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RECEIVED  
NOV 17 2009  
BOARDS

November 15, 2009

**Re: Bristol Bay Finfish Meeting  
December 1-8, 2009**

Alaska Board of Fish  
P.O. Box 115526  
Juneau, Alaska 99811-5526

Mr. Chairman and Members of the Board:

I am submitting these comments for reference during the December 1-8, 2009 Bristol Bay Finfish meeting.

As the author of Proposal 20 that was "...tabled to the board's Salmon Restructuring Committee for additional review...", I am reiterating my support for the proposal that allows one person to own two permits and take part in the board-allowed advantages of having two permits 'stacked' on one vessel. While the proposal was referred to the Salmon Restructuring Committee, the proposal's impact is limited in that it only seeks a change permit ownership requirements without altering legal gear regulations. Since it has been legal to 'stack' permits for 6 years already, allowing one person to own both of the permits used can be considered as a housekeeping measure that is unlikely to precipitate a significant change. Contrary to opinions expressed in the media, this proposal does not seek to increase or change the net length regulations that are presently in place. Further justification for passage of this proposal and reasons for my continued support have been submitted previously as requested by the Salmon Restructuring Committee and are presumed to be part of the Board packet.

In addition, I strongly support Proposal 15 that seeks to eliminate the 32 foot vessel length limit. Support the measure is founded on the broad industry perception and obvious physical reality that a somewhat larger vessel can better accommodate equipment and deck space needed to improve fish handling practices. The market demand for higher quality wild salmon, especially sockeye, is clearly demonstrated by RSW vs. dry price differentials within the Bay as well as the reality that Bristol Bay sockeye overall command the lowest price in the state. The proposal should be viewed by the Board as an integral part of a longer-term statewide effort supported by the Administration and Legislature to revitalize Alaska's salmon industry. The concept promoted for revitalization is to provide the 'tools' needed for responding to worldwide

1/4

Public Comment #

73

market changes. Lifting the 32-foot limit will allow individual fisherman to react to market opportunities as they individually see fit without compromising the prospects of others to continue fishing as they have in the past. Given that the legal length of gear is not addressed by this proposal, the “catching power” of the fleet will change only incrementally--if any, while increases in ex-vessel value that will benefit all.

Opponents this proposal, often from local Bristol Bay communities, have cited concerns that include vessel obsolescence (i.e. stranded capital), inadequate financial options for vessel upgrades or new construction and the potential to be overwhelmed by an influx larger vessels. While these fears are often expressed, the purpose of this proposed change is to diverge from a “status quo” that is no longer effective in achieving the best values for Bristol Bay fish. Socioeconomic information available in CFEC reports and on the website shows a present system that is failing the local resident fishermen as permits ‘migrate’ out of the region and incomes stagnate and decline. It is difficult to understand what aspect of the ‘status quo’ some of the local residents are trying to protect. Lifting—or at least increasing—the vessel length limit is an aspect of change that is not likely to result in the fearful scenarios suggested by opponents.

First, considering the perception that vessels will suddenly become obsolete leaving owners with ‘stranded capital’, the following points can contradict that view:

- Vessel values are ultimately based on the income that can be produced
  - Fishing power is primarily a function of the amount of net in the water and where that net can be operated
  - Smaller and shallower vessels will still be able to ‘load up’ on the beach as the tide ebbs in a way that larger deeper vessels never can
  - Longer vessels are less maneuverable than smaller vessels—a decided disadvantage in the close quarters sometimes encountered in Bristol Bay
  - Longer/larger vessels are affected by wind more than smaller vessels—wind is a significant operational factor for drift gillnetting
  - Value for a longer vessel that can produce higher quality fish will result from the capability to get a higher price per fish rather than some inherent ability of a longer vessel to catch more fish
- Depreciation is real.
  - Over time, vessels wear out and become obsolete.
  - Maintaining even a given level of competitiveness requires periodic investment—and, ultimately, new construction.
  - The average age of a Bristol Bay vessel—over 25 years—indicates that many have exceeded the industry standard 30-year expected useful life.
- Sturdily-built and maintained vessels that are especially well-suited for the unique Bristol Bay conditions and operator’s fishing style will maintain value. Conversely, poorly maintained vessels with no special capabilities

will continue to depreciate in value related to their ability to perform.

Second, fears of inadequate financial capability expressed by some residents of the Bristol Bay Region are unfounded. On top of federal programs available to all fishermen (e.g. Capital Construction Funds) and the state loan program available to Alaska resident fishermen, Bristol Bay residents are sitting on accumulated assets and regular income for the Bristol Bay Economic Development Corporation (BBEDC) from the CDQ program that:

- is specifically designed to:
  - (i) *to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area; (ii) to support economic development in western Alaska; (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and (iv) to achieve sustainable and diversified local economies in western Alaska. (<http://www.fakr.noaa.gov/cdq/>)*
- BBEDC, a non-profit organization, has significant income and assets as shown in their 2007 IRS Form 990 submission:
  - Total Revenue (line 12) of over \$29 Million
  - Expenses (line 17) of almost \$9 Million
  - Net Revenue (line 18) of over \$20 Million
  - Net Assets (line 21) of over \$125 Million
- If BBEDC chose to use a portion of those assets for purchasing and financing vessel construction for the salmon fishery, Bristol Bay residents would have a decided financial advantage in securing funding for vessel conversion, construction and re-construction.

And third, while total abolishment the 32 foot limit could theoretically allow a 90-footer (suggested as a concern by Izetta Chambers in October 22 issue of the Bristol Bay Times), the practical limitations of gillnet operation make this an absurd contention—especially in the shallow and often stormy waters of Bristol Bay. Since drift gillnets are limited by regulation, the vessels operating them will ultimately be sized in a compromise between the need to minimize the vessels effect on the gear, ability to handle the catch in the most market-savvy way and the need to minimize construction and operational costs.

- Other Alaska salmon gillnet fisheries seldom see participation by vessels much more than 40 feet even though net length and depth limitations are often greater than those allowed in Bristol Bay.
- Operation of larger vessels in close quarters as required in the Bristol Bay fishery becomes progressively more difficult as:
  - Effects of wind and current is greater for larger vessels
  - Vessel turning radius increases with length
  - Shallow water precludes any deeper draft vessels from operating in many of the Bay's typically fished productive areas

- Larger vessels cost more to build, operate and maintain.
  - Expected price increases for higher quality fish are not likely to justify construction or use of vessels any larger than those operated in other Alaska drift gillnet fisheries
  - Given that the salmon price collapse of the last decade and a half has precluded much new construction; there are relatively few vessels available from other fisheries for immediate entry into Bristol Bay--even if they were suitably built!

Thank you for the opportunity to present written testimony favoring passage of Proposals 20 and 15 respectively. I also support Proposal 31 because it can function to increase the time available to harvest a given run of fish with commensurate improvements in handling as well as minimize the chances of forgone harvest.

I oppose proposals 21, 22, 23 and 24 as being contrary to the justification of permit stacking and the intent of the Administration and Legislature in supporting revitalized salmon fisheries.

Sincerely,

Charles W. Treinen

4/4

Public Comment # 73

# CONCERNED AREA M FISHERMEN

35717 Walkabout Road, Homer, Alaska 99603  
(907) 235-2631

November 17, 2009

Vince Webster, Chairman  
Alaska Board of Fisheries  
P.O. 25526  
Juneau, Alaska 99802-5526

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Re: Proposals 29 and 30

Dear Mr. Webster and Board Members:

Concerned Area M Fishermen (CAMF) submits these comments on two proposals you will be considering this year concerning fishing by Bristol Bay (Area T) boats in the Northern District of Area M. These are proposals 29 and 30. We understand that the Board will take public testimony on these proposals and discuss them in committee during your upcoming Bristol Bay meeting, but that you do not intend to deliberate or take action on them until the Area M meeting in February. CAMF members will testify regarding this "overlap" issue at the Area M meeting, but we want to state in advance that we oppose these proposals to expand the presence of Area T boats fishing in Area M.

For those of you who are new to the Board, CAMF represents the interests of Area M drift gillnet fishermen. Our members participate in both South and North Alaska Peninsula fisheries. CAMF has been active in the Board process for nearly 25 years and we look forward to working with you again this year.

