



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

1011 E. Tudor Road
Anchorage, Alaska 99503-6199

MAR 14 2014

FWS/OSM 14017.GP

Mr. Karl Johnstone, Chair
Alaska Board of Fisheries
Alaska Department of Fish and Game
P.O. Box 115526
Juneau, Alaska 99811-5526

Dear Chairman Johnstone:

The Alaska Board of Fisheries will consider 48 proposals, among other issues, at its Statewide King and Tanner Crab meeting beginning March 17-21, 2014.

The U.S. Fish and Wildlife Service, Office of Subsistence Management (OSM), working with other Federal agencies, has reviewed the proposals and developed the enclosed preliminary comments on four proposals which may have an effect on Federal subsistence users participating in the Kodiak Tanner crab and the Yukon River Chinook salmon Federal subsistence fisheries. We may wish to comment on other proposals if issues arise during the meeting which may have an effect on Federal subsistence users and fisheries.

Chairman Johnstone

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We appreciate the opportunity to comment on these important regulatory matters and look forward to working with the Alaska Board of Fisheries and the Alaska Department of Fish and Game on these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eugene R. Peitola, Jr.", written in a cursive style.

Eugene R. Peitola, Jr.
Assistant Regional Director, OSM

Enclosure

cc: Cora Campbell, Commissioner, Alaska Department of Fish and Game
Glenn Haight, Alaska Department of Fish and Game, Juneau
Tim Towarak, Chair, Federal Subsistence Board
Karen Hyer, Acting Deputy Assistant Regional Director, OSM
Drew Crawford, Alaska Department of Fish and Game, Anchorage
Lisa Olson, Alaska Department of Fish and Game, Anchorage
Hazel Nelson, Alaska Department of Fish and Game, Anchorage
Jennifer Yuhas, Alaska Department of Fish and Game, Fairbanks
Jeff Regnart, Alaska Department of Fish and Game, Anchorage
Charles Swanton, Alaska Department of Fish and Game, Juneau
Interagency Staff Committee
Administrative Record

**FEDERAL STAFF COMMENTS ON
ALASKA BOARD OF FISHERIES PROPOSALS
for the
STATEWIDE KING AND TANNER CRAB
AND
SUPPLEMENTAL ISSUES**

**State of Alaska
Board of Fisheries Meeting
March 17-24, 2013
Anchorage, Alaska**

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Federal Comments

The following comments address these proposals only as they affect Federally qualified subsistence users and resource conservation.

Proposals 337 requests repealing prohibition on subsistence Tanner crab fishing 14 days before participating in a king and Tanner crab commercial fishery opening.

Current State Regulation:

5 AAC 02.425. Subsistence Tanner crab fishery

(a)(2) the subsistence taking of Tanner crab is prohibited in waters 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

Current Federal Regulation:

§100.28 Subsistence taking of shellfish.

(j)(4) Kodiak Area. (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(v) In the subsistence taking of Tanner crab:

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location.

Is a similar issue being addressed by the Federal Subsistence Board? No.

Impact to Federal subsistence users/fisheries: Yes. Adoption of this proposal could result in reduced amounts of Tanner crabs available for harvest in waters under Federal subsistence fisheries jurisdiction, potentially reducing the success rates for Federally qualified subsistence users. Although most marine waters of the State do not include Federal Subsistence Program jurisdiction, the Kodiak Area is different. Areas of Federal subsistence fisheries/shellfish jurisdiction include (50 CFR 100.3(b)(1)):

(i) *Karluk Subunit: All of the submerged land and water of the Pacific Ocean (Shelikof Strait) extending 3,000 feet from the shoreline between a point on the spit at the meander corner common to Sections 35 and 36 of Township 30 South, Range 33 West, and a point approximately 1¹/₄ miles east of Rocky Point within Section 14 of Township 29 South, Range 31, West, Seward Meridian as described in Public Land Order 128, dated June 19, 1943;*

(ii) *Womens Bay Subunit: Womens Bay, Gibson Cove, portions of St. Paul Harbor and Chiniak Bay: All of the submerged land and water as described in Public Land Order 1182, dated July 7, 1955 (U.S. Survey 21539);*

(iii) *Afognak Island Subunit: A submerged lands and waters of the Pacific Ocean lying within 3 miles of the shoreline as described in Proclamation No. 39, dated December 24, 1892;*

Federal Position/Recommended Action: Oppose 337. The Federal Subsistence Management Program supports the Kodiak-Aleutians Federal Subsistence Regional Advisory Council (KA RAC) recommendation to oppose this proposal. The current prohibition of subsistence Tanner crab fishing two weeks prior to the commencement of a commercial fishery was put into regulation over thirty years ago. The intent of this existing regulation is to prevent commercial fishermen from pre-season prospecting for crab using subsistence fishery regulations. Although the intent of the regulation is to prevent prospecting by commercial fishermen, an additional benefit is that concentrations of Tanner crabs near rural communities are less known prior to commercial fishery opening and more available to subsistence users.

The KA RAC said that if commercial fishermen found pockets of crabs prior to a commercial fishery, the fishermen would return to those pockets during the open commercial Tanner crab fishery and harvest the crabs. The KA RAC indicated commercial fishing did overharvest the schools of Tanner crabs near their communities which resulted in lower success rates for subsistence users.

Proposal 371 requests removing the dip net size restrictions for Yukon Area Districts 1-3 commercial chum salmon fisheries. The proposal recommends limiting the net webbing to a maximum stretched measurement of 4.5 inches and defines a dip net as a bag-shaped net supported on all sides by a rigid frame which is attached to a single rigid handle.

Current State Regulation:

State Commercial

5 AAC 05.362 (k) In Districts 1 - 3, during times when the commissioner determines that it is necessary for the conservation of king salmon, the commissioner may, by emergency order, close the commercial gillnet fishing season and immediately reopen a fishing season during which

(1) a permit holder may fish with

(A) up to four dip nets, as a dip net is defined in 5 AAC 39.105;

(B) beach seine gear, with mesh size that does not exceed four inches stretched measure; and

(2) all king salmon caught in dip net and beach seine gear must be returned immediately to the water alive, except that a dead king salmon may be taken but may not be retained; the dead king salmon must be recorded on a fish ticket and forfeited to the state.

State Subsistence

5 AAC 01.220. Lawful gear and gear specifications

(m) Notwithstanding the provisions of (d), (e)(2), and (f)(2) of this section, during times when the commissioner determines it to be necessary for the conservation of chum salmon, the commissioner may, by emergency order, close the fishing season in the Yukon Area and immediately reopen the season in that area during which the following gear limitations apply:

(3) dip nets may be used; however, all chum salmon caught with a dip net must be released to the water alive.

(n) Notwithstanding the provisions of (d), (e)(2), and (f)(2) of this section, during times when the commissioner determines it to be necessary for the conservation of king salmon, the commissioner may, by emergency order, close the fishing season in the Yukon Area and immediately reopen the season in that area during which the following gear limitations apply:

(3) dip nets may be used, however, all king salmon caught with a dip net must be released to the water alive.

Definition of Dip Net

5 AAC 39.105. Types of legal gear

(24) a dip net is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand;

Current Federal Regulation:

§100.27 Subsistence taking of fish (e)(3)(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(A) In the Yukon River drainage, you may not take salmon for subsistence fishing using gillnets with stretched mesh larger than 7.5 inches.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes.

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length.

Is a similar issue being addressed by the Federal Subsistence Board? No.

Impact to Federal subsistence users/fisheries: Yes. Authorizing the use of larger and/or more effective dipnets in the chum salmon commercial fishery during times of low Chinook salmon abundance in the Yukon River, depending upon levels of capture and release related mortality, may impact continuance of subsistence uses by Federally qualified users and result in conservation concern. During 2013, commercial fishermen using dip net gear in Districts 1-3 of the Yukon River caught and released over 1,000 Chinook salmon while targeting chum salmon though zero mortally wounded Chinook salmon were reported.

The Chinook salmon handling mortality and potential spawning success detractors associated with this fishery are unknown. No information is available which suggest whether or not these released fish survived and successfully spawned. Increases in the number of Chinook salmon handled likely will result in an overall increase in mortality. Currently, both the State and Federal subsistence fisheries are being managed cooperatively to progressively decrease Chinook salmon mortality due to subsistence activity in an effort to attain escapement objectives. Conversely, this gear change could increase Chinook salmon mortality due to commercial fishing during times when subsistence fishermen are clearly not meeting their needs. In 2013, the Yukon River subsistence harvest estimate indicates that the Chinook salmon harvest was approximately 75% below average. Since Yukon River Chinook salmon production is expected to be low in the near future with significant management challenges, an increase in commercial fish harvesting related mortality of Chinook salmon would require offset in the subsistence fishery to provide for escapement.

Federal Position/Recommended Action: Oppose 371. The Federal Subsistence Management Program opposes regulatory actions which may increase Yukon River Chinook salmon mortality by an unknown amount during times of low abundance. If this proposal is adopted, larger and more efficient commercial fishery dipnets would be authorized over what is currently specified for subsistence use and an undetermined increase in Yukon River Chinook salmon mortality could be expected. The Federal Subsistence Management Program encourages promulgation of regulations which reduce or eliminate mortality of Chinook salmon in the Yukon River commercial fisheries especially during times of conservation concerns and low abundance.

Proposal 373 requests removing the exception allowing for a dead Chinook salmon to be taken, but not retained, in the Yukon Area Districts 1-3 dip net and beach seine commercial summer chum salmon fisheries.

Current State Regulation:

Commercial Fishing

5 AAC 05.362 (k) In Districts 1 - 3, during times when the commissioner determines that it is necessary for the conservation of king salmon, the commissioner may, by emergency order, close the commercial gillnet fishing season and immediately reopen a fishing season during which

(1) a permit holder may fish with

(A) up to four dip nets, as a dip net is defined in 5 AAC 39.105;

(B) beach seine gear, with mesh size that does not exceed four inches stretched measure; and

(2) all king salmon caught in dip net and beach seine gear must be returned immediately to the water alive, except that a dead king salmon may be taken but may not be retained; the dead king salmon must be recorded on a fish ticket and forfeited to the state.

Subsistence Fishing

(n) Notwithstanding the provisions of (d), (e)(2), and (f)(2) of this section, during times when the commissioner determines it to be necessary for the conservation of king salmon, the commissioner may, by emergency order, close the fishing season in the Yukon Area and immediately reopen the season in that area during which the following gear limitations apply:

(3) dip nets may be used, however, all king salmon caught with a dip net must be released to the water alive.

Current Federal Regulation: None addressing this issue.

Is a similar issue being addressed by the Federal Subsistence Board? No.

Impact to Federal subsistence users/fisheries: Unknown. Further clarification is necessary to determine if adoption of this proposal will have impacts on Federally qualified subsistence users.

Federal Position/Recommended Action: Oppose 373 as written but offer modifications. The Federal Subsistence Management Program supports promulgation of clear regulations which result in orderly fisheries and conservation of the resources. It is unclear to the Federal Subsistence Management Program, if this proposal is adopted, what would happen to Chinook salmon mortally wounded in the commercial fisheries when retention of Chinook salmon is prohibited. If adopted as written, it appears Chinook salmon mortally wounded in the commercial fisheries would be required to be dumped back into the water resulting in wanton waste.

If not adopted, it is believed that commercial fishermen could harvest non-mortally wounded Chinook salmon in violation of 5 ACC 05.362 (k) (2) with the intent of taking them home for subsistence purposes. When approached by law enforcement, the commercial fishermen could claim the dead Chinook salmon in possession were mortally wounded in the commercial fishery and they were transporting the fish to the state for forfeiture.

The Federal Subsistence Management Program recommends modifying the existing regulation in three manners to increase the enforceability of this regulation.

First, modify the current regulation to require all mortally wounded Chinook salmon be retained and marked in a manner that allows enforcement officers to easily differentiate between a Chinook salmon retained in the commercial and or a subsistence fishery before concealing the fish from plain view or transfer from the fishing site. This could be accomplished by requiring the removal of the pectoral fins instead of the currently required removal of both lobes of