

**Staff Comments on Agenda Change Requests for the
Board of Fisheries Worksession in
Fairbanks, Alaska
October 8-9, 2008**



**By
Alaska Department of Fish and Game
Divisions of: Commercial Fisheries, Sport Fish, and Subsistence
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ACR #1

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. Inability of user groups to control escapement in the Naknek River Special Harvest Area.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Recent over escapements may affect future returns to the Naknek River.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: Not applicable.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE:

1. Addresses future health of Naknek River spawning grounds.
2. Allocation is 3 to 1 ratio with no direct competition among user groups.
3. Over escapement of this magnitude benefits neither river health of the economic health of fishermen.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. Increases allowable gear from 25 fathoms to 35 fathoms for setnet fishermen when fishing the Naknek River Special Harvest Area.

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. Recent over escapements may have already stated adverse effects on future salmon runs and the sustainability of this resource.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Commercial Fishermen.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. Yes, October 2007, ACR #14. Voted 4 to 3 against. In October 2005 ACR #3 was accepted, then adopted at the March 2006 BOF meeting (copy enclosed). We setnetters are asking for the same consideration and treatment given to the drift gillnet fleet.

Submitted By: Donald Mack

ADF&G STAFF COMMENT ON ACR: 1

PRESENT SITUATION: When fishing in the Naknek River Special Harvest Area (NRSHA), set gillnet gear is limited to 25 fathoms.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: The agenda change request seeks to allow a set gillnet permit holder the option of fishing 35 fathoms of gear in the NRSHA.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason? No, however recent escapements into the Naknek River have met or exceeded the current goals which may have an effect on future returns.

2. Does the agenda change request correct an error in regulation? No.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? No.

ADDITIONAL INFORMATION:

<u>Year</u>	<u>Escapement</u>
1999	1,625,364
2000	1,375,488
2001	1,830,360
2002	1,263,918
2003	1,831,170
2004	1,939,374
2005	2,744,622
2006	1,953,228
2007	2,945,304
2008	2,416,782 The NRSHA was not opened in 2008

The sockeye salmon sustainable escapement goal (SEG) range for the Naknek River is 800,000 to 1,400,000. However, when the NRSHA is open, an optimum escapement goal (OEG) established during the January 2001 Alaska Board of Fisheries (BOF) meeting, raises the upper limit to 2,000,000 sockeye salmon. The recent large runs to the Naknek River have resulted in the upper end of the OEG being exceeded in two of the last four years, when fishing in the NRSHA, despite nearly continuous fishing. This is partially a result of the fishery being restricted to the much reduced area of the NRSHA for the majority of those fishing seasons. During the 2005 and 2007 seasons, processor harvest restrictions to both set and drift gillnet gear

contributed to the large escapements. Additional set gillnet gear may help to reduce escapement to some extent.

The current allocation plan for the NRSHA is based on a ratio of fishing periods (three drift to one set gillnet period), rather than percent of harvest. Any additional harvest by the set gillnet fleet resulting from an increase in gear length could affect the overall allocation. However, the two gear groups do not fish simultaneously in the NRSHA and do not compete directly with each other.

At the October, 2005 BOF work session, ACR #3 was accepted, increasing drift gillnet gear in the NRSHA from 50 to 75 fathoms. ACR #3 was adopted at the March, 2006 BOF meeting.

During the October, 2007 BOF work session, ACR 14, which is identical to this ACR, was submitted and the board determined that it failed to meet the criteria.

PROPOSED BY: Donald Mack, set gillnet permit holder.

ACR #2

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. The Board of Fish placed additional restrictions on the taking of sockeye and king salmon near river mile 30 of the Kenai River for the 2008 fishing season. These restrictions created a “fly area only” and prohibited fishing from a boat in this area from January 1st through July 31st. These new restrictions reversed a previously compromised decision made by the Board in 2004. Previously, individuals were allowed to harvest both red and king salmon from a boat in this area with traditional terminal tackle as defined under existing sport fishing regulations after July 15th of each year.

By restricting this 1.3 river mile area (river mile 29.5 to 30.8 respectively) to a “fly area only” and not allowing fishing from a boat through July 31st the following has occurred:

- 1) Significant bank erosion has been increased substantially in this area of the river;
- 2) Disabled fisherman no longer can use their boat as a fishing platform even if the boat is moored to their property; and,
- 3) Concentration of bank fisherman just outside the fly area only fishery has caused a very negative fishing experience.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason. Not applicable.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: Previously this area was open to the taking of king and red salmon after July 15th of each year from a boat or bank using traditional tackle. This workable solution was arrived at after a change was proposed by members of the Clearwater Lot Owners’ Association in 2004. Many unforeseen effects have occurred in this area by changing this area to a fly area only and not allowing fisherman to fish from their boats.

First and foremost, the river bank erosion to property owners has increased because of the number of boats turning around or powering up and down the river after not finding a place to fish from the bank just outside the fly area only. Also, since many fishermen now have elected not to fish in the fly area only, the concentration of bank fisherman just outside the fly area only has caused the North bank of the river to be substantially eroded. Trees and brush along the North river bank are now being cut to allow bank fisherman more access to the area just downriver from mile 29.5. Except for a very small area on the South bank, the South bank is completely closed to bank fishing from state owned properties.

Secondly, by not allowing any fishing from a boat, disabled fisherman who have fished an area locally referred to as the “red hole” (located near river mile 30 on the North bank) for some 30

years have elected not to fish this year until after July 31st. The reason is that the bank topography of this quarter mile area of the river causes the near, shore river current to actually flow “up-river” thus creating a unique eddy effect allowing for a very rewarding near shore boat fishery. Prior to 2008 this unique river current condition encouraged many families to allow their young family members to enjoy this part of the river and fish from their boat in a lake like environment. This long held traditional, fishing experience previously afforded these families has now been denied and many families have elected not to take their young family members fishing on the Kenai because of the risk to these young anglers.

Finally, from a totally humanistic perspective, the temperament and courtesy of the fisherman using this area has changed from one of cooperation and camaraderie to one of animosity and arrogance towards other fisherman. The reason(s) are simple, if you have to use a “fly” to catch red salmon you are going to remain on the bank for a much longer time because of the number of fish that, “... throw the hook” because of the small shank to barb restrictions; the ineffectiveness of the fly as compared to traditional beads; and, the lack of understanding fishing techniques between traditional terminal tackle and a Russian River fly applications. Since Alaska State Park officials elected to close the entire South bank of this area to bank fishing and fisherman are further restricted to fishing from public lands/non-posted bank areas, there is literally only a very small accessible public fishing area now open where traditional, terminal tackle may be used.

Also, compounding this 2008 ruling and negatively impacting upon the fishing experience is the issues associated with guide operators dropping off as many as 20 clients at a time in small, highly productive bank fishing areas just outside the fly are only. Prior to this regulation change, there was almost seven/eighths of a mile where guides could drop off bank fishing clients on the North bank fishery. Now, the concentration of these customers is consolidated in just over 300 to 400 river yards where traditional terminal tackle is permitted and near ideal bank fishing conditions exist.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: Does not allocate fish stocks between different user groups.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 57.121 (1)(F); and 5 AAC 57.121 (2)(D)

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. The bank erosion will be exasperated significantly if these restrictions are not changed and two additional fishing seasons are allowed to occur. If not addressed by the Board immediately, the negative, unintended social impact upon local fisherman will also not receive the relief desired. In addition, the safety factors associated with young fisherman trying to fish from the banks vis-à-vis from the safety of a boat in the near lake like conditions of the red hole is of major concern. Finally, the impact for another two years on

very, senior permanently disabled veterans is also totally unacceptable since they can not fish from their boats in this area until after July 31st.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Property owner Mile 30 and 30-year sport fisherman.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. Not applicable.

Submitted By: James Harpring

ADF&G STAFF COMMENT ON ACR: 2

PRESENT SITUATION: At the 2008 Upper Cook Inlet Board of Fisheries meeting, the board added 17 days to the seasonally closed-water regulations at the confluence area of the Funny River. The sanctuary areas of Slikok Creek and the Killey River were also increased. The intent of these areas termed “sanctuary areas” is to protect tributary spawning king salmon. King salmon entering the Kenai River during the early run can hold in these confluence areas of the mainstem Kenai River for some time into July before ascending tributaries to spawn or spawn in these mainstem confluence areas.

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, the following restrictions apply;

- 1) These waters are fly-fishing-only waters. In waters designated as fly-fishing-only waters, sport fishing is permitted only as follows: with not more than one unweighted, single-hook fly with a gap between point and shank of 3/8 inch or less; weights may be used 18 inches or more ahead of the fly; and beads not attached to the fly are not allowed.
- 2) These waters are closed to the taking of king salmon.
- 3) Fishing from a boat is prohibited.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: This proposal seeks to reduce the Funny River sanctuary closures by 17 days by returning the dates back to what they were prior to the 2008 Upper Cook Inlet Board of Fisheries meeting.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason? No.

2. Does the agenda change request correct an error in regulation? No.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? No.

ADDITIONAL INFORMATION: The department's staff comments on Proposal 269 which proposed to extend the Slikok Creek, Funny River and Lower Killey River sanctuary closures through July 31 stated it would decrease the total area of the Kenai River mainstem open to king salmon fishing by over two river miles; angler effort may also decline in the fishery above the Soldotna Bridge because of the loss of harvest opportunity; anglers that presently fish upstream may fish downstream of the Soldotna Bridge thereby contributing to crowding in the lower river; and it would also result in an undetermined decrease in exploitation of both early and late-run king salmon because more of the river will close to king salmon fishing.

No comments were made regarding the loss of sockeye salmon fishing opportunity from boats or the potential of increased erosion. Lastly, no studies were conducted in 2008 to determine if erosion in this area had changed from previous years.

PROPOSED BY: James Harpring

ACR #3

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. At this time, regulations regarding trawling in the Bristol Bay management area are in conflict. Currently, 5 AAC 39.165 (3) closes the waters of Bristol Bay (5 AAC 06.100) to all types of trawl gear. However, 5 AAC 39.164 (b)(7) opens a defined area within Bristol Bay to fishing with non-pelagic trawl gear from April 1 through June 15.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) **Fishery conservation purpose or reason:** Not applicable.

or 2) **Correct an error in regulation:** Yes.

or 3) **correct an unforeseen effect of a regulation:** Not applicable.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: This ACR is submitted to address existing conflict in regulations. The question of whether or not this area is open to non-pelagic trawl gear does not allocate groundfish resources among different fisheries. Under the current regulations, there is no possibility that pelagic trawl gear may be operated during the April 1- June 15 period, so the question is only whether the Board intended to allow non-pelagic trawl gear. This is a housekeeping proposal.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. This depends on the Board's intent. If the board wishes to allow trawling along the Nushagak Peninsula, then 5 AAC 39.165 (3) should be amended to include the phrase "except as provided in 5 AAC 39.164 (b)(7)" or 5 AAC 39.164 (b)(7) should be amended to include the phrase " notwithstanding 5 AAC 39.165 (3)."

If the board wishes to prohibit non-pelagic trawling in that area, then 5 AAC 39.164 (b)(7) should be amended to delete the seasonal exception to the trawl gear ban.

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. Current conflict in regulations that need resolution. The error will remain on the books for another season to the confusion of commercial fishermen and the public.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Management/regulatory concerns.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. We are not aware that this particular question has been raised.

Submitted By: Alaska Department of Fish and Game

ADF&G STAFF COMMENT ON ACR: 3

PRESENT SITUATION: Regulation 5 AAC 39.165 (3) Trawl Gear Unlawful is in conflict with 39.164 (b) (7) Non-pelagic Trawl Gear Restrictions. 5 AAC 39.164 indicates that state waters near Dillingham are open to non-pelagic trawling from April 1 – June 15, whereas 5 AAC 39.165 indicates that state waters of the Bristol Bay salmon management area are closed to all types of trawl gear year-round.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: This agenda change request brings these conflicting regulations to the Board’s attention for clarification as to whether the area in question is open or closed.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** Yes.
- 3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?** No.

ADDITIONAL INFORMATION: Halibut fishermen who fish in the area brought this to ADF&G’s attention because of concerns that non-pelagic trawlers would take halibut as bycatch in the directed Yellowfin sole fishery. Yellowfin sole is the intended target species for the opening in 5 AAC 39.164. Catches of yellowfin sole in the Bering Sea have averaged approximately 202.2 million pounds over the past 5 years (2004-2008), of which more than 97 percent was harvested by catcher/processors. The only catch to occur in state waters was in 1991, by a single vessel. Catch therefore remains confidential.

PROPOSED BY: Alaska Department of Fish and Game

ACR #4

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. Kenai River king salmon fishing closure around the Lower Killey River for 2008 vis-à-vis 2007 increased the period and area of the closure. King and sockeye salmon fishing opportunities for children, elderly and the disabled were significantly reduced and, in some cases, eliminated by this change.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Not applicable.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: 5 AAC 57.121 (1)(F) and 57.121 (1)(G) Request this regulation be changed to the exact wording in 2007. Kenai Keys and Stephanski Subdivision area is the highest density of river users between Skilak Lake and Bing's Landing and is adjacent to the portion of the Kenai River affected by the subject regulation. Residents include the elderly, the disabled, and families with children. A significant area of calm water (known as Hole #3) is at the mouth of the Kenai Keys canals and in the area of the king salmon fishing restrictions. People unable to back troll or drift (primarily elderly and/or disabled) could legally anchor on the current line and not be in the drift channel of the river. These people had an opportunity to fish for king salmon except for the closed period from 25 June thru 14 July. In 2008, none of these people fished at all for king salmon. Returning to the 2007 wording of the regulation will not jeopardize the desired escapement since ADF&G has independent ability via emergency order to amend this or any other regulation deemed necessary to achieve optimal numbers. The 2008 regulation restricts anglers ability to harvest sockeye salmon during the "normal heart" of the run (15 thru 31 July).

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: Does not allocate resource between user groups.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 57.121 (1)(F); and 57.121 (1)(G)

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. Elderly and/or disabled residents discussed above have an extremely limited number of years available to enjoy sport fishing for king salmon. Any delay in correcting the unintended consequences of the subject 2008 restrictions will essentially say to

our elderly residents, “You can no longer go fishing for king salmon.” Delay would also prevent harvest of the sockeye salmon resource by these anglers by restricting sport fishing methods and gear. The 2008 restriction to king salmon fishing is not warranted because there is no conservation concern.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). The Kenai River Keys Property Owners Association (KRKPOA) is a home owner’s association and our interest is strictly sport fishing. Guiding from our properties is strictly forbidden in our by-laws. This request was proposed at our annual meeting on 5 July 2008 and approved by an 80% majority vote of our attending members.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. Has not been addressed previously.

Submitted By: Kenai River Keys Property Owners Association

ADF&G STAFF COMMENT ON ACR: 4

PRESENT SITUATION: At the 2008 Upper Cook Inlet Board of Fisheries meeting, the board increased the seasonally closed-water regulations at the confluence areas of the Killey River. The sanctuary areas of Slikok Creek and the Funny River were also increased. The intent of these areas are termed “sanctuary areas” is to protect tributary spawning king salmon. King salmon entering the Kenai River during the early run can hold in these confluence areas of the mainstem Kenai River for some time into July before ascending tributaries to spawn or spawn in these mainstem confluence areas.

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, the following restrictions apply;

- 4) These waters are fly-fishing-only waters. In waters designated as fly-fishing-only waters, sport fishing is permitted only as follows: with not more than one unweighted, single-hook fly with a gap between point and shank of 3/8 inch or less; weights may be used 18 inches or more ahead of the fly; and beads not attached to the fly are not allowed.
- 5) These waters are closed to the taking of king salmon.
- 6) Fishing from a boat is prohibited.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: This proposal seeks to reduce the Killey River sanctuary closures by returning the dates and boundaries back to what they were prior to the 2008 Upper Cook Inlet Board of Fisheries meeting. The dates prior to the

2008 fishing season were from June 25 – July 14, and the upper boundary marker was one-half mile downstream of the new marker.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** No.
- 3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?** No.

ADDITIONAL INFORMATION: The department's staff comments on Proposal 269 which proposed to extend the Slikok Creek, Funny River and Lower Killey River sanctuary closures through July 31 stated it would decrease the total area of the Kenai River mainstem open to king salmon fishing by over two river miles; angler effort may also decline in the fishery above the Soldotna Bridge because of the loss of harvest opportunity; anglers that presently fish upstream may fish downstream of the Soldotna Bridge thereby contributing to crowding in the lower river; and it would also result in an undetermined decrease in exploitation of both early and late-run king salmon because more of the river will close to king salmon fishing. No comments were made regarding the loss of sockeye salmon fishing from boats.

PROPOSED BY: Kenai River Keys Property Owners Association

ACR #5

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. I am writing you to prevent the reallocation of fisheries, which is being preformed by the ADF&G within its flipping back and forth between 5 AAC 21.360 fisheries management options. I claim that the ADF&G is reallocating fisheries within UCI, Upper Cook Inlet, by misusing AAC 21.360.

I would like the Board to address the way our Alaska Department of Fish and Game has recently decided to manage our salmon fisheries here in the Cook Inlet area.

Our ADF&G openly states that it is managing our Upper Cook Inlet (UCI) salmon primary for the benefit of sockeye salmon & commercial fisheries users. More specifically, the ADF&G manages our salmon fisheries primary to maximize sockeye salmon production. This basically means that the department's fisheries management practices are generated and implemented primarily for the benefit of sockeye salmon, over all other salmon. This practice has had a devastating effect on the giant king salmon, which return to the Kenai River each year in July. This maximization of sockeye production and commercial harvest has ended up giving commercial user groups a priority access over all other common groups. I claim that this priority access intent has turned into an exclusive access reality because the ADF&G is manipulating 5 AAC 21.360 to reallocate fisheries.

Right now our ADF&G basically uses 5 AAC 21.360 to manage our UCI, Kenai River sockeye salmon. The department regulates the hours of commercial gill netting by allowing 2 normal gill net fishing days per week during the Kenai's late run and adds on extra gill netting hours by using the below 5 AAC 21.360 management plan.

- 1.) If the department forecast projects the Kenai's sockeye run will be less than 2 million sockeye salmon, they are required to manage for an inriver goal range of 650,000 - 850,000 sockeye salmon. This means that the department may allow no more than 24 hours of additional set gillnet fishing time beyond the two, 12- hour regularly scheduled fishing periods.
- 2.) If the department forecast projects between 2 and 4 million sockeye salmon, they are required to manage for an inriver goal range of 750,000 - 950,000 sockeye salmon and may allow an additional 51 hours of set gillnet fishing time per week as well as the two, 12 - hour regular periods.
- 3.) If the department forecast projects more than 4 million sockeye salmon, the department shall manage for an inriver goal range of 850,000 - 1,100,000 sockeye salmon and may allow an additional 84 hours of set gillnet fishing time per week in addition to the two 12 - hour regular periods.

Historically 5 AAC 21.360 has been use haphazardly by the ADF&G. If the department misses the correct Cook Inlet sockeye run size forecast target, they just keep bashing away at it until they feel comfortable. Unfortunately this bashing away is having a seriously negative effect on

Kenai River salmon stocks and their inriver user groups. The ADF&G views its initial seasonal Cook Inlet data evidence for sockeye returns almost a year ahead and normally assume a best case scenario, with a 4 million fish UCI sockeye salmon return projection, with a 850,000 - 1,100,000 Kenai River sockeye salmon escapement.

This assumption translates into projecting a maximum 84 hours per week of extra commercial set gillnet fishing and that is what everyone involved expects to see at the beginning of the fishing season. The commercial fishery then proceeds to conduct its fishing season expecting to see 84 hours of extra fishing time per week, until about July 25th - 30th.

Once the end of July approaches, the bulk of the Kenai River's sockeye run has normally been completely removed by commercial fisheries. Then the ADF&G typically "discovers" another Kenai sockeye projection, which estimates that most of the Kenai River sockeye run has been commercially harvested and that only if the remainder of the run escapes into the river, will the Kenai just barely achieve it's minimum sockeye escapement goals... Seeing that very few Kenai sockeye remain, the ADF&G "discovers" a new "reduced" Kenai run projection of less than 2 million sockeye salmon, which results in a new minimum 650,000 - 850,000 inriver Kenai sockeye salmon goal. This new reduced inriver escapement projection melts together with the fact that very few sockeye survived the commercial fishery, therefore forcing an early closure of all user groups. Commercial users are then closed down along with common users, to allow the few remaining sockeye salmon to survive and spawn. Commercial fisheries willing accept the closures because they have already "acquired" the bulk of the run. Common user fisheries are completely caught off guard because they are basically cutoff from accessing the sockeye fishery by seasonal date as a result of the commercial fisheries massive harvest. The end results of this kind of fisheries management is that common users are having their fisheries access reduced because the ADF&G has granted excessive commercial fishing at the beginning of the sockeye run. This ADF&G "flipping back and forth" between run projection forecasts during June, July and Aug, allows the department to literary grant any amount of extra gillnet fishing time, which they may desire.

Cook Inlet's 2008's commercial fishing season is a typical example of how the ADF&G can grant excessive gillnet fishing time to commercial users. Out of a possible 31 fishing days commercial fisheries could have fish in July; they were allowed to fish 26 of those days. This excess fishing resulted in extensive damage to Kenai River, king salmon stocks as only 27,408 king salmon had return by Aug. 1, 2008. this 2008 Kenai king salmon return represents the lowest ever recorded and is demonstrating that all is not well with this run of king salmon.

The ADF&G is using its ability to flip back and forth between UCI sockeye run projections, so that it can match a UCI run projection to whatever amount of extra gillnet fishing time they would like to allow. 5 AAC 21.360 true intent was to let the size of the sockeye run dictate the number of commercial fishing hours but the ADF&G is circumventing that intent and just grabbing a maximum run projecting during the commercial fishing season and a minimum run projection during the common users fishing season.

It is this ADF&G manipulation of 5 AAC 21.360 which allows it to therefore reallocate fisheries. This ADF&G "run projection flipping" is basically undermining the intent behind 5 AAC

21.360, in that the regulation's intent was to set up structure, organization and logic to the Cook Inlet salmon management process. Used correctly, 5 AAC 21.360 can match increased gillnet fishing hours to increased run projections. Used incorrectly, 5 AAC 21.360 can be misused to reallocate fisheries by granting extra days or hours of fishing to a select user group "regardless as to the size of a run projection".

I claim that because 5 AAC 21.360 does not set an early July 15th requirement for a firm UCI run projection, that the ADF&G uses 5 AAC 21.360 to reallocate fisheries by flipping back and forth between run projections.

I claim that this ADF&G "run projection flipping" has effectively undermined the intent behind 5 AAC 21.360, in that in many seasons there is no true connection between the sockeye run size and how many extra hours of gillnet fishing the ADF&G may grant. When 10 days of standard July gillnet fishing turns into 26 days of gillnet fishing, common users begin to ask why? This actually happened in 2008! The reason this is happening is because the ADF&G is misusing 5 AAC 21.360, by "run projection flipping".

I claim that 5 AAC 21.360 never intended for the ADF&G to project maximum run returns during commercial fishing seasons and minimum run returns during common user fishing seasons. I claim that the ADF&G is currently manipulating Cook Inlets sockeye run returns in order to reallocate fisheries to satisfy internal departmental agendas and desires. I claim that 5 AAC 21.360 should have additional wording inserted into it to require firmer and earlier dates in July, which requires the ADF&G to project an early and firm, total UCI sockeye return scenario and thus generating a firm Kenai River inriver goal range. It is understandable that long range run projections may change prior to a July 15 projection but it is not understandable that a July 15th projections should be altered after that. I believe that the ADF&G should be held to a final July 15th deadline date for making a Cook Inlet sockeye run projection. If that projection proves to be incorrect, everyone should be forced to live with the out come. Any other requirement allows the ADF&G to reallocate fisheries by run projection flipping.

Right now the ADF&G is "early season" over gillnet fishing Kenai River sockeye in July and making up for that over fishing error by closing down common users fisheries, in order to achieve Kenai River escapement requirements. This "run projection flipping" is an unforeseen effect, which has resulted from the creation of 5 AAC 21.360 and should be address by the Alaska Board of Fisheries as soon as possible to prevent further reallocation of fisheries in UCI. A July 1 - 15, UCI sockeye run projection requirement would force the ADF&G to pick a single reasonable run projection goal for the Kenai River and thus giving real meaning to 5 AAC 21.360. Right now there is little real meaning within 5 AAC 21.360 because the ADF&G is reallocating fisheries by manipulating the intent behind the regulation. A mandatory July 1 - 15, UCI sockeye run projection deadline requirement would prevent this reallocate of UCI & Kenai River fisheries.

I claim that it is possible for the ADF&G to complete its UCI sockeye projection estimate by July 15th, therefore this requirement is a desirable and obtainable option. I am requesting that a mandatory July 15, UCI sockeye salmon run projection requirements be written into 5 AAC 21.360.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: The misuse of 5 AAC 21.360 by the ADF&G resulted in the lowest return of king salmon ever to the Kenai River in 2008.

or 2) Correct an error in regulation: 5 AAC 21.360 should be corrected to give a new July 15th, deadline to the ADF&G for a final UCI sockeye run projection.

or 3) correct an unforeseen effect of a regulation: The ADF&G flipping back and forth between UCI sockeye projections is an unforeseen effect of 5 AAC 21.360 and should be corrected to require a July 15th deadline for the projection.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: My agenda change request is an attempt to prevent the reallocation of fisheries within UCI by the manipulation of 5 AAC 21.360 by the ADF&G. The ADF&G is manipulating 5 AAC 21.360 to reallocate fisheries within UCI. If 5 AAC 21.360 were corrected there would be no reallocation of fisheries by the ADF&G.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. My request is allocative in that 5 AAC 21.360 is being abused by the ADF&G within the UCI . I am requesting that 5 AAC 21.360 be corrected to prevent this reallocation of fisheries.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 21.360

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. We are 3 years from addressing this problem with the regular cycle. Much fisheries damage will result within UCI between now and then.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). I am a sport fisherman and have watched common user fishing seasons being cancelled because of excessive commercial gillnetting allowed by the reallocative misuse of 5 AAC 21.360.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. I do not know if this issue has been considered before.

Submitted By: Donald Johnson

ADF&G STAFF COMMENT ON ACR: 5

PRESENT SITUATION: The Upper Subdistrict set gillnet fishery will fish regular weekly fishing periods, through July 20, or until the department makes a determination of run strength, whichever occurs first. If the department determines that the minimum inriver goal will not be met, the fishery shall be closed or restricted as necessary. The commissioner may allow extra fishing periods depending upon the size of the run. Run size assessment occurs once enough information from the inriver passage estimate, off shore test fishing, and other assessments of the Kenai River sockeye salmon specific to total run estimates are available.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: The agenda change request seeks to require ADF&G to complete its Upper Cook Inlet sockeye projection estimate by July 15th.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** No.
- 3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?** No.

ADDITIONAL INFORMATION: Prior to the inseason assessment of the run timing and strength of the late run Kenai River late run sockeye salmon, the Upper Subdistrict set gillnet fishery is managed based on the preseason forecast size of the Kenai River sockeye salmon. A formal inseason projection occurs once it has been determined that there is enough information to do so. The department typically analyzes run strength and timing information to produce a formal assessment of the Kenai River late run sockeye salmon run; this assessment has not occurred until after July 20. Projections for the Kenai River sockeye salmon run strength can be difficult when the projections are near the break points of two or four million that are specified in the management plan, as happened in 2008.

PROPOSED BY: Donald Johnson

ACR #6

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. The gillnet quota for the Kodiak row herring fishery is going nearly unharvested and has for the last few years as only 5 or 6 vessels participate.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Not applicable.

or 2) Correct an error in regulation: See below (3).

or 3) correct an unforeseen effect of a regulation: The BOF, in 2007, gave authority to ADF&G to transfer gillnet (GN) quota to seine quota “in season.” The department is not comfortable doing so.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: It is not allocative because only 5% or less of the GN permits are being used, and over 90% of the GN quota is left unharvested.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable. Please review petition from May 1, 2008 for history, statistics, and need.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 27.535 (e) – 75%/25% allocation. 5AAC 27.510 (1) and (2). I would like the 25% GN quota rescinded until such a time that it is needed or justifiable. The new regulations will have the GN fleet fishing even days and seine fleet odd days like it was before quota.

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. It was addressed in 2007 and the ADF&G staff wants clear regulations to manage with the problem was addressed in 2007 but it didn’t work as intended, so it should be fixed now as was intended.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Commercial fisherman.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. No it hasn’t. An emergency

petition was filed in May 2008. The department attempted to instigate our request, but local ADF&G staff was uncooperative in doing so.

Submitted By: Bruce Schactler

ADF&G STAFF COMMENT ON ACR: 6

PRESENT SITUATION: A Kodiak allocative herring sac roe harvest strategy (5 AAC 27.535) was developed through a BOF Herring Task Force (established in 1999). The task force consisted of purse seine and gillnet permit holders and department staff. The harvest strategy provides opportunity for gillnet permit holders to harvest approximately 25% and purse seine permit holders to harvest approximately 75% of the total Kodiak Management Area herring sac roe guideline harvest level (GHL).

The harvest strategy requires the department to establish GHLs by section, based on historical harvest data, current and past fishery performance, commercial catch samples, and aerial surveys. The department is then required, for each district that has more than one section open to fishing, to assign, by section, 20% to 30% of the district GHL to gillnet permit holders and 70% to 80% of the district GHL to purse seine permit holders.

During the 2005 Kodiak BOF meeting several modifications were made to this allocative harvest strategy. One allowed the department to combine adjacent sections within a district and manage them as a single unit when information indicated that adjacent sections were actually a single herring stock. The plan was also changed so that purse seine and gillnet gear may be allowed to fish the same section to achieve the allocation percentages by gear type within a district. Also, the provision concerning section harvest overages being applied to a district GHL was eliminated from the plan.

Further changes to the herring sac roe management plan occurred during the Kodiak January 2008 BOF meeting. A new regulation required all permit holders participating in the 2008 fishery to register with the department prior to the fishery season opening date of April 15. New regulations also allowed the department, based on the departments' assessment of harvest or effort, or a combination of both harvest and effort, to allow a gear type into an area regardless of the allocation. The department attempted to use the preseason registration to ascertain district effort levels by the gillnet fleet and intended to rollover any unused gillnet allocation to the purse seine fleet. However, the gillnet fleet indicated preseason that all of their district allocations would receive gillnet effort; thus the department did not have any gillnet allocations to rollover into the seine allocations. The current harvest strategy does not provide the department with inseason criteria by which to adjust allocations by gear type.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: ACR 6 seeks to rescind the current allocations and return to equal fishing time for each fleet separated by time, but not area. The ACR further requests that the current harvest strategy be reinstated when needed or justifiable. The ACR does not make clear what criteria would be used to justify reinstating the current allocation.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason? No.

2. Does the agenda change request correct an error in regulation? Possibly.

Although purse seine and gillnet permit holders were present during the task force meetings, the Kodiak Advisory Committee meetings and the Kodiak BOF meetings and gear allocations were discussed, no inseason criteria for rollover of a gear's stranded allocation were developed. The current harvest strategy does not provide criteria for inseason department actions to fully utilize the herring sac roe resource. It may be appropriate for the BOF to develop a task force to review the harvest strategy including the gear type allocations.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? No.

ADDITIONAL INFORMATION:

In the 9 years since the inception of the allocative harvest strategy, an average of 9 gillnet permit holders have made deliveries. Since 2006, this average has been less than 4. In the 9 years prior to the allocation strategy, an average of 55 gillnet permit holders harvested herring during the sac roe fishery. The gillnet harvest percentage has declined from an average of 20% (1991 - 1999) to an average of 10% (2000 - 2008), with 1% or less occurring in the previous three years (2006 - 2008). It would be difficult to predict future harvest given the volatility of the herring sac roe market. Herring sac roe prices have increased in the previous 2 seasons; however effort levels by gillnet permit holders remains very low.

Table 1. Kodiak Management Area herring sac roe comparison of harvested and unharvested GHLS by gear type.

Year	Total GHL	Total Harvest	GHL		Harvest		GHL not harvested	
			by Gear Type		by Gear Type		by Gear Type	
			Seine	Gillnet	Seine	Gillnet	Seine	Gillnet
2000	1,735	1,370	1,270	465	1,290	80	0	385
2001	1,540	1,694	1,135	405	1,412	282	0	123
2002	1,860	1,677	1,380	480	1,274	403	106	77
2003	2,600	1,992	1,920	680	1,738	254	182	427
2004	2,850	3,167	2,225	625	2,894	273	0	352
2005	3,475	3,463	2,625	850	2,932	531	0	319
2006	3,705	2,643	2,745	960	2,617	26	128	934
2007	4,000	2,546	2,915	1,085	2,510	36	405	1,049
2008	4,290	3,099	3,220	1,070	3,086	13	134	1,057
Average								
2000 to 2008	2,895	2,406	2,159	736	2,195	211	106	525
5 Year								
2004 to 2008	3,664	2,984	2,746	918	2,808	176	133	742

All values are in tons.

A significant portion of the gillnet allocation has not been harvested in recent years. An average of nearly 95% of the gillnet allocation was not harvested for the past 5 seasons. If these herring had been harvested, their average yearly exvessel value would have been more than \$300,000.

PROPOSED BY: Bruce Schactler

ACR #7

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. The National Marine Fisheries Service has implemented regulations recommended by the North Pacific Fishery Management Council to protect bottom habitat from the potential effects of bottom trawling by federally permitted vessels operating in the Bering Sea and adjacent State waters. The regulations are effective August 25, 2008 (73 FR 43362, July 25, 2008) and include non-pelagic trawl closures in State waters for federally permitted vessels. To ensure consistency in the protection of bottom habitat from the effects of non-pelagic trawling for all vessels operating in State waters, the State should consider the adoption of regulations that are consistent with federal regulations.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Adoption of State regulations that are consistent with the federal regulations for the protection of bottom habitat in the Bering Sea meets only the fishery conservation purpose criterion for agenda change requests. The federal regulations close certain State waters in the Bering Sea to non-pelagic trawling by federally permitted vessels. The adoption of State regulations to close these same waters to all vessels using non-pelagic trawl gear would ensure effective conservation of the bottom resources in State waters. This action conserves bottom habitat that supports subsistence marine resources, blue king crab habitat, and other marine resources that are dependent on bottom habitat.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: Not applicable.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: This regulation does not change or restrict the participation in the non-pelagic trawl fishery, nor affect access to the fishery resources based on vessel categories or sectors. The closures apply to all non-pelagic trawl participants in the Bering Sea subarea.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 39.164 (b) or 5 AAC 39.167

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. The federal regulations are effective August 25, 2008. It is important for the participants in the State and federal fisheries to have consistent regulations for

similar activities. A rapid adoption of this regulation by the State is necessary to reduce the potential for confusion for those personal responsible for implementing the closures.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). I am responsible for the federal regulation and management of Alaska fisheries.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. The action has not been previously considered.

Submitted By: Robert D. Mecum, Acting Regional Administrator NMFS, Alaska Region

ADF&G STAFF COMMENT ON ACR: 7

PRESENT SITUATION: The North Pacific Fishery Management Council and the National Marine Fisheries Service (NMFS) have taken action closing several locations in the northern Bering Sea to federally permitted non-pelagic trawl vessels. NMFS has closed these federal waters to protect Essential Fish Habitat under Amendment 89 of the Bering Sea/Aleutian Islands Groundfish FMP. Amendment 89 prohibits non-pelagic trawling in certain waters of the Bering Sea subarea to protect bottom habitat from the potential adverse effects of non-pelagic trawling. That action promotes the goals and objectives of the Magnuson-Stevens Fishery Management and Conservation Act, the FMP, and other applicable federal laws.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: NMFS is requesting the Alaska Board of Fisheries to close state-waters adjacent to the federal closures. These closures are described in 73 FR 43362, dated July 25, 2008. Please see attached descriptions.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason? Yes. National Marine Fisheries Service has closed waters to protect bottom habitat from the potential effects of bottom trawling by federally permitted vessels operating in the Bering Sea and adjacent State waters under Amendment 89 to the Bering Sea/Aleutian Islands Groundfish FMP. The adoption of state regulations to close waters adjacent to federal waters to all vessels using non-pelagic trawl gear would ensure effective conservation of bottom resources.

2. Does the agenda change request correct an error in regulation? No

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? No

ADDITIONAL INFORMATION: If the Board agrees to adopt state water closures to protect habitat, changes would be required in 5 AAC 39.167.

PROPOSED BY: Robert D. Mecum, Acting Regional Administrator NMFS, Alaska Region

ACR #8

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. The lack of a 60' vessel size limit has allowed larger vessels, especially Catcher/Processors, to harvest the State water GHJ in very compressed seasons, with little of the benefit flowing to the local areas in the region. Our proposal is to create a uniform size limit of 60' in the AI state water P. cod fishery for all gear types.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Not applicable

or 2) Correct an error in regulation: Not applicable

or 3) correct an unforeseen effect of a regulation: The board previously reduced the size limit for trawl and for longline, but not for pot vessels. Continuing the 125' size limit for pot vessels had the unforeseen effect of encouraging the participation of Catcher Processors, which accelerates the pace of the fishery.

There have also been unforeseen impacts from a number of federal regulatory actions that have made the community of Adak even more dependent on this state water P. cod fishery and on smaller vessels which are more closely tied to shore-based communities.

1- The development of a new Biological Opinion has been repeatedly delayed, which means that the modification of the 100% closure the AI pollock fishery in SSL Critical Habitat can not be modified at least for the next few years.

2- Implementation of Am. 80 without sideboards on at sea processors, has undercut landings of catcher vessel cod for onshore processing in the AI.

3- Implementation of the opilio crab custom processing use cap exemption without sideboards on mobile floating processors has undercut landings of catcher vessel cod for onshore processing in the AI.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: It creates an equal vessel size limit for all gear types, removing the allocative preference to large pot vessels.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. While the proposal does not allocate between any classes of vessels, it does put smaller vessels on a more level playing field with the larger vessels, particularly those who are delivering cod ends at-sea to Catcher Processors. The need to take

corrective action flows from the 5 AAC 28.089. “Guiding principles for groundfish fishery regulations”

Some of the include important goals from the “Guiding Principles” are not being met under the status quo. The fast pace of the fishery means that the local regions in this area of the state are not receiving maximum benefit. Instead most of the benefit is flowing out of state.

“4) maintenance of slower harvest rates by methods and means and time and area restrictions to ensure the adequate reporting and analysis necessary for management of the fishery;”

A 75,000 lb trip limit would slow harvest rates.

"(5) extension of the length of fishing seasons by methods and means and time and area restrictions to provide for the maximum benefit to the state and to regions and local areas of the state;"

Slower harvest rates will lengthen the season and will benefit the local areas of the state in the Aleutian region as originally intended by providing enough fishing time for small vessels to base operations in the local area. Benefits to the local economies will be multiplied to the extent the catch is processed on shore.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 28.647(d)(3)(A,B, and C)

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. The AI statewater P. cod fishery is a new fishery created to benefit the local region and encourage the development of a local fleet. If benefits are going to accrue to the local regions of the state in which the fishery occurs, it is important to fine tune the regulations based on problems now. Delaying needed modifications of the regulations allows large vessels to develop claims of “historic dependence” in this new fishery.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Aleut Enterprise LLC is responsible for the economic development of Adak. AE leases space to an onshore processing plant.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. A phase in to a 60’ limit was proposed to the BOF at the October 2006 BOF meeting.

Submitted By: Clem Tillion, Aleut Enterprise LLC

ADF&G STAFF COMMENT ON ACR: 8

PRESENT SITUATION: The guideline harvest level (GHL) for the Aleutian Islands state-waters Pacific cod fishery west of 170° W long. is based on 3 percent of the federal Pacific cod Allowable Biological Catch (ABC) for the Bering Sea – Aleutian Islands area. The state-waters GHL is apportioned so that a maximum of 70% of the GHL is available prior to June 10 during the A season, and the remaining 30% of the state GHL and any unharvested GHL from the A season is available during the B season beginning June 10. Vessel size limits of 125' or less overall length (OAL) for pot vessels, 100' or less OAL for trawl vessels and 58' or less OAL for longline and jig vessels are in effect. Vessels are allowed to utilize jig and longline gear concurrently. There are daily and trip limits of 150,000 pounds.

Since the fishery began in 2006, the A season length has ranged from 7 to 9 days. During the 2008 fishery the state-waters A season opened to commercial fishing on March 10 and closed on March 18, an 8 day fishery (Table 1). The harvest of 7,478,914 pounds of Pacific cod was taken by 30 vessels, although 32 vessels registered. Three of the vessels were catcher processors. No catcher processors operated during the 2007 A season. Four floating processors and 2 shore-based processors also participated in the 2008 A season. Trawl vessels accounted for 82% of the harvest. Average fishing vessel size was 86' OAL (Table 2). Fishing effort broken out by vessels under and over 60' OAL is confidential for the A season.

During the 2008 state-waters B season the fishery opened to commercial fishing on June 10 and closed on July 9, a 29 day fishery (Table 1). In 2007, the B season was a 146 day fishery. In 2008, 18 vessels participated including five catcher processors. One floating processor and 1 shore-based processor also participated in the B season. Average fishing vessel size was 66' OAL (Table 3) and 4,235,449 pounds were harvested. Fishing effort broken out by vessels under and over 60' OAL is confidential for the B season.

During the 2008 A season, vessels less than 60' OAL utilizing trawl gear reported daily catches of up to 110,000 pounds. However, during the 2007 A season fishery, trawl vessels less than 60' OAL reported daily catches of up to 165,000 pounds which exceeded the daily limit of 150,000 pounds. Three trawl vessels less than 60' OAL exceeded the daily catch limits in the 2007 A season fishery.

Table 1. Aleutian Islands state-waters Pacific cod fishery guideline harvest level and harvest apportionment.

Year	Season	Initial GHL ^b	Season Dates		Season Length ^a	Harvest ^b	Number of	
			Opened	Closed			Vessels	Deliveries
2006	A season	8,981,540	15-March	24-March	9	8,502,781	26	68
	B season	3,849,232 ^c	10-June	1-Sep	83	Confidential	Confidential	
	TOTAL	12,830,772			92	Confidential	Confidential	
2007	A season	8,148,202	16-March	23-March	7	8,229,931	29	97
	B season	3,492,086 ^c	10-June	1-Sep	83	2,143,310	10	92
			1-Oct	3-Dec	63	1,265,760	5	14
	TOTAL	11,640,288			153	11,639,001	41 ^d	203
2008	A season	8,148,202	10-March	18-March	8	7,478,914	30	116
	B season	3,492,086 ^f	10-Jun	9-Jul	29	4,235,449	18	77
	TOTAL	11,640,288			37	11,714,363	45 ^d	193

^a In days.

^b In whole pounds.

^c ADF&G made 3.5 million pounds of the GHL available to National Marine Fisheries effective on September.

^d Some vessels participated in both seasons.

^e 81,729 pounds were deducted from the B season due to an overage during the A season.

^f 669,288 pounds remained from the A season and was rolled into the B season.

Table 2. Aleutian Islands state-waters Pacific cod fishery fleet composition, A season.

Year	Vessel type	Number participating	Average overall length
2006	Trawl catcher under 60'	3	58'
	Trawl catcher over 60'	16	104'
	Pot catcher over 60'	1	92'
	Trawl catcher-processor	1	296'
	Longline catcher-processor	5	152'
	Total	26	115'
2007	Trawl catcher under 60'	7	58'
	Trawl catcher over 60'	15	91'
	Pot catcher over 60'	7	113'
	Total	29	89'
2008	Trawl catcher under 60'	5	58'
	Trawl catcher over 60'	17	98'
	Trawl catcher-processor	1	98'
	Pot catcher under 60'	1	58'
	Pot catcher over 60'	3	108'
	Pot catcher-processor	2	105'
	Longline catcher under 60'	2	58'
Total	30 ^a	86'	

^a One vessel participated as both a trawl catcher-processor and a trawl catcher-vessel.

Table 3. Aleutian Islands state-waters Pacific cod fishery fleet composition, B season.

Year	Vessel type	Number participating	Average overall length
2006	Pot catcher over 60' OAL	2	98'
	Longline catcher under 60' OAL	3	54'
	TOTAL	5	71'
2007	Pot catcher under 60' OAL	1	58'
	Pot catcher over 60' OAL	1	108'
	Pot catcher-processor	3	112'
	Longline catcher	7	52'
	Jig	1	47'
	TOTAL	12 ^a	72'
2008	Pot catcher under 60' OAL	2	59'
	Pot catcher over 60' OAL	2	95'
	Pot catcher-processor	4	107'
	Longline catcher	6	48'
	Longline catcher-processor	1	58'
	Jig	5	38'
	TOTAL	18 ^b	66'

^a One vessel used both jig and longline gear.

^b Two vessels used both jig and longline gear.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: ACR 8 requests a reduction in the vessel size limit to 60' OAL for trawl and pot vessels and increase from 58' to 60' for longline and jig vessels participating in the Aleutian Islands state-waters Pacific cod fishery.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** No.
- 3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?** Unknown.

ADDITIONAL INFORMATION: The BOF developed current vessel size limits during the October 2006 meeting. Although the A season has been short (7-9 fishing days), it has thus far been manageable. The B season has been longer (29-146 fishing days) and is also manageable.

PROPOSED BY: Clem Tillion, Aleut Enterprise LLC

ACR #9

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. Our proposal is to sub-divide the A and B season quotas in the AI state water P. cod fishery.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Not applicable.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: The Board modified the vessel size limit at its October 2006 meeting in order to deal with the fact that the A season in the first year of the AI state water P. cod fishery lasted only one week. However, given the lack of a prohibition on at-sea cod end transfers to floating processors and the participation of pot catcher processors, the state water fishery has remained a fast pace fishery with the 2007 and 2008 A seasons lasting barely over a week, and the 2008 B season lasting just one month.

There have also been unforeseen impacts from a number of federal regulatory actions that have made the community of Adak even more dependent on this state water P. cod fishery and on smaller vessels which are more closely tied to our community.

1- The development of a new Biological Opinion has been repeatedly delayed, which means that the modification of the 100% closure the AI pollock fishery in SSL Critical Habitat can not be modified at least for the next few years.

2- Implementation of Am. 80 without sideboards on at sea processors, has undercut landings of catcher vessel cod for onshore processing in the AI.

3- Implementation of the opilio crab custom processing use cap exemption without sideboards on mobile floating processors has undercut landings of catcher vessel cod for onshore processing in the AI.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: Spreading out the season does not prevent any one from participating.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Many participants in the AI statewater P. cod fishery treat it as a “hit and run” opportunity, which discriminates against locally based vessels who can’t turn to other fisheries in other areas.

Spreading out the season may favor locally based vessels, but the need to do so is embedded in the 5AAC 28.089 “Guiding principles for groundfish fishery regulations”.

Some of the include important goals from the “Guiding Principles” are not being met under the status quo. The fast pace of the fishery means that the local regions in this area of the state are not receiving maximum benefit. Instead most of the benefit is flowing out of state.

“4) maintenance of slower harvest rates by methods and means and time and area restrictions to ensure the adequate reporting and analysis necessary for management of the fishery;”

"(5) extension of the length of fishing seasons by methods and means and time and area restrictions to provide for the maximum benefit to the state and to regions and local areas of the state;"

Spreading out the seasons will benefit the local areas of the state in the Aleutian region as originally intended by providing enough fishing time for small vessels to base operations in the local area. Benefits to the local economies will be multiplied to the extent the catch is processed on shore.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 28.647 (d)

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. The AI statewater P. cod fishery is a new fishery created to benefit the local region. If benefits are going to accrue to the local regions of the state in which the fishery occurs, it is important to fine tune the regulations based on problems now. Delaying needed modifications of the regulations allows outside participants to develop claims of “historic dependence” in this new fishery.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Aleut Enterprise LLC is responsible for the economic development of Adak. AE leases space to an onshore processing plant.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. It has not been considered before.

Submitted By: Clem Tillion, Aleut Enterprise LLC

ADF&G STAFF COMMENT ON ACR: 9

PRESENT SITUATION: The guideline harvest level (GHL) for the Aleutian Islands state-waters Pacific cod fishery west of 170° W long. is based on 3 percent of the federal Pacific cod Allowable Biological Catch (ABC) for the Bering Sea – Aleutian Islands area. The state-waters GHL is apportioned so that a maximum of 70% of the GHL is available prior to June 10 during the A season, and the remaining 30% of the state GHL and any unharvested GHL from the A season is available during the B season beginning June 10. The A season opens by regulation 4 days after the closure of the Bering Sea – Aleutian Islands federal catcher-vessel trawl fishery. If the A season GHL has not been taken by April 1, the state-waters season will close by emergency order (EO) and may be reopened by EO after the closure of the federal catcher-vessel trawl fishery season until June 9. The B season opens on June 10. If the GHL has not been taken by September 1, the state-waters season will close by EO and may be reopened after the closure of the federal catcher-vessel pot fishery season for vessels 60' and over overall length (OAL).

Vessel size limits of 125' or less OAL for pot vessels, 100' or less OAL for trawl vessels and 58' or less OAL for longline and jig vessels are in effect. Vessels are allowed to utilize jig and longline gear concurrently. There are daily and trip limits of 150,000 pounds.

Since the fishery began in 2006, the A season length has ranged from 7 to 9 days. During the 2008 fishery the state-waters A season opened to commercial fishing on March 10 and closed on March 18, an 8 day fishery (Table 1). The harvest of 7,478,914 pounds of Pacific cod was taken by 30 vessels, although 32 vessels registered. Three of the vessels were catcher processors. No catcher processors operated during the 2007 A season. Four floating processors and 2 shore-based processors also participated in the 2008 A season. Trawl vessels accounted for 82% of the harvest. Average fishing vessel size was 86' OAL (Table 2).

The 2008 state-waters B season opened to commercial fishing on June 10 and closed on July 9, a 29 day season (Table 1). In 2007, the B season was 146 days which spanned 2 different openings. In 2008, 18 vessels participated including 5 catcher processors. One floating processor and 1 shore-based processor also participated in the B season. Average fishing vessel size was 66' OAL (Table 3) and 4,235,449 pounds were harvested.

Table 1. Aleutian Islands state-waters Pacific cod fishery guideline harvest level and harvest apportionment.

Year	Season	Initial GHL ^b	Season Dates		Season Length ^a	Harvest ^b	Number of	
			Opened	Closed			Vessels	Deliveries
2006	A season	8,981,540	15-March	24-March	9	8,502,781	26	68
	B season	3,849,232 ^c	10-June	1-Sep	83	Confidential		
	TOTAL	12,830,772			92	Confidential		
2007	A season	8,148,202	16-March	23-March	7	8,229,931	29	97
	B season	3,492,086 ^e	10-June	1-Sep	83	2,143,310	10	92
			1-Oct	3-Dec	63	1,265,760	5	14
	TOTAL	11,640,288			153	11,639,001	41 ^d	203
2008	A season	8,148,202	10-March	18-March	8	7,478,914	30	116
	B season	3,492,086 ^f	10-Jun	9-Jul	29	4,235,449	18	77
	TOTAL	11,640,288			37	11,714,363	45 ^d	193

^a In days.

^b In whole pounds.

^c ADF&G made 3.5 million pounds of the GHL available to National Marine Fisheries effective on September.

^d Some vessels participated in both seasons.

^e 81,729 pounds were deducted from the B season due to an overage during the A season.

^f 669,288 pounds remained from the A season and was rolled into the B season.

Table 2. Aleutian Islands state-waters Pacific cod fishery fleet composition, A season.

Year	Vessel type	Number participating	Average overall length
2006	Trawl catcher under 60'	3	58'
	Trawl catcher over 60'	16	104'
	Pot catcher over 60'	1	92'
	Trawl catcher-processor	1	296'
	Longline catcher-processor	5	152'
	Total	26	115'
2007	Trawl catcher under 60'	7	58'
	Trawl catcher over 60'	15	91'
	Pot catcher over 60'	7	113'
	Total	29	89'
2008	Trawl catcher under 60'	5	58'
	Trawl catcher over 60'	17	98'
	Trawl catcher-processor	1	98'
	Pot catcher under 60'	1	58'
	Pot catcher over 60'	3	108'
	Pot catcher-processor	2	105'
	Longline catcher under 60'	2	58'
Total	30 ^a	86'	

^a One vessel participated as both a trawl catcher-processor and a trawl catcher-vessel.

Table 3. Aleutian Islands state-waters Pacific cod fishery fleet composition, B season.

Year	Vessel type	Number participating	Average overall length
2006	Pot catcher over 60' OAL	2	98'
	Longline catcher under 60' OAL	3	54'
	TOTAL	5	71'
2007	Pot catcher under 60' OAL	1	58'
	Pot catcher over 60' OAL	1	108'
	Pot catcher-processor	3	112'
	Longline catcher	7	52'
	Jig	1	47'
	TOTAL	12 ^a	72'
2008	Pot catcher under 60' OAL	2	59'
	Pot catcher over 60' OAL	2	95'
	Pot catcher-processor	4	107'
	Longline catcher	6	48'
	Longline catcher-processor	1	58'
	Jig	5	38'
	TOTAL	18 ^b	66'

^a One vessel used both jig and longline gear.

^b Two vessels used both jig and longline gear.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: ACR 9 seeks to subdivide the A and B seasons' guideline harvest level for the Aleutian Islands state-waters Pacific cod fishery.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason? No.

2. Does the agenda change request correct an error in regulation? No.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? Unknown.

ADDITIONAL INFORMATION: Current regulation, adopted by the BOF during the October 2006 meeting, provides for both an A and B season with the possibility of 2 fishing periods within each season depending on available GHs. Since the beginning of the fishery in 2006, the A season has lasted 7 to 9 fishing days and the B season has lasted 29 to 146 fishing days which has thus far been manageable. It is unclear what effects this proposal would have on the fishery as a detailed plan of how the seasons are to be sub-divided is not provided. However, further division of the A and B seasons would likely result in even shorter, more difficult to manage fishing periods.

PROPOSED BY: Clem Tillion, Aleut Enterprise LLC

ACR #10

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. Our proposal is to reduce the trip limit to 75,000 pounds in the Aleutian Islands state water P. cod fishery.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Not applicable.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: The Board modified the vessel size limit at its October 2006 meeting in order to deal with the fact that the A season in the first year of the AI state water P. cod fishery lasted only one week. The ADF&G had recommended a 75,000 lb trip limit, but the BOF expected that the modifications of vessel size limits would be adequate to slow the fishery. In so doing, the BOF did not foresee the need to reduce the trip limit at that time.

However, given the lack of a prohibition on at-sea cod end transfers to floating processors and the participation of pot catcher processors, the state water fishery has remained a fast pace fishery with the 2007 and 2008 A seasons lasting barely over a week, and the 2008 B season lasting just one month.

There have also been unforeseen impacts from a number of federal regulatory actions that have made the community of Adak even more dependent on this state water P. cod fishery and on smaller vessels which are more closely tied to shore-based communities.

1- The development of a new Biological Opinion has been repeatedly delayed, which means that the modification of the 100% closure the AI pollock fishery in SSL Critical Habitat can not be modified at least for the next few years.

2- Implementation of Am. 80 without sideboards on at sea processors, has undercut landings of catcher vessel cod for onshore processing in the AI.

3- Implementation of the opilio crab custom processing use cap exemption without sideboards on mobile floating processors has undercut landings of catcher vessel cod for onshore processing in the AI.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: A change in the trip limit does not prevent any one from participating. It merely slows the fishery and puts all harvesters on a more level playing field.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. While the proposal does not allocate between any classes of vessels, it does put smaller vessels on a more level playing field with the larger vessels, particularly those who are delivering cod ends at-sea to Catcher Processors. The need to take corrective action flows from the 5 AAC 28.089. “Guiding principles for groundfish fishery regulations”

Some of the include important goals from the “Guiding Principles” are not being met under the status quo. The fast pace of the fishery means that the local regions in this area of the state are not receiving maximum benefit. Instead most of the benefit is flowing out of state.

“4) maintenance of slower harvest rates by methods and means and time and area restrictions to ensure the adequate reporting and analysis necessary for management of the fishery;”

A 75,000 lb trip limit would slow harvest rates.

"(5) extension of the length of fishing seasons by methods and means and time and area restrictions to provide for the maximum benefit to the state and to regions and local areas of the state;"

Slower harvest rates will lengthen the season and will benefit the local areas of the state in the Aleutian region as originally intended by providing enough fishing time for small vessels to base operations in the local area. Benefits to the local economies will be multiplied to the extent the catch is processed on shore.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 28.647 (d)(7)

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. The AI statewater P. cod fishery is a new fishery created to benefit the local region. If benefits are going to accrue to the local regions of the state in which the fishery occurs, it is important to fine tune the regulations based on problems now. Delaying needed modifications of the regulations allows outside participants to develop claims of “historic dependence” in this new fishery.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Aleut Enterprise LLC is responsible for the economic development of Adak. AE leases space to an onshore processing plant.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. A 75,000 lb trip limit was recommended by ADF&G at the October 2006 BOF meeting.

Submitted By: Clem Tillion, Aleut Enterprise LLC

ADF&G STAFF COMMENT ON ACR: 10

PRESENT SITUATION: The guideline harvest level (GHL) for the Aleutian Islands state-waters Pacific cod fishery west of 170° W long. is based on 3 percent of the federal Pacific cod Allowable Biological Catch (ABC) for the Bering Sea – Aleutian Islands area. The state-waters GHL is apportioned so that a maximum of 70% of the GHL is available prior to June 10 during the A season, and the remaining 30% of the state GHL and any unharvested GHL from the A season is available during the B season beginning June 10. Vessel size limits of 125’ or less overall length (OAL) for pot vessels, 100’ or less OAL for trawl vessels and 58’ or less OAL for longline and jig vessels are in effect. Vessels are allowed to utilize jig and longline gear concurrently. There are daily and trip limits of 150,000 pounds.

Since the fishery began in 2006, the A season length has ranged from 7 to 9 days. During the 2008 fishery the state-waters A season opened to commercial fishing on March 10 and closed on March 18, an 8 day fishery (Table 1). The harvest of 7,478,914 pounds of Pacific cod was taken by 30 vessels, although 32 vessels registered. Three of the vessels were catcher processors. No catcher processors operated during the 2007 A season. Four floating processors and 2 shore-based processors also participated in the 2008 A season. Trawl vessels accounted for 82% of the harvest. Average fishing vessel size was 86’ OAL (Table 2).

The 2008 state-waters B season opened to commercial fishing on June 10 and closed on July 9, a 29 day season (Table 1). In 2007, the B season was 146 days. In 2008, 18 vessels participated including 5 catcher processors. One floating processor and 1 shore-based processor also participated in the B season. Average fishing vessel size was 66’ OAL (Table 3) and 4,235,449 pounds were harvested.

During the 2008 A season, 5 overages exceeding the 150,000 pound daily limit were reported. In 2007, 17 overages were reported during the A season. No overages have ever been reported during the B season. All overages occurred on vessels utilizing trawl gear. No trawl vessels have participated in the B season and pot vessels in both seasons have reported daily catches of up to 75,000 pounds.

Table 1. Aleutian Islands state-waters Pacific cod fishery guideline harvest level and harvest apportionment.

Year	Season	Initial GHL ^b	Season Dates		Season Length ^a	Harvest ^b	Number of	
			Opened	Closed			Vessels	Deliveries
2006	A season	8,981,540	15-March	24-March	9	8,502,781	26	68
	B season	3,849,232 ^c	10-June	1-Sep	83		Confidential	
	TOTAL	12,830,772			92		Confidential	
2007	A season	8,148,202	16-March	23-March	7	8,229,931	29	97
	B season	3,492,086 ^e	10-June	1-Sep	83	2,143,310	10	92
			1-Oct	3-Dec	63	1,265,760	5	14
	TOTAL	11,640,288			153	11,639,001	41 ^d	203
2008	A season	8,148,202	10-March	18-March	8	7,478,914	30	116
	B season	3,492,086 ^f	10-Jun	9-Jul	29	4,235,449	18	77
	TOTAL	11,640,288			37	11,714,363	45 ^d	193

^a In days.

^b In whole pounds.

^c ADF&G made 3.5 million pounds of the GHL available to National Marine Fisheries effective on September.

^d Some vessels participated in both seasons.

^e 81,729 pounds were deducted from the B season due to an overage during the A season.

^f 669,288 pounds remained from the A season and was rolled into the B season.

Table 2. Aleutian Islands state-waters Pacific cod fishery fleet composition, A season.

Year	Vessel type	Number participating	Average overall length
2006	Trawl catcher under 60'	3	58'
	Trawl catcher over 60'	16	104'
	Pot catcher over 60'	1	92'
	Trawl catcher-processor	1	296'
	Longline catcher-processor	5	152'
	Total	26	115'
2007	Trawl catcher under 60'	7	58'
	Trawl catcher over 60'	15	91'
	Pot catcher over 60'	7	113'
	Total	29	89'
2008	Trawl catcher under 60'	5	58'
	Trawl catcher over 60'	17	98'
	Trawl catcher-processor	1	98'
	Pot catcher under 60'	1	58'
	Pot catcher over 60'	3	108'
	Pot catcher-processor	2	105'
	Longline catcher under 60'	2	58'
Total	30 ^a	86'	

^a One vessel participated as both a trawl catcher-processor and a trawl catcher-vessel.

Table 3. Aleutian Islands state-waters Pacific cod fishery fleet composition, B season.

Year	Vessel type	Number participating	Average overall length
2006	Pot catcher over 60' OAL	2	98'
	Longline catcher under 60' OAL	3	54'
	TOTAL	5	71'
2007	Pot catcher under 60' OAL	1	58'
	Pot catcher over 60' OAL	1	108'
	Pot catcher-processor	3	112'
	Longline catcher	7	52'
	Jig	1	47'
	TOTAL	12 ^a	72'
2008	Pot catcher under 60' OAL	2	59'
	Pot catcher over 60' OAL	2	95'
	Pot catcher-processor	4	107'
	Longline catcher	6	48'
	Longline catcher-processor	1	58'
	Jig	5	38'
	TOTAL	18 ^b	66'

^a One vessel used both jig and longline gear.

^b Two vessels used both jig and longline gear.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: ACR 10 seeks to reduce the trip limit to 75,000 pounds in the Aleutian Islands state-waters Pacific cod fishery.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** No.
- 3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?** Unknown.

ADDITIONAL INFORMATION: The BOF adopted trip limits of 150,000 pounds during the October 2006 meeting. Although the A season has been short (7-9 fishing days) and trawl vessels are able to achieve the current daily limits of 150,000 pounds, it has thus far been manageable. The B season has been longer (29-146 fishing days) and is also manageable. Thus far vessels have not exceeded a daily catch of 75,000 pounds during the B season.

PROPOSED BY: Clem Tillion, Aleut Enterprise LLC

ACR #11

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. Permit Stacking in Upper Cook Inlet. The original or emergency regulation adopted by the Board of Fish concerning two permits on a single vessel did not resolve some important issues. Adopting regulatory wording from Southeast or Bristol Bay was inappropriate because they are entirely different fisheries and have very little similarity to Upper Cook Inlet.

Two examples:

a) Early and late corridor openings added to regular fishing periods.

5:00 – 7:00am – Corridor opening – 150 fathoms limit – 200 fathoms illegal

7:00am – 7:00pm – Regular opening – 200 fathoms

7:00am – 11:00pm – Corridor opening – 150 fathoms – 200 fathoms illegal

Under present regulations a dual permit (D) vessel cannot participate in either the 5:00 – 7:00am or the 7:00 – 11:00pm fishing times. No other area of the State has this fishing pattern.

b) We have made inquiries of Southeast and Bristol Bay fishermen about removing or bagging of (50 fathoms) gear. In Bristol Bay there are numerous tenders where (50 fathoms) of gear can be stored while out on the fishing grounds. Additionally, we understand that many fishermen leave the 50 fathoms on the reel and cover the reel, or bag the 50 fathoms if left on the vessel. In Southeast, when they change from 300 fathoms to 200 fathoms it is one time during the season. There is no continuous need to switch from 300 fathoms to 200 fathoms back and forth.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason. Not applicable.

or 2) Correct an error in regulation: The adopted regulation concerning 200 fathoms of gillnet gear is still not working or practical in Upper Cook Inlet.

or 3) correct an unforeseen effect of a regulation: Not applicable.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: The use of 200 fathoms of drift gillnet by two permit holders on a single vessel reduces the total amount of fishing gear in the water. Allocative aspects were previously considered by the Board of Fish in February 2008.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 21.333. Requirements and specifications for use of 200 fathoms or drift gillnet in the Cook Inlet area.

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. This matter could wait until 2011. However, if it is the Board's decision to implement the 200 fathom permit stacking, provisions as indicated by the February Board of Fish hearings on this regulation could be adjusted on more time.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Commercial fishermen.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. Yes. February 2008, Yes. June 2008.

Submitted By: Steve Tvenstrup

ADF&G STAFF COMMENT ON ACR: 11

PRESENT SITUATION: Two Cook Inlet drift gillnet CFEC permit holders may concurrently fish from the same vessel and jointly operate up to 200 fathoms of drift gillnet gear under this section. Before operating drift gillnet gear jointly under this section, both permit holders shall register with the department office either in Anchorage, Soldotna or Homer. The joint operation of drift gillnet gear under this section is not allowed in any other area, or during any time when, a single CFEC permit holder is restricted to operating less than 150 fathoms of drift gillnet gear and in Kasilof and Kenai sections of the Central District, Kasilof terminal harvest area, or in the Chinitna Bay Subdistrict of the Central District. While fishing under this section in any area where gear is restricted to less than 200 fathoms of gillnet, the remaining gear must be removed from the reel and securely bagged or sacked.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: The agenda change request seeks to allow drift gillnetting by "stacked" permit holders in the Kasilof and Kenai Corridors immediately before and after a Central District drift gillnet opening.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** No.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? No.

ADDITIONAL INFORMATION: Regulations were adopted by the BOF at its February 2008 UCI finfish meeting which allowed two Cook Inlet drift gillnet CFEC permit holders to concurrently fish from the same vessel and jointly operate up to 200 fathoms of drift gillnet gear. After this regulation was adopted, a petition was submitted and accepted to address an “unintended legal outcome.” The proponents argued that the intention of the proposal adopted by the BOF was to allow the use of 200 fathom nets in all areas during normal district wide openings but to prohibit such use when fishing is restricted to less than 150 fathoms and to prohibit such use when fishing is restricted to the Kenai and/or Kasilof sections, the Kasilof terminal fishery, or the Chinitna Bay subdistrict. There was substantial discussion when reconsideration of this proposal was taken up by the board in June 2008. Regulatory action was taken during the June board meeting clarifying the board’s intent concerning jointly operating up to 200 fathoms of drift gillnet gear. New language adopted during this meeting provided regulatory language that is clear and enforceable.

PROPOSED BY: Steve Tvenstrup

ACR #12

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. The combination of the sector allocations under Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea/ Aleutian Islands Management Area and existing Alaska State Parallel Fisheries regulations in the Bering Sea and Aleutian Islands have set up an unintended loophole. The combination of the two sets of regulations has created motivation for vessel owners to target the state parallel fishery with larger vessels and add processing equipment including freezers in order to access the Federal Amendment 85 Catcher Processor Hook and Line allocation.

As our group is attempting to form a fishery cooperative and slow down the “race for fish” in the federal fishery, we are requesting the Board of Fish limit the size of longline vessels allowed to participate in the state waters parallel fishery to fifty-five feet, LOA. This will prevent the entrance of existing freezer longline vessels into the state parallel fishery once we have formed a fishery cooperative, as well as eliminate much of the existing motivation for Non-LLP and Non-cod endorsed vessels to enter into the state parallel fishery in the future using larger vessels.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason. Encouraging larger Catcher /Processor vessels to enter a fishery that was primarily intended for smaller shore side delivery vessels may have unintended consequences to the resource of Pacific cod within 3 miles.

A substantial portion of the desirable and available Pacific cod fishing grounds within Alaska State waters (three miles) is within the Aleutian Islands sub-area. Exploitation rates are currently (2007) estimated to be 22% of the biomass in the AI as opposed to 17% in the EBS (Thompson et al. 2007).

In addition although until recently there has been no separate population model for the AI portion of the Pacific cod population a model has been developed that indicates that the Aleutian Island cod population has been in a general decline since the late 1970's with the exception of a small peak in the early 1990's. (Kinzey, D., and A.Punt, in review.)

While 16% of the Pacific cod BSAI stock is estimated to exist in the AI sub area the fishing effort is such that 20% of the overall catch is being taken in the AI area. (Gaichas, S., and Aydin, K. BSAI cod) There is clearly the potential for increased effort in the AI Pacific cod fishery if vessel size is not regulated. This increased effort will add capacity to an already disproportionate catch.

or 2) Correct an error in regulation: Not applicable.

or 3) correct an unforeseen effect of a regulation: It was unforeseen that the Bering Sea and Aleutian Islands parallel fishery would have participation with CP H&L vessels. The combination of Amendment 85 sector splits in this area and the high run up in cod prices have created a situation where Non-LLP and Non-Pacific cod endorsed catcher processor vessels are encouraged to invest in larger hook and line vessels. The intention of these new entries would be to participate within state waters in the Aleutian Island and Bering Sea areas with that access being provided by the current parallel fishery.

This has created an unforeseen situation where investment is being planned to add freezers to existing larger vessels who have not historically participated in the state waters parallel fishery. This has the potential of creating an unforeseen competitive fleet to those catcher vessels who have historically fished in the state parallel fishery and to those historical participants in the Amendment 85 federal catcher processor hook and line fleet.

Encourages capitalization in a fishery (CP Longline) that has recently gone through a federal government buy-back program to reduce the fleet size. The owners of the BSAI Hook and Line Catcher Processor fleet have recently participated in the Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the BSAI and beginning in January 2008 have began repaying a \$35 million Federal loan. The ability to repay this loan was based on average catches on BSAI Pacific cod and this ability could be encroached upon by larger vessels entering the parallel fishery.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: This is an entirely allocative neutral request. The fleet that has historically participated in the state parallel fishery will continue to fish in the Bering Sea and Aleutian Islands fishery. This only prevents larger hook and line vessels from becoming reliant on this seasonal fishery.

Leaving the law at status-quo could become an allocative measure as NPFMC A.85 allocates fish to the Catcher Processor fleet and the H&L CP fleet just went through a federally funded buyback to limit the fleet size that access this sectors allocation. The status quo could allowing an unforeseen allocation to Catcher Processors that do not qualify under A. 85

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 28.087 (will need to quote the exact area the change will be made.)

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. Waiting for the regular cycle will likely result in vessel owners investing in freezers and other processing equipment and becoming established and reliant upon catching and processing pacific cod in the state waters parallel fishery using larger vessels than are currently participating.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). I am the Executive Director of the Freezer Longline Coalition. We represent thirty-four of the thirty-six vessels currently harvesting the FMP Amendment 85 Hook and Line Catcher Processor sector allocation.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. Has not to our knowledge been a proposal or a change request in the past.

Submitted By: Freezer Longline Coalition - Kenny Down, Executive Director

ADF&G STAFF COMMENT ON ACR: 12

PRESENT SITUATION: State waters of the Bering Sea-Aleutian Islands Area are opened annually for parallel Pacific cod fishing. Unless other state regulation takes precedent, the state adopts the adjacent federal-waters season, gear types, bycatch limits, and closed waters for the parallel fishery.

The federal Pacific cod fishery in the Bering Sea and Aleutian Islands is allocated by sector (Amendment 85). Several federal sectors are distinguished by gear type, vessel size, and processing type. As a result of the Alaska Supreme Court’s decision in *State v. Grunert*, 139 P.3d 1226 (2006), ADF&G may no longer distinguish between catcher vessels (CV) and catcher processors (CP) using the same gear type in state waters. Therefore, a vessel operator using a particular gear type may participate in the parallel Pacific cod fishery if that federal gear sector is open in adjacent federal waters regardless if the sector open is for catcher-vessels only or catcher-processor vessels.

Federal Pacific cod fishery sectors and 2008 gear shares (metric tons):

CDQ	18,267 mt.
Hook and line CP	73,844 mt.
Hook and line or pot CV < 60 ft.	3,033 mt.
Hook and line CV >= 60 ft.	303 mt.
Pot CV >= 60 ft.	12,737 mt.
Pot CP	2,274 mt.
Trawl CV	33,692 mt.
AFA trawl CP	3,506 mt.
Amendment 80	20,429 mt.
Jig	2,134 mt.

A vessel operator in a parallel fishery does not need a federal LLP to participate. Participation in federal waters, for the hook and line catcher-processor sector is capped, whereas effort for hook and line is not capped in state waters because vessels do not need a federal LLP to participate.

Hook and line harvest in recent BSAI parallel Pacific cod fisheries are summarized as follows:

	<u>No. vessels</u>		<u>CV harvest</u>	<u>CP harvest</u>
	CV	CP		
2006	33	4	300 mt.	275 mt
2007	39	4	288 mt.	359 mt.
2008	30	2	447 mt.	confidential

For 2006 and 2007, hook and line CPs participating in the BSAI parallel Pacific cod fishery have had federal LLPs with Pacific cod endorsements. However, in 2008, 3 hook and line CPs without LLPs with Pacific cod endorsements fished in the BSAI parallel Pacific cod fishery during the B season (i.e., the second season for Pacific cod which opened on September 1). Catch data from these vessels cannot be reported separately due to confidentiality requirements. One of the hook and line CPs fishing in the BSAI parallel fisheries without an LLP in 2008 is under 60 feet overall length (OAL). All other hook and line CPs have been greater than 60 feet OAL. Most hook and line CVs in the BSAI parallel Pacific cod fishery are less than 60' OAL.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: For the parallel Pacific cod fishery in the Bering Sea-Aleutian Islands Management Area, vessel size for longline (hook-and-line) vessels, both catcher vessels and catcher-processors, would be capped at 55 feet overall length.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason? No.

The parallel/federal Pacific cod fishery in the BSAI area is currently managed to stay below a total allowable catch (TAC). There are no sub-area TAC allocations in the Bering Sea and Aleutian Islands Area, although the fishery is managed for sector allocations. Recent harvests are within the TAC set by NMFS. If the parallel fishery were impacting the federal management regime to the degree that conservation problems were being created by the parallel fishery then the state would have the option to close the parallel fishery.

2. Does the agenda change request correct an error in regulation? No.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? Possibly.

The BOF has not established vessel size limits or gear allocations in state regulation for the parallel Pacific cod fishery, therefore there are no specific state regulations affected by this ACR. Parallel fishery rules for fishing season, bycatch limits, gear type and closed waters are adopted from adjacent federal waters annually by emergency order. However, the Board's regulatory provisions for parallel fisheries were developed prior to the Alaska Supreme Court's decision in *State v. Grunert*, and thus the inability to fully mirror federal fishery limitations could not have been anticipated and this could result in unforeseen effects on the fishery.

ADDITIONAL INFORMATION: Federal Amendment 85 which allocates Pacific cod by sector in the Bering Sea and Aleutian Islands Area was implemented by NMFS in 2008.

PROPOSED BY: Freezer Longline Coalition – Kenny Down, Executive Director

ACR #13

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues.

Current subsistence and personal use fishery regulations prohibiting blocking of more than half or two-thirds of a stream (a number of regulations are scattered throughout subsistence and personal use chapters) have recently proven largely unenforceable in areas with braided streams or multiple channels. New statewide prohibitions on blocking a channel are needed to achieve the intent of preventing fish passage from being blocked. The only alternatives to a statewide regulation would be making area by area EO closures or making changes to regulations on an area by area basis. Area regulations could still be more restrictive, i.e. exiting area provisions prohibiting obstruction of more than one-half the width of a stream would remain effective.

Suggested language: “A gillnet or stationary fishing device may not obstruct more than two-thirds the width of a stream or of any channel or side channel within a stream.”

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: In one case where we have determined that enforcement is problematic, an individual blocked the only channel which provides real fish passage. A net across the channel could be expected to stop more than 95% of the salmon trying to migrate past that area. Similar situations may exist in other streams.

or 2) Correct an error in regulation: It is clear that the Board’s intent was to prevent fishing gear from obstructing fish passage and to ensure escapement. Using the term “stream” instead of “stream or channel” appears to be an error that prevents the Boards existing regulations from being effective in some areas.

or 3) correct an unforeseen effect of a regulation: Not applicable.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: No allocative impacts. This is a conservation issue.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Not applicable.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 01.010; and 5 AAC 77.010.

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. This is a conservation issue involving an existing Board regulation which, within the context of a recent criminal case, has been determined likely to be

unenforceable in areas where there are braided streams with more than one channel. ADF&G, enforcement officers, and most of the public have previously assumed that the Board's prohibition on stream obstruction would apply to side channels as well as full streams. While the issue involving the stream where the enforcement issue arose can be addressed by an emergency order closing half of the applicable channel to subsistence fishing, it is likely that because the enforcement problem is now known, other individuals will try to take advantage of the lack of enforceability in other areas across the State. Correcting the issue by EO on an area by area basis would be impracticable because of the number of streams and channels involved and would be inconvenient to the public because it would usually involve closing one bank to subsistence fishing.

Another possible out of cycle solution, if the Board agrees that this is a housekeeping issue, would be for the Board to adopt a delegation to the Commissioner to identify all the area regulations restricting stream obstruction and adopt a housekeeping edit to each area's regulations to extend the area restrictions to channels and side channels. This option would present less possibility of public confusion because the restrictions on stream obstruction in each area could be understood without referring back to statewide regulations and because it would make area restrictions more consistent (i.e. if the stream restriction is one-half, the channel restriction would also be one-half, and if the stream restriction is two-thirds, the channel restriction would also be two-thirds).

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Resource Manager.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. No.

Submitted By: Alaska Department of Fish and Game.

ADF&G STAFF COMMENT ON ACR: 13

PRESENT SITUATION: Current subsistence and personal use fishery regulations in some management areas prohibit the blocking of more than one-half or two-thirds of a stream by fishing gear, depending on the management area. The existing regulatory language allows a channel of a stream to be completely blocked so long as one-half or two-thirds of the entire stream is not blocked. Some management areas have no regulations specifying the amount of stream that can be obstructed by fishing gear.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: Create statewide subsistence and personal use regulations that prohibit the obstruction of more than one-half of any individual channel within the main stream channel.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

1. Is there a pressing fishery conservation purpose or reason?

Yes. In cases of streams with multiple channels, a gillnet or other stationary fishing gear could block the entire channel of a stream preventing escapement if that channel is the only one that allows fish passage because the other channels are too shallow or otherwise limiting fish passage.

2. Does the agenda change request correct an error in regulation?

Yes. It is clear that the BOF's intent was to prevent fishing gear from obstructing fish passage and ensure escapement. Using the term "stream" instead of "stream or channel" appears to be an error that prevents the existing regulations from being effective in some areas.

3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?

Not applicable.

ADDITIONAL INFORMATION: Some streams with multiple braids or channels may have only one channel where fish can pass because other channels are too shallow to allow fish movement. An individual could block the only passable channel on a salmon stream under normal conditions or during a prolonged low water period. Only in the Yakutat Area (5 AAC 01.670(d)) do subsistence regulations allow for two-thirds of a stream to be blocked. The following seven areas allow one-half of a stream to be blocked in the existing subsistence regulations: Kotzebue (5 AAC 01.120(c)), Norton Sound-Port Clarence (5 AAC 01.170(c)), Yukon-Northern (5 AAC 01.220(f)(4)), Kuskokwim (5 AAC 01.270(f)), Bristol Bay (5 AAC 01.320(e)), Chignik (5 AAC 01.470(a)), and Kodiak (5 AAC 01.520(b)). The Yukon-Northern area (5 AAC 77.171(a)(4)) has the only personal use regulation allowing one-half of a stream to be blocked. There is currently no specific regulation on the amount of a stream width that can be blocked by fishing gear in the statewide regulations and in the Aleutian Islands (5 AAC 01.350), Alaska Peninsula (5 AAC 01.400), Cook Inlet (5 AAC 01.550), Prince William Sound (5 AAC 01.600), and Southeast Alaska (5 AAC 01.700).

PROPOSED BY: Alaska Department of Fish & Game.

ACR #14

STATE IN DETAIL THE NATURE OF THE PROBLEM: Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues. The BOF in 2008 attempted to address the Kasilof River Terminal fishery issues with a policy clarification. The 2008 season ended with the same scenario as in previous years with negative affects to the historic harvest patterns and the targeting of non commercial stocks. Proposals 170, 173, and 182 had consensus from user groups in Committee C. Board committee grouped these solutions within Proposal 166 and in Proposal 181. Commercial fisheries managers will not implement specific plan without being designated within regulation. Repeat seasons with weak Kenai runs for next two years.

STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATED BELOW. If any one or more of the three criteria set forth below is not applicable, state that it is not applicable.

1) Fishery conservation purpose or reason: Long term negative affects from late season exploitation on Kasilof King and Coho Stocks.

or 2) Correct an error in regulation: BOF did not address specific changes to the management of the fishery to accomplish a more orderly harvest.

or 3) correct an unforeseen effect of a regulation: BOF could not have fully understood the Kasilof issue without fully knowing the information on poor survival in rearing areas would substantially affect the adult returns in to the Kenai River Watershed.

STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE: This is not primarily allocative as it questions and seeks to reduce the adverse and unintended consequences to the non targeted stocks and to prosecution of the fishery. It has created a new fishery and has taken away the historical fishing opportunity to 80% of the registered ESSN fishermen. Effectively allowing less than 10% to harvest in a disorderly fishery.

IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Please see comments.

CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD. 5 AAC 21.365

STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE. Please see above statement.

STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user sport fisherman, etc.). Commercial Fishing.

STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING. Please see comments.

Submitted By: Paul Shadura II

ADF&G STAFF COMMENT ON ACR: 14

PRESENT SITUATION: The Kasilof River Special Harvest Area may be open to the taking of salmon by gillnets when it is projected that the Kasilof River sockeye salmon escapement will exceed 275,000 fish. It is the intent of the board that the Kasilof River Special Harvest Area should rarely, if ever, be used and then only for conservation reasons. Achieving the lower end of the Kenai River sockeye salmon escapement goal shall take priority over not exceeding the upper end of the Kasilof River optimal escapement goal range of 150,000 to 300,000 sockeye salmon.

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: The agenda change request seeks to disallow the use of the Kasilof River Special Harvest Area.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- 1. Is there a pressing fishery conservation purpose or reason?** No.
- 2. Does the agenda change request correct an error in regulation?** No.
- 3. Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted?** No.

ADDITIONAL INFORMATION: Beginning July 15, 2008, additional set gillnet fishing periods were allowed in the Kasilof Section of the Upper Subdistrict but only within ½ mile of the mean high tide mark on the Kenai Peninsula shoreline. This was intended to concentrate commercial harvest on Kasilof River sockeye salmon stocks as much as possible while reducing the exploitation of sockeye salmon bound for the Kenai River. Beginning July 27, fishing was limited to the Kasilof River Special Harvest Area. The Kasilof River Special Harvest Area was open July 27 through August 7 for a total of 268 hours. This was in response to the fact that the Kenai River sockeye salmon run in 2008 appeared to be much smaller than forecast based on escapements and the Offshore Test Fish program. While the Kenai River sockeye salmon run was weak, the Kasilof River sockeye salmon run was near forecast and the escapement rate of sockeye salmon into the Kasilof River proceeded at a rate greater than that needed to assure optimum escapement levels. The Kasilof River Special Harvest Area was used to harvest sockeye salmon bound for the Kasilof River while reducing the harvest of Kenai River stocks to the extent possible.

PROPOSED BY: Paul Shadura II