## Proposal 29

This proposal seeks to expand significantly the opportunity for Area T boats to fish in Area M, particularly in the Outer Port Heiden and Ilnik Sections. We agree with the Department that this additional effort "would likely create a resource conflict" and would "complicate management of the fishery." See Staff Comments, Regional Information Report No. 2A09-02, at 38. The size of the fleet in Area M is sufficient to harvest the available surplus in this area, and there is no basis to consider authorizing a potentially substantial increase in effort. As the Department also notes, this proposal would be in conflict with the net registration regulations adopted by the Commercial Fisheries Entry Commission.

1/3

Public Comment #

74

The proponent refers to a “new fishery” that was opened up in the Outer Port Heiden Section in 2007. While the Board did provide some additional fishing area in which Area M boats would operate in this section, this effort was directed at a run that we have always fished, Meshik River sockeye. Escapements into that system were consistently exceeding the Department’s goal, and the Board sought to better target this run. The 2007 regulatory change has succeeded in allowing our fleet to harvest the available surplus. No expansion of effort is needed to accomplish this goal.

The proponent also claims that Area T fishermen “traditionally” fished the Outer Port Heiden and Ilnik Sections until the early 1980s. This was never true for the month of July. As explained in the Department’s comments, allowing Area T boats to fish in Area M was intended to preserve historical fishing for Chinook and coho salmon in the Inner Port Heiden and Cinder River Sections, primarily by residents of Port Heiden and Pilot Point. Allowing Area T boats into the Outer Port Heiden and Ilnik sections, especially in June and July, would represent a significant expansion of effort by Area T boats in Area M, which effort would certainly be directed at sockeye.

### **Proposal 30**

The stated rationale for this proposal is that Area T boats need more opportunity to catch kings in the inner portion of the Cinder River Section (in Cinder River Lagoon) during the month of July. However, the proposal also seeks to allow Area T boats access to the Inner Port Heiden Section during this time. We question the likelihood of Area T boats abandoning their sockeye fishery at its peak in order to fish the back end of a Chinook run down in Area M. Perhaps what the proponent really seeks is more opportunity to harvest sockeye, not kings. Should the Board desire more effort directed at Cinder River sockeye in June and July, there is positive evidence from the Board’s action in opening up a portion of the Outer Port Heiden Section so our fleet could gain better access to the Meshik River run, that we would be capable of harvesting any available surplus from the Cinder River. The Department’s comments on proposal 30 state that use of the Outer Port Heiden Section has been “effective at controlling escapement into the Meshik River” (Staff Comments at 41), and there is no reason to think that the same would not also be true if the Area M fleet were allowed greater access to the Cinder River run.

One final point regarding the Cinder River. The proponent of proposals 29 and 30 also submitted proposal 48, pertaining to fishing periods within Bristol Bay. He seeks to add language to an existing regulation that would preclude fishermen in some districts from fishing in the Ugashik or Cinder River Sections during the same week. However, the outer portion of the Cinder River Section does not open until August 1 (5 AAC 09.310(a)(1)(B)), so the reference to Cinder River in proposal 48 is confusing and should be deleted.

Board of Fisheries  
November 17, 2009  
Page 3

In sum, we urge the Board to reject both proposals 29 and 30. Our fleet is fully capable of harvesting the available surplus in Area M, and there is no justification for authorizing the significant expansion of effort in our area that likely would occur if either of these proposals were adopted. Thank you for considering these comments.

Sincerely,

*Steve Brown*

Steve Brown  
President, CAMF

*24 MB*



Alaska Chapter  
715 L Street  
Anchorage, AK 99501

Tel (907) 276-3133  
Fax (907) 276-2584

nature.org/alaska

**Written Testimony of Randy Hagenstein, Director  
The Nature Conservancy in Alaska  
(with appendices)  
Nov. 17, 2009**

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**Alaska Board of Fisheries Hearing on Salmon Habitat Protections in Bristol Bay as  
Discussed in Proposal 13**

**Introduction and Background**

The mission of The Nature Conservancy is to preserve the plants, animals, and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Nature Conservancy has been working for more than a decade to protect salmon habitat in Southwest Alaska. For the first few years we worked primarily with Native communities along the Nushagak River and focused on conservation planning and purchasing habitat protections on private lands. As part of that effort, the Conservancy helped establish the Nushagak-Mulchatna Watershed Council and create the Southwest Alaska Salmon Habitat Partnership. Since 2001, through the leadership of The Conservation Fund, the Southwest Alaska Salmon Habitat Partnership has raised in excess of \$14 million and protected more than 94,000 acres of salmon habitat in Southwest Alaska, most of it in Bristol Bay. The Partnership recently received official recognition by the National Fish Habitat Board.

Over the past two years, our work has expanded even further. The Nature Conservancy has worked with a variety of partners to:

- document and map salmon distribution,
- nominate salmon-bearing waters to the Alaska Anadromous Waters Catalog,
- document water flows and apply for in-stream flow reservations, and
- improve understanding of water quality.

We have used two important statutory provisions – the Anadromous Fish Act (AS 41.14.870) and the Water Use Act (AS 46.15.145) – to implement these salmon conservation actions. The salmon habitat surveys have resulted in more than 90 stream-miles of new nominations in the Upper Nushagak-Upper Kvichak area and verification of more than 200 miles of streams currently listed in the catalog but without substantiating data.

The field research in the upper reaches of the Nushagak and Kvichak has demonstrated that virtually all water bodies in the area are important for salmon. In fact, salmon were documented in approximately 90 percent of the streams surveyed, many of them small streams less than 10 feet wide. These healthy watersheds are essential for migrating salmon, rearing salmon, and spawning salmon in Bristol Bay.

### **The Anadromous Fish Act**

The Anadromous Fish Act (AS 41.14.870-900) is the key statutory protection for freshwater habitats of fish in Alaska. The act requires the Alaska Department of Fish and Game to "specify the various rivers, lakes and streams or parts of them" in the state that are important to the spawning, rearing or migration of anadromous fishes. The Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes (AWC) and its associated atlas are the media used to fulfill this directive, and are adopted as regulation under 11 AAC 195.010.

It is important that water bodies used by anadromous fish are listed in the AWC, because only listed water bodies are afforded protections under the Act. To be listed in the AWC, water bodies must have site-specific, direct, unambiguous observations of anadromous fish by a qualified observer. Speculation or professional judgment is not sufficient to list water bodies in the AWC.

Alaska's streams and rivers total approximately 1.2 million kilometers (km) in length and Alaska's lakes number in excess of 3 million. In the vastness of Alaska, only a fraction of extant anadromous fish freshwater habitats have been documented. The AWC currently lists approximately 16,000 streams, rivers or lakes around the state, which have been specified as being important for the spawning, rearing or migration of anadromous fish. However, based upon thorough surveys of a few drainages it is believed that this number represents less than 50 percent of the streams, rivers and lakes actually used by anadromous species (ADF&G 2007). Until these habitats are inventoried, they will not benefit from the protections of the Anadromous Fish Act (TNC 2008).

During 2008 and 2009, 91 miles of headwater streams in Bristol Bay were added to the AWC based on fieldwork sponsored by The Nature Conservancy. Partners in this work included Alaska Department of Fish and Game, Bristol Bay Native Association, Bristol Bay Regional Seafood Development Authority, Nushagak-Mulchatna Watershed Council, Pebble Partnership, and Trout Unlimited, among others. These surveys involved two helicopter-supported teams of three scientists each working to conduct electro-fish surveys of streams for salmon and other fish species. Better than 90 percent of the stream reaches surveyed contained salmon at the time of the survey.

### **The Water Use Act**

Among those fundamentals necessary for a salmon's survival, none is as vital as water. Wild salmon need an abundance of clean, cool, well-oxygenated freshwater. These freshwater habitats need an abundant source of water that is sufficient to provide connectivity to other habitats such as ponds and tributaries. To ensure that wild salmon in the Nushagak and Kvichak drainages have the water essential for spawning, migration and rearing, The Nature Conservancy and its partners are applying for water reservations on several stream systems.

Unlike the rest of the United States, less than 1 percent of Alaska's freshwater has out-of-stream appropriations. Also unlike most other states, Alaska law provides a water right for keeping water in a stream. AS 46.15.145 provides that "the state, an agency or a

political subdivision of the state, an agency of the United States, or a person" can apply for a "reservation of water" which is defined by regulation as the appropriation of "water for maintaining a specified point on a stream or water body or in a specified part of a stream or water body for specified periods of time and for one or more permissible purposes." Reservations can be made for four identified beneficial uses: protection of fish and wildlife habitat, migration, and propagation; recreation and park purposes; navigation and transportation purposes; and sanitary and water quality purposes.

So, under the Water Use Act, quantities of water and flows needed for fish and wildlife and for different life stages and times of year can be protected by reserving an in-stream flow right.

Under the Alaska Water Use Act a reservation of water to protect salmon habitat is based on a claim of priority – first in time is first in right. Someone must step forward to file a claim of reservation of water or instream flow for salmon or other fish on a particular water body with the Alaska Department of Natural Resources (ADNR). Priority of use or reservation is established from the date of filing. A filing must include data or evidence to support the water reservation requested.

Generally the evidence supplied with an application is the best scientific guess as to how much water is needed in a stream at various times of the year. Once an application for reservation of water is filed it must be perfected or "proved-up." Perfecting an application is normally done by gauging and recording water levels for a period of 5 years. Often the U.S. Geological Survey is engaged to install and maintain the gauges and collect the data. Once the data is collected the instream flow application is updated with actual information, ADNR then adjudicates the application and decides whether to grant a "certificate of reservation" specifying the amount of water that must remain in a water body before any out-of-stream uses can be permitted. ADNR also issues a priority date for the reservation that relates back to the date of the original filing. It may take years for ADNR to adjudicate an application once it is perfected due to a backlog of water reservation applications.

The Nature Conservancy, along with various partners, including Alaska Department of Fish and Game, Bristol Bay Native Association, New Stuyahok Village Council, Trout Unlimited and Southwest Alaska Salmon Habitat Partnership, is assisting with instream flow applications to reserve water for salmon and other fish on several stream systems in Bristol Bay. These include Upper Talarik Creek, the Koktuli River, the Swan River, Kaskanak Creek, the Mulchatna River and the Stuyahok River. In 2007, The Nature Conservancy and Alaska Department of Fish and Game perfected an instream flow reservation filed in 2000 on Lower Talarik Creek. The application is awaiting adjudication by ADNR.

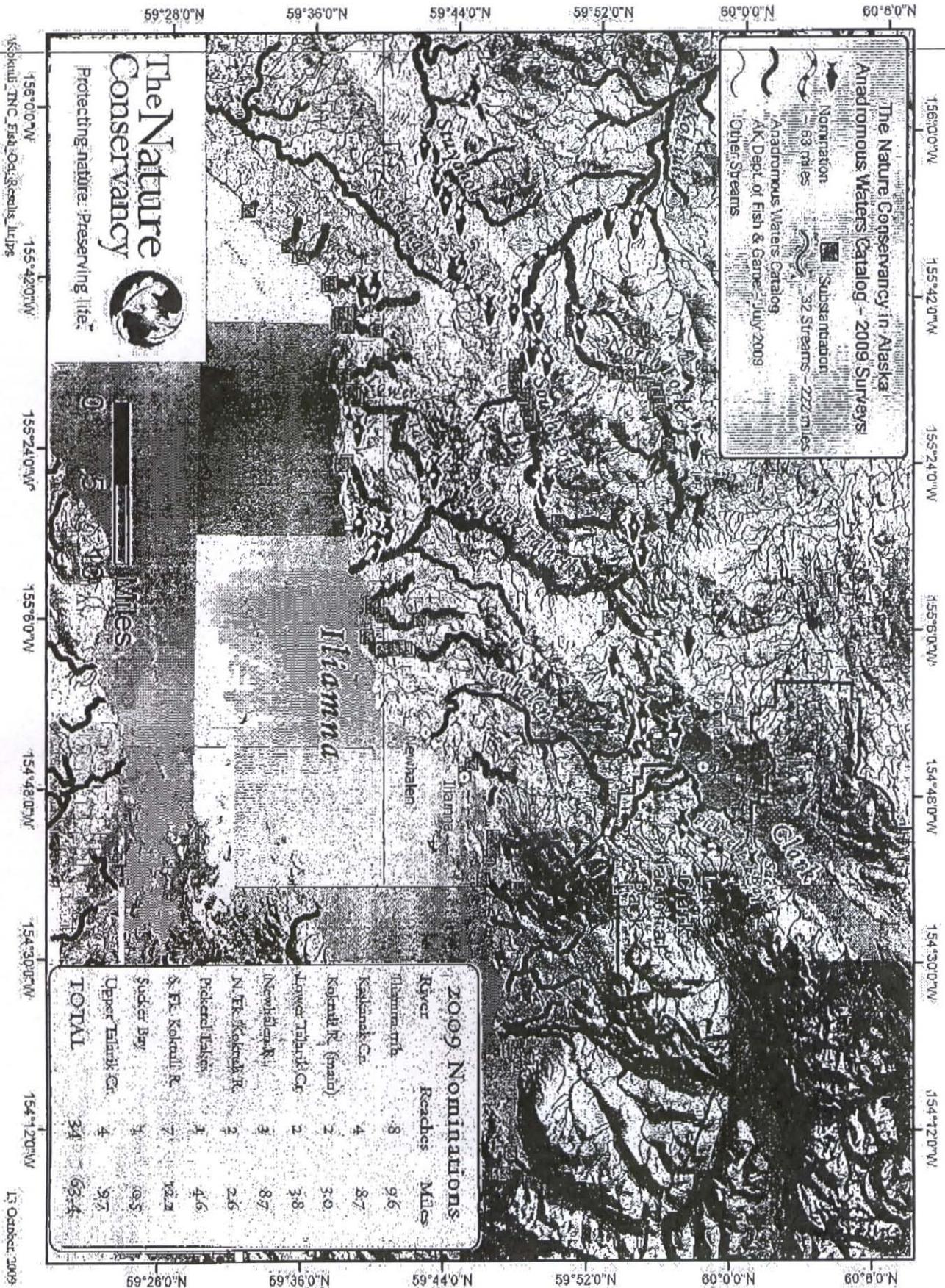
### **Conclusion**

Surveys by The Nature Conservancy and our partners confirm that even remote tributaries in these river systems provide an abundance of habitat for wild salmon. The reservation of instream flow in the aforementioned waters is essential for spawning, migrating and rearing salmon.

Appendix A: The Nature Conservancy in Alaska:  
Anadromous Waters Catalog – 2009 Survey

419

Public Comment # 75



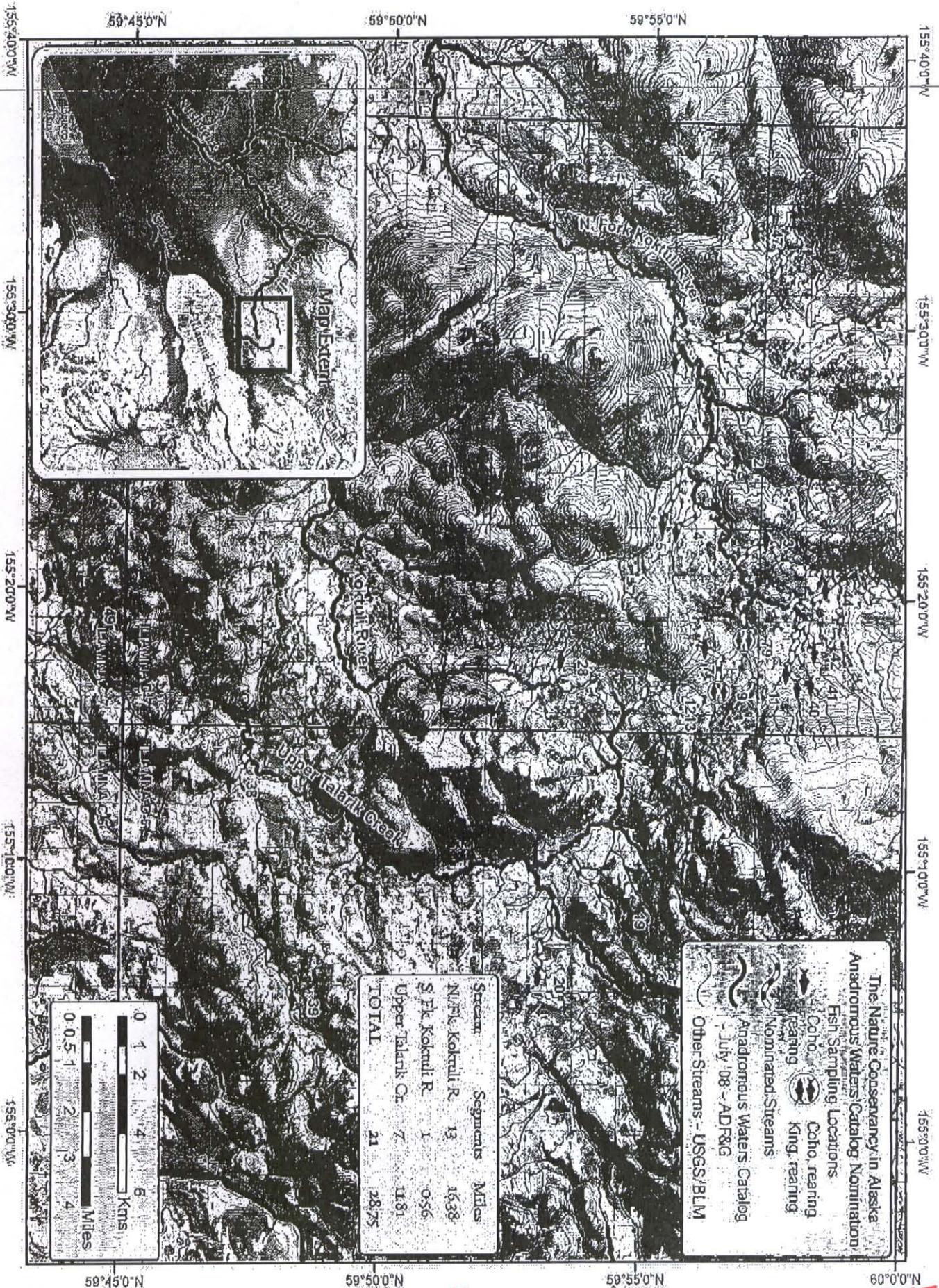
5/9

Public Comment # 75

Appendix B: The Nature Conservancy in Alaska:  
Anadromous Waters Catalog – 2008 Survey

6/9

Public Comment # 75



719

Appendix C: The Nature Conservancy in Alaska: Instream  
Flow Reservations in Bristol Bay – 2009 Status



November 16, 2009

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Vince Webster, Chair  
+ Members of the Board of Fish  
Alaska Boards Section: Board of Fish  
P.O. Box 115526  
Juneau, AK 99811-5526

RE: Proposal 20 - Allow one person to own  
two permits

I am writing to ask you to vote against this proposal. Also I would ask that you return Bristol Bay back to the way it was for over 100 years. That each permit be allowed to fish 150 fish and one permit per boat. The recent changes have changed Bristol Bay for the worse. Boats with different lengths of gear drift at different rates and cause nets to come together creating a safety problem. Processors have given the boats with 2 permits higher limits than those with 1 permit. This permit stacking has increased the cost of an already overcapitalized fishery and makes it harder for young people to get into the fishery.

By going back to the way the fishery was before will hurt no one. Very few new boats will enter the fishery as processing capacity has

already limited the number of boats with  
markets. Permit stacking will only decrease the  
quality of the fish. Longer net catches more  
fish and decreases the time available to cool  
with each fish.

I am hopeful you will vote against this  
proposal as you look out for the long-term  
Safety and Health of this fishery

Thank-you  
Kevin P. Maville  
Kris P. Kennedy  
7441 Hawnegan Rd  
Lynden Wa. 98264  
360-961-8856

~~I am creating different lengths of gears on  
different boats the use of~~

Jason Kohlhase  
F/V Icy Bay  
10753 Horizon Drive  
Juneau, Alaska 99801

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November 16, 2009

Vince Webster, Chair  
& Members of the Board of Fish  
Alaska Boards Section: Board of Fish  
PO Box 115526  
Juneau, Alaska 99811-5526

RE: Proposal 20-Allow one person to own and operate two permits on one vessel

I am writing to express support for proposal 20. Allowing one individual to earn an extra 50 fathoms of gear through ownership of a second permit will help to increase profitability, moving closer to the CFEC's optimum number for an economically healthy fishery. With less overall gear in the water the race for fish will slow allowing everyone to improve quality through improved handling and refrigerating practices. Also, permit stacking will help to stabilize permit values into the future through reduced latency.

Our future goals for Bristol Bay should include a more financially stable model, 100% chilled fish and a safer work environment. Permit stacking is but one very important tool that without it, Bristol Bay will be stuck in the past.

Please support proposal 20 with your vote.

Thank you for your consideration.



Jason Kohlhase

Kvichak Setnetters Association  
PO Box 91118  
Anchorage AK

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ATTN: BOF COMMENTS  
Boards Support Section  
Alaska Dept of Fish and Game  
P.O. Box 115526  
Juneau AK 99811-5526  
Fax: 907 465-6094

RE: proposals Bristol Bay Finfish

14: oppose

16, 17, 18: support

20: support

31: oppose

32: support

33: oppose

34: oppose

35: oppose

36 oppose

39: oppose

ATTN: BOF Comments

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Boards Support Section

ALASKA DEPARTMENT OF FISH AND GAME

Fax (907) 465 – 6094

Re: Bristol Bay Finfish – Proposal 13

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The following is offered to the Board of Fish by Koliganek Natives LTD village corporation as information that may be relevant to its deliberations on Proposal 13.

Herman Nelson, Sr.  
Chairman, Koliganek Natives LTD

1/4

Public Comment #

79

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**KOLIGANEK NATIVES LTD SALMON RESERVE****INTERIM GUIDING PRINCIPLES**

WHEREAS: Kolliganek Natives Ltd, (KNL) is the ANCSA village corporation established for the Native people of Koliganek, Alaska.

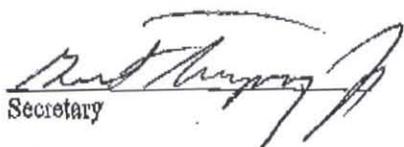
WHEREAS: KNL has entered into an Memorandum of Understanding with the Nushagak-Mulchatna / Wood-Tikohik Land Trust and the Nature Conservancy in Alaska to prepare a conservation land management plan that identifies and maps important cultural and subsistence sites and important salmon habitat on its lands for the purpose of guiding future development.

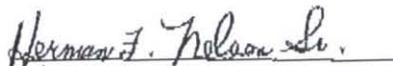
THEREFORE, BE IT RESOLVED; That KNL adopts the following land management guidelines as temporary measures to protect cultural and subsistence sites and salmon habitat for three years from the date of this resolution or until the conservation land management plan is complete, whichever occurs sooner:

1. A 100 ft riparian setback for habitat protection is designated for all salmon bearing waters on KNL lands. The following activities, with the exception of activities specifically provided for herein, are prohibited within the riparian setback: major land or vegetation clearing, excavation, filling, building construction, or any other activity that may cause significant erosion or damage to riparian habitat or results in pollution of surface or groundwater.
2. Commercially operated camps for sport hunting and fishing on KNL lands may be allowed but shall not be placed within 100 feet of a known salmon spawning area or within 100 feet of the mouth of a tributary stream. Whenever practicable commercial camps will be placed beyond the 100 foot riparian setback.
3. Subsistence cabins, drying racks, smokehouses and the like may be allowed on KNL lands but shall not be placed within 100 feet of a known salmon spawning area or within 100 feet of the mouth of a tributary stream.
4. Extraction of gravel from a salmon bearing stream either for community development or export shall, to the greatest extent possible, be conducted in such places and at such times as to have the least possible impact on salmon and salmon habitat;
5. Hard rock or mineral mining shall be prohibited on KNL lands within one mile of any salmon bearing waterbody. Fish distribution surveys and salmon life stages must be fully documented before hard rock or mineral mining can occur on any KNL lands where such activities may adversely affect salmon bearing waterbodies;

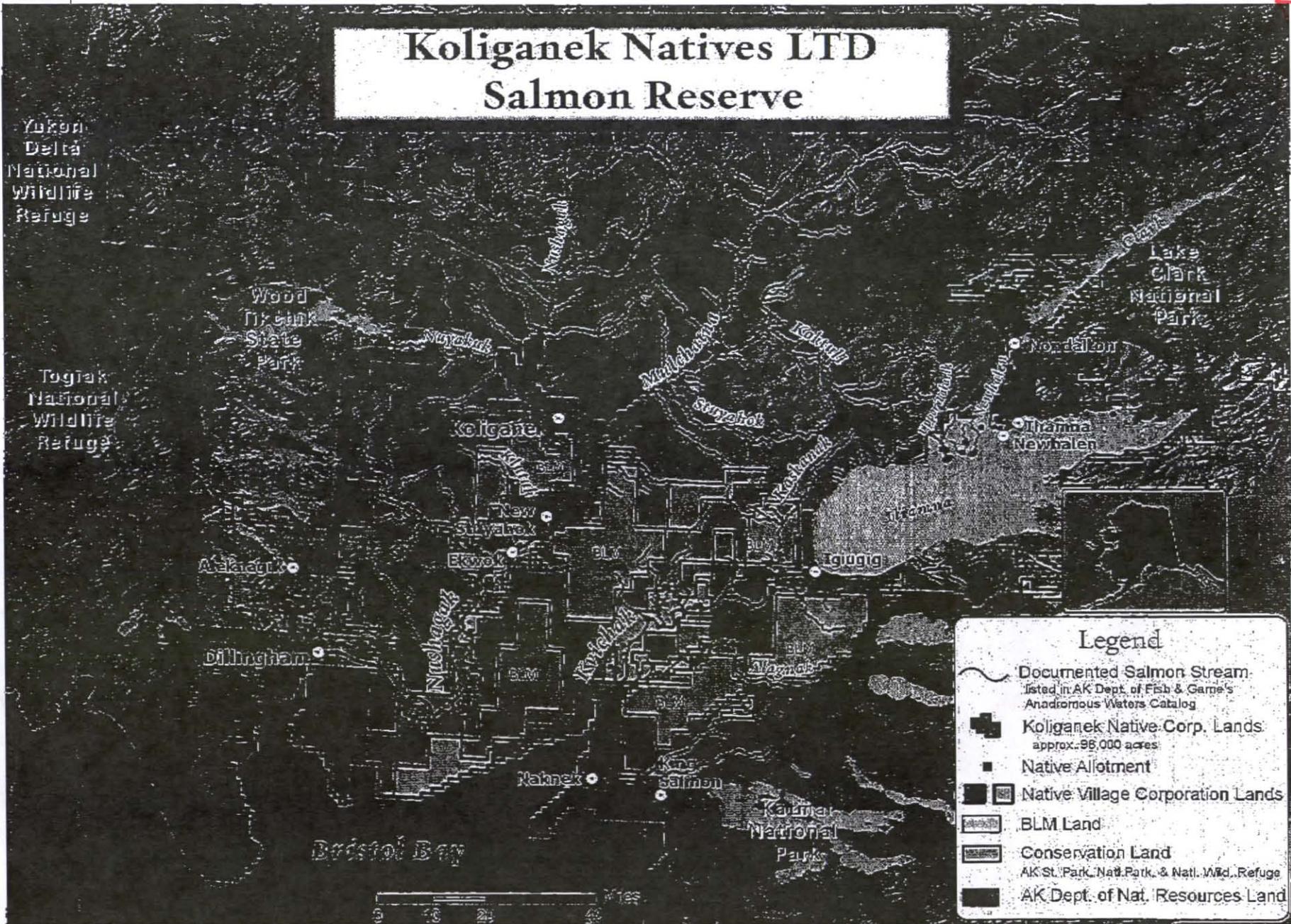
- 6. Instream flow reservations protecting water levels necessary to protect salmon must be filed under Alaska law before any hard rock or mineral mining can occur on any KNL lands where such activities may adversely affect salmon bearing waterbodies;
- 7. The commercial harvest of trees shall not be allowed within 300 feet of the bank of a salmon bearing waterbody. This restriction does not apply to the local harvest of wood for personal use.
- 8. Fuel storage or storage of hazardous substances within the 100 foot riparian setback shall have proper containment and otherwise comply with all federal and state regulations.
- 9. KNL lands shall not be used for the construction of dams or other artificial measures that may result in obstruction of salmon passage.
- 10. A shareholder or descendant of a shareholder of any ANCSA village corporation within Bristol Bay Native Corporation region may, without charge, have permission to hunt, fish, collect edible and medicinal plants, or otherwise respectfully use KNL lands provided the same privileges are extended to shareholders of Kolliganek Natives, LTD.

ADOPTED this 7 day of Oct, 2009 by the Board of Directors of Kolliganek Natives LTD.

  
Secretary

  
Chairman

# Koliganek Natives LTD Salmon Reserve



Yukon Delta National Wildlife Refuge

Wood Creek State Park

Togiak National Wildlife Refuge

Lake Clark National Park

Nondalton

Umanna Newhalen

Akatuk

Dillingham

Koliganek

New Suvatok

Ekwok

Kigig

Naknek

Kane Salmon

Kaumar National Park

Bristol Bay

### Legend

- Documented Salmon Stream - listed in AK Dept. of Fish & Game's Anadromous Waters Catalog
- Koliganek Native Corp. Lands - approx. 96,000 acres
- Native Allotment
- Native Village Corporation Lands
- BLM Land
- Conservation Land - AK St. Park, Nat. Park, & Natl. Wild. Refuge
- AK Dept. of Nat. Resources Land



19

Public Comment #

4/4

# Lake and Peninsula Borough

PO Box 495 King Salmon, Alaska 99613 907-246-3421

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NOV 17 2009  
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November 14, 2009

Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526  
(907) 465-6094 FAX

Subject: Proposal 13 calling for a State Fish Refuge

Dear Sir or Madame:

The Borough will never trade our critical fish resources for any development, nonetheless we strongly oppose proposal 13, just as we opposed proposal 121 in our letter dated November 17, 2006 and submitted as comment 120 for the Board of Fisheries meeting in December 2006. Proposal 13 is much too vague and will confuse rather than strengthen the permitting process for any economic development in our region.

It is the residents and communities of the Lake and Peninsula Borough that stand to be affected the most by the fish refuge and/or any development that may occur in our region and we respectfully ask you to carefully consider our concerns. The two Fish and Game advisory committees that most completely represent the communities of the Borough are the Lake Iliamna Advisory Committee and the Lower Bristol Bay Advisory Committee. Of the committee members on both of these advisory committees it is fair to say that they are split on the issue of mining development itself but they are strongly and unanimously opposed to a fish refuge as a very misguided and inappropriate tool for managing the decision process. One Borough resident questioned the wisdom of a fish refuge by asking if their grandchildren would thank them for instituting a refuge for them to live in – would future management of the refuge, despite assurances that it would never happen under State management, restrict their way of life for future generations in unacceptable and unreasonable ways? Given the vagueness of proposal 13 and the potential downside of living within a fish refuge the members of these two local AC's unanimously adopted a strong position of opposition to the proposed fish refuge and chose instead to rely on the permit system as the best way to address the mine decision process.

**Background: In regards to mining specifically, will not trade our fish resources for a mine.**

- the Lake and Peninsula Borough Assembly feels strongly it has an obligation to the region to work with its citizens to objectively and thoroughly review the proposed Pebble Project once detailed site-specific, accurate project and environmental information is provided.

- the Lake and Peninsula Borough Assembly believes the acceptance or rejection of this project is a decision that should be carefully examined and principally decided upon locally, and, only after a detailed and thorough review.
- the Lake and Peninsula Borough believes environmental protection and economic development can co-exist. They are not mutually exclusive, however the Lake and Peninsula Borough will not trade its pristine environment for a mine. If the project is not shown to adequately protect Borough fisheries, water quality, natural resources, and social and cultural values, we will oppose it.

**The Proposal Confuses rather than Strengthens the Permit Process.** The critical fishery resource that any permitting process must protect from adverse impact is water quality and quantity. Yet, we cannot see how the "Refuge" would increase protection for the water resources. Three examples illustrate the problem.

- **No additional protection for Water Quality.** Any water quality discharge to the rivers within this proposed "Refuge" already requires an authorization from the Alaska Department of Environmental Conservation. If after a rigorous risk analysis, a discharge can be proven to meet Alaska water quality standards, then the DEC must authorize the discharge. If it does not, the agency cannot authorize it. This "Refuge" proposal does not change this fact.

Water quality permitting is delegated by Alaska law to the Alaska Department of Environmental Conservation - This refuge proposal neither alters nor enhances these state laws. Water quality permitting remains solely under the jurisdiction of DEC. Anyone can give comments to DEC or can appeal a decision of the agency, but creating a new fish refuge bureaucracy without authority of water quality does not add additional protection for our water. It only serves to confuse the issue.

- **No additional protection for Water Quantity (Water Right).** Decisions on water rights are delegated by Alaska statute to the Department of Natural Resources. In the approximately two dozen State Refuges and Critical Habitats that already exist, the Department of Fish and Game does not take over this function. It remains with DNR. This "Refuge" would be no different. Any decision about whether to allow a mine (or anyone else) to withdraw waters from the creeks would be made by the Department of Natural Resources. Proposal 13 changes neither the statutory criteria nor procedures under which DNR makes the decision. Again, any person or group can comment or appeal DNR's decision, but this "Refuge" proposal does not change the framework nor procedures for DNR's waters rights decision. It adds no protection, only confusion .

- **It is unclear how this "Refuge" (Proposal 13) reflects Valid Existing Rights.** All federal and state special areas - State Parks, State Game Refuges, State Critical Habit Areas, etc, exempt valid, existing rights from their jurisdiction. Even the federal conservation units do so. This "Refuge" proposal will be required to do so as well.

The mining claims of the Pebble Project are valid existing property rights. Any mining claim owner has the right to develop a mine, so long as they can

adequately protect the environment. Given the size and configuration of the design outlined in Northern Dynasty's water right applications, it is possible a full analysis will show that the proposal provides undue risk to public resources. If so, the state and federal agencies have a legal responsibility to not allow it. However, if the mine does show that it adequately will protect public resources, the mining claims give the company a legal right to mine.

- If DEC determines a discharge will meet water quality standards and if DNR determines that a water right is appropriate, how can ADF&G use this Refuge to deny a permit? It is extremely unclear how Proposal 13 interacts with existing authorities and protects valid existing rights.
- Summary: This "Refuge" Proposal does not add additional protection to our resources, it just adds confusion.

**There is a Right Way to Strengthen Protection for Our Resources.** The permit process that will best protect our resources is one that is simple, clear and plain enough for our citizens to understand and participate in. It is one where good analysis is done with good data. This "Refuge" proposal does nothing to advance those goals. It creates no additional data requires no additional analysis, nor does it bring any real additional expertise to the question.

The "Refuge" would only add confusion to the process. It confuses the public as to where the real authority lies, plus it does nothing to ensure the agencies with the actual authority will do a better job. There is a better way.

The Lake and Peninsula Borough has and will continue to review the process to ensure that it occurs with adequate data, analysis, expertise, and public participation. Where additional data, analysis, and expertise can strengthen the process and strengthen, protection of our resources, the Borough will continue to demand it.

If any large scale development applications are ever actually submitted, and a permit process begins, the Borough will work hard to ensure the agencies involved engage our citizens with expertise and analysis to ensure the resources of our Borough are protected. This is the way to protect fish.

Adding confusion to the process, which is the effect of this "Refuge" proposal will not protect us. It actually will distract the agencies and the public from the real job at hand. It adds no additional data, analysis, or expertise to the process. We urge the Board of Fisheries not to support Proposal 13.

In short this appears to be another surreptitious effort to evade existing rules and regulations to prevent economic development in our borough and in the long term deny our children and grandchildren a viable future.

Sincerely,



Glen Alsworth, Mayor  
Lake and Peninsula Borough

Public Comment # 80

To: Alaska Department of Fish and Game (Boards support section-board of fish)

RECEIVED  
NOV 17 2009  
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SUPPORT FOR PROPOSAL #20

Members of the Board of Fish,

My name is Peter Thompson and I have lived and fished out of Kodiak for 30 years. I have owned a Bristol Bay drift permit since 1986 and have experienced the financial ups and downs of the Salmon fishery in the Bay.

The time has come for the Board to take positive action on permit stacking in Bristol Bay in order to help the fishery become economically sustainable long-term. The economic benefit of removing fishing nets from the waters of Bristol Bay through stacking is a benefit for all fishermen both urban and native.

On a personal note I have owned two drift permits since the beginning and have not had the chance to utilize my second permit because I did not have a family member able to safely use the permit (too young). I have been leasing a medical permit in the past and putting that in my crewmen's name in order to use the "D" option rather than risk putting my permit into a crewmen's name and not getting it back. I feel that this has disadvantaged people such as myself that don't have family members that are of an age to safely be on the water.

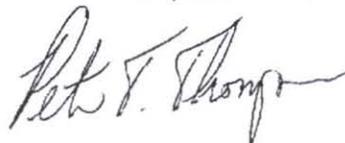
In speaking with a number of "dual permit" holders... there are a significant portion actively shopping the boat market to put another boat on the water in Bristol Bay with a full set of fishing gear should this board elect not to implement Proposition 20. It is a more profitable business move for myself to start up another operation with 900 feet of net then to hang on to a second B Bay Drift permit that I can't use.

This would be counterproductive to the time, money, and effort that has been put forward by ADFG,CFEC, and others all trying to decrease the excessive amount of permits and nets.

We need to implement Proposition 20 NOW....there are no other "tools" in the "tool box" that will work effectively and immediately for all stakeholders.

Thank you for your consideration,

Peter Thompson



11/17/09

Public Comment #



Alaska Department of Fish & Game  
 Boards Support Section  
 P.O. Box 115526  
 Juneau Alaska 99811-5526  
 BY FAX # (907) 465-6094  
 Public Comments  
 In re;

10 PAGES

Bristol Bay Finfish Meetings  
 December 1-8, 2009  
 Anchorage Hilton  
 500 West 3<sup>rd</sup> Avenue  
 Anchorage Alaska

RECEIVED  
 NOV 17 2009  
 BOARDS

Todd Granger  
 2101 West Shore Dr.  
 Lummi Island Wa. 98262

#### Proposal #21

A Patriot is always part of the answer.  
 A Traitor is always part of the problem.  
 A Patriot always has a program.  
 A Traitor always has an excuse.  
 A Patriot says "Let me do it for you."  
 A Traitor says "That's not my job."  
 A Patriot is constantly trying to improve.  
 A Traitor already knows everything & fights every change.  
 A Patriot will always find out what caused the problem.  
 A Traitor will always blame someone else.  
 A Patriot says "It may be difficult, but it's possible."  
 A Traitor says "It may be possible, but it's difficult."

Evidently the peak week, still confuses a Bristol Bay (D) Permit Holder  
 Did anyone catch the July 4<sup>th</sup> of July?

IN CONGRESS, July 4, 1776,

*"We hold these truths to be self evident, that all men, are created equal... The history of the present King of Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States...A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people..."*

#### American Crisis I

"These are the times that try men's souls. The summer soldier and the sunshine patriot will in crisis, shrink from the service of his country; but he that stands it now, deserves

49

Public Comment #

82

the thanks...Britain with an army to enforce her tyranny, has declared that she has a right, not only to tax, but 'to bind us in all cases whatsoever;' and if being bound in that manner is not slavery, there is not such a thing as slavery upon the earth...Tis surprising to see how rapidly a panic will run thru a country. All nations and ages have been subject to them...In fact, they have the same effect as secret traitors...They sift out the private thoughts of man, and hold them up in public to the world. Many a disguised Tory has lately shown his head, that shall penitentially solemnize with curses the day on which Howe arrived upon the Delaware...Voltaire has remarked, that King William never appeared to full advantage, but in difficulties and in action. The same remark can be made on General Washington, for the character fits him... Why is it that the enemy hath left the New England provinces, and made those middle ones the seat of war? The answer is easy; New England is not infected with Tories as we are...And what is a Tory? Good God! What is he? I should not be afraid to go with an hundred Whigs against a thousand Tories, were they attempt to get into arms. Every Tory is a coward; for a servile, slavish, self interested fear is the foundation of toryism; and a man under such influence, though he may be cruel, never can be brave...The heart that feels not now, is dead. The blood of his children shall curse his cowardice, who shrinks back at a time when a little might have saved the whole and made them happy. I love the man who can smile in trouble-that can gather strength from distress, and grow brave by reflection. It is the business of little minds to shrink; but he, whose heart is firm, and who conscience approves his conduct, will pursue his principals unto death...Let them call me a rebel, and welcome; I feel no concern from it; but I should suffer the misery of devils, were I to make a whore of my soul, by swearing allegiance to one whose character is that of a sottish, stupid, stubborn worthless, brutish man...There are cases which cannot be overdone by language; and this is one. There are persons too, who see not the full extant of the evil that threatens them. They solace themselves with hopes, that the enemy, if they succeed, will be merciful. It is the madness of folly, to expect mercy from those who have refused to do justice: and even mercy, where conquest is the object, is only a trick of war. The cunning of the fox is a murderous as the violence of the wolf, and we ought not be equally on our guard against both...This is our situation-and who will, may know it. By perseverance and fortitude, we have the prospect of a glorious issue; by cowardice and submission, the sad choice of a varieties of evils-a ravaged country-a depopulated city-inhabitants without safety- and slavery without hope-our homes turned into barracks and bawdy houses for the Hessians-and the future race to provide for, whose fathers we shall doubt of! Look on this picture, and weep over it! And if there yet remains one thoughtless wretch, who believes it not, let him suffer it unlamented.

December 1776, Thomas Paine, and his "Common Sense" the most widely read document for our Patriots, and our Traitors. 'An army of principals will penetrate where an army of soldiers cannot...it will march on the horizon of the world and it will conquer.'

Today's, Bristol Bay Limited Entry Permit Stacking Plans, used under authority given in AS 16.05.251, 5 AAC 06.333, 20 AAC 05.1147, and the "CURRENT PLAN" using the

“separate but equal doctrine,” shown best in this simplistic form, and definition from Black’s Law Dictionary 7<sup>th</sup> Abridged Edition, 2000,

**separate-but-equal doctrine.**

*The now defunct doctrine that African Americans could be segregated if they were provided with equal opportunities and facilities in education, public transportation, and jobs. This rule was established in Plessey v. Ferguson, 163 U.S. 537, 16 S. Ct 1138 (1896) and overturned in Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686 (1954).*

How this government, contemplates holding one Limited Entry Permit S03T’s net length should be 50 fathoms, and his neighbors S03T, should fish 150 fathoms, for a fleet reduction system, is almost beyond belief in this day and age, especially when the Highest Court for Alaska, defined it well, back in another decision, Board of Fisheries v Grunert in 2006, and the allocation issue “within a single fishery” with the obvious confusion in the BOF, single fishery allocations, back in 2004, 2005, 2006, 2007, 2008, 2009...”

Justice Eastaugh;

*In Grunert I, Alaska Statute 16.05.251(e) authorizes the board to allocate fishery resources among personal use, sport, guided sport, and commercial fisheries. We explained in Grunert I that among means between, not within, the fisheries...The board cannot divide what has historically been a single fishery by simply tinkering with ancillary apparatus and seine dimensions The emergency regulation therefore authorized to allocate fishery resources within a single fishery, in violation of the authorizing statute, AS 16.05.251(e)*

*We note the board’s allocation of the harvestable salmon between the co-operative and open fishers was potentially arbitrary and capricious. Allowing some, but not all ...permit holders to operate different types and amounts of fishing equipment potentially raises questions of efficiency, arbitrary decision making, and equal protection. The allocation may be venerable to attack on the theory that under a two-subfishery system, the open fishers only have access to a small percentage of the allocation for the whole fishery...Unit of gear is defines by the Limited Entry Act, as the maximum amount of a specific type of gear than can be fished by a person under regulations established by the Board of Fisheries defining the legal requirements for that type of gear. Because only some of the permit holders could operate the maximum amount of gear Grunert contends, the regulation unlawfully discriminated...”*

If this Board, was to actually implement “permit stacking” as shown today in the Kodiak Salmon Set Net Fishery, that allows “every person” and “all” Limited Entry Permit’s the same equal gear length, bringing up the old self evident truth, the current sharecropper’s badge of slavery, supported by the Board, and those permit holders who are stacked, for a economic benefit to everyone involved.

A fisherman who holds two Commercial Fisheries Entry Commission (CFEC) Kodiak salmon set gill net permits may fish an additional amount of gear this year as authorized by the Alaska Board of Fisheries’ new regulation 5 AAC 18.331(j). However, CFEC will

issue only one permit card to such individuals for the purpose of recording landings on fish tickets. The permit card to be used for recording landings will be on the same card stock as all other 2008 CFEC Kodiak salmon set gill net permits.

Individuals who hold two permits will be issued an additional card on white stock that will be used for identification purposes. The white card is not to be used for recording landings. However, the individual who holds two permits must carry the white card and present it to representatives of the Alaska Department of Fish and Game (ADF&G) and the Department of Public Safety when requested to demonstrate that the individual holds the second CFEC Kodiak salmon set net permit.

The Jim Crow provision of this regulation is amusing, as shown against the Kodiak Setnet version of permit stacking, in compliance with the simple issue of the Bill of Right's "Fourteenth Amendment" Section 1. Never used in Bristol Bay

#### RIGHTS GUARANTEED

#### FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### Article 8 Alaska Constitution

§ 15. No Exclusive Right of Fishery No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972]

§ 16. Protection of Rights No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

If the BOF was too look at "ALL" other Limited Entry Salmon Fishery in the State, you'd notice a clear denial of Limited Entry in the Bristol Bay Unlimited Salmon Fisheries.

Every Salmon Drift Net Fishery contained enforcement of the Limited Entry Act, EXCEPT 1, and another interesting subject matter at the CFEC.

Permit Statutes Report by Fishery Code, CFEC All Years, Salmon Drift Net Fisheries.

Fishery	Total Permits 1974	Total Permits 2004
S03T Bristol Bay Drift,	872	1877
S03E PWS Drift	557	540
S03M AK Peninsula Drift	167	161
S03H Cook Inlet Drift	585	574
S03A SE Drift	855	479

Now we have an Optimum Number, an Optimum Number Study, where putting Optimum Numbers together is pretty simple.

1877 divided by 2, equals 938.5, using the 2004 CFEC Status Report Number

938, Midway in 5 AAC 1147, of 800 to 1200 as the adopted Optimum Number.

Article I, Alaska Constitution, 1959

#### 1. Inherent Rights

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State. § 2. Source of Government. All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole. § 3. Civil Rights No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section. [Amended 1972]

"...If he can, by much drumming and repeating, fasten the odium of the idea upon his adversaries, he thinks he can struggle through the storm. He therefore clings to this hope as a drowning man to the last plank. He makes an occasion for lugging it in from the opposition from the Dred Scott decision. He finds that the Republicans insisting that the Declaration of Independence includes all men...Chief Justice Taney, in his opinion in the Dred Scott case, admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes, by the fact that they did not at once, actually place them on equality with whites. Now this grave argument comes to nothing at all, by the other fact, that they did not at once, or even afterwards, actually place all white people on equality with one another. And this is the staple argument of both the Chief Justice and the Senator, for doing this obvious violence to the plain unmistakable language of the Declaration. I think the authors of that notable instrument intended to include all men, but they did not mean to say all were equal in color, size, intellect, moral development, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal—equal in "certain inalienable rights, among which are life, liberty and the pursuit of happiness." This they said, and this

5/9

Public Comment #

82

meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of might follow as fast as circumstances should permit. They meant to set up a standard maxim for a free society, which should be familiar to all, and revered to all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. The assertion that "all men are created equal" was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, not for that, but for future use. Its authors meant it to be, thank God, it is now proving itself, a stumbling block to those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant that when such should reappear in this fair land and commence their vocation that they should find left for them at least one hard nut to crack.

I have now briefly expressed my view of the *meaning* and *objects* of that part of the Declaration of Independence which declares that "all men are created equal."

Now let us hear Judge Douglas' view of the same subject, as I find it in the printed report of his late speech. Here it is:

"No man can vindicate the character, motives and conduct of the signers of the Declaration of Independence, except on the hypothesis that they referred to the white race alone, and not to the African, when they declared that all men to have been created equal- they were speaking of British subjects on this continent being equal to British Subjects born and residing in Great Britain-that they were entitled to the same inalienable rights, and among them were enumerated life, liberty, and the pursuit of happiness. The Declaration was adopted for the purpose of justifying the colonist in the eyes of the civilized world in withdrawing their allegiance from the British Crown, and dissolving their connections with the mother country."

My good friends, read that carefully over some leisure hour, and ponder well upon it-see what a mere wreck-a mangled ruin- it makes our once glorious Declaration.

"They were speaking of British subjects on the continent being equal to British subjects born and residing in Great Britain!" Why according to this, not only negroes but white people outside of Great Britain and America are not spoken of in that instrument. The English, Irish, and Scotch, along with white Americans, were included for sure, but the French, Germans and other white people of the world are all gone to pot along with the Judge's inferior races.

I had thought the Declaration promised something better than the condition of British subjects; but no, it only meant that we should be *equal* to them in their own oppressed and *unequal* condition. According to that, it gave no promise that having kicked off the King of Great Britain; we should not at once be saddled with a King and Lords of our own.

I had thought the Declaration contemplated the progressive improvement in the condition of all men everywhere; but no, it merely "was adopted for the purpose of justifying the colonist in the eyes of the world in withdrawing their allegiance from the British crown, and dissolving their connections with the mother country." Why that

object having been affected some eighty years ago, the Declaration is of no practical use now-mere rubbish-old wadding left to rot on the battle field after the victory is won.

I understand you are preparing to celebrate the "Fourth" tomorrow week. What for? The doings of that day had no reference to the present; and quite half of you are not even descendants of those who were referred to that day. But I suppose you will celebrate; and will even go so far as to read the Declaration. Suppose after you read it once the old fashion way, you read it once more with Justice Douglas' version. It will then run thus: "We hold these truths to be self evident that all British subjects who were on this continent eighty one years ago, were created equal to all British subjects born and then residing in Great Britain."

And now I appeal to all-to Democrats as well as others,- are you really willing that the Declaration shall thus be frittered away?- thus left no more at most, than an interesting memorial of the dead past? Thus shown of its vitality, and practical value; and left without the germ or even the suggestion of the individual rights of man in it?..."  
Abraham Lincoln (1857)

Scott v. Sandford, 60 U.S. (19 How.) 393 (1857). The controversy, political as well as constitutional, which this case stirred and still stirs, is exemplified and analyzed in the material collected in S. KUTLER, THE DRED SCOTT DECISION: LAW OR POLITICS? (1967).

"Equal and exact justice to all men, of whatever state or persuasion, religious or political."

Thomas Jefferson, First Inaugural March 4<sup>th</sup> 1801

"There is nothing against human ingenuity will not be able to find something to say."

Thomas Jefferson to Gideon Granger, Washington, May 3, 1801

"It is not incumbent on lawyers to be learned."

Thomas Jefferson to Isaac McPherson, Monticello Aug 13, 1813

Memorandum

State of Alaska

Dept. of Law

Nov. 2, 2007

File Number 661050436

Allocation. When allocating fishery resources among...However, the Alaska Supreme Court has also recently held that the board may not allocate "within" a single fishery (same gear and same administrative area).

Memorandum

State of Alaska

Dept. of Law

Nov. 19, 2008

File Number 661050426

Allocation. When allocating a fishery resource among...However, the Alaska Supreme Court has also recently held that the board may not allocate "within" a single fishery (same gear and same administrative area).

**BUCK v. BELL, 274 U.S. 200 (1927) 274 U.S. 200**  
**Superintendent of State Colony Epileptics and Feeble Minded.**  
**No. 292.**  
**Argued April 22, 1927.**  
**Decided May 2, 1927.**

Mr. Justice HOLMES delivered the opinion of the Court. Back when Lawyers, dropped out of Harvard, to go Join Lincoln's Grand Old Party and one of the first 75,000 Volunteers, no hunting tag required, and appointed by Theodore Roosevelt

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 3 Ann. Cas. 765. Three generations of imbeciles are enough. [274 U.S. 200, 208] But, it is said, however it might be if this reasoning were applied generally, it fails when it is confined to the small number who are in the institutions named and is not applied to the multitudes outside. It is the usual last resort of constitutional arguments to point out shortcomings of this sort. But the answer is that the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow. Of course so far as the operations enable those who otherwise must be kept confined to be returned to the world, and thus open the asylum to others, the equality aimed at will be more nearly reached.

Judgment affirmed.

**Proposal #14**

An interesting comment by the Department, in Department Comments of Confusion? Is the Department truly that confused, between a regulation and criminal statute as noted in their comments on this proposal?

As the author,

The presumption in this case, deals with set net gear NOT fishing, and INTERFERING with a DRIFT NET fishery, that IS Fishing?

Evidently the Statute, as read by the Department AS 16.05.055, makes the concept of English interpretation another confusing subject matter

I do not see anywhere, in the Statute's clearly written English language, that allows one fishery to interfere with another, and ignores this fact, that set net operators, are NOT ever Responsible, for a Drift net fishers damages.

Blacks Law Dictionary, again for A Department left behind; 7<sup>th</sup> Abridged interference, n. 1. The act of meddling in another's affairs. 2. An obstruction or hindrance

**obstruction of justice.** Interference with the orderly administration of law and justice, as by giving false information to or withhold evidence...Obstruction is a crime in most jurisdictions.

Confusion from a Department, who implemented an allocation plan, as requested by the set net fleet, who actually believe their own theories of what English truly means.

Article 02. INTERFERENCE WITH COMMERCIAL FISHING GEAR

Sec. 16.10.055. Interference with commercial fishing gear.

A person who willfully or with reckless disregard of the consequences, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another.

In his "Common Law" Lecture II, Justice Holmes "The Criminal Law"  
In spite of all this, probably most English-speaking lawyers would accept the preventive theory without hesitation. As to the violation of equal rights which is charged, it may be replied that the dogma of equality makes an equation between individuals only, not between an individual and the community. No society has ever admitted that it could not sacrifice individual welfare to its own existence. If conscripts are necessary for its army, it seizes them, and marches them, with bayonets in their rear, to death. It runs highways and railroads through old family places in spite of the owner's protest, paying in this instance the market value, to be sure, because no civilized government sacrifices the citizen more than it can help, but still sacrificing his will and his welfare to that of the rest. /3/

If it were necessary to trench further upon the field of morals, it might be suggested that the dogma of equality applied even to individuals only within the limits of ordinary dealings in the common run of affairs. You cannot argue with your neighbor, except on the admission for the [44] moment that he is as wise as you, although you may by no means believe it. In the same way, you cannot deal with him, where both are free to

choose, except on the footing of equal treatment, and the same rules for both. The ever-growing value set upon peace and the social relations tends to give the law of social being the appearance of the law of all being. But it seems to me clear that the ultima ratio, not only regum, but of private persons, is force, and that at the bottom of all private relations, however tempered by sympathy and all the social feelings, is a justifiable self-preference. If a man is on a plank in the deep sea which will only float one, and a stranger lays hold of it, he will thrust him off if he can. When the state finds itself in a similar position, it does the same thing.

The considerations which answer the argument of equal rights also answer the objections to treating man as a thing, and the like. If a man lives in society, he is liable to find himself so treated. The degree of civilization which a people has reached, no doubt, is marked by their anxiety to do as they would be done by. It may be the destiny of man that the social instincts shall grow to control his actions absolutely, even in anti-social situations. But they have not yet done so, and as the rules of law are or should be based upon a morality which is generally accepted, no rule founded on a theory of absolute unselfishness can be laid down without a breach between law and working beliefs.

If it be true, as I shall presently try to show, that the general principles of criminal and civil liability are the same, it will follow from that alone that theory and fact agree in frequently punishing those who have been guilty [45] of no moral wrong, and who could not be condemned by any standard that did not avowedly disregard the personal peculiarities of the individuals concerned. If punishment stood on the moral grounds which are proposed for it, the first thing to be considered would be those limitations in the capacity for choosing rightly which arise from abnormal instincts, want of education, lack of intelligence, and all the other defects which are most marked in the criminal classes. I do not say that they should not be, or at least I do not need to for my argument. I do not say that the criminal law does more good than harm. I only say that it is not enacted or administered on that theory.

Proposal #26  
Memorandum  
State of Alaska  
Dept. of Law  
Nov. 19, 2008  
File Number 661050426

Allocation. When allocating a fishery resource among...However, the Alaska Supreme Court has also recently held that the board may not allocate "within" a single fishery (same gear and same administrative area).

An interesting special deal, for some of our Area T Permit Holders. Evidently a New Administrative Area, should be formed, to remove this sub district from the rest of Area T.

Same old story, same old issue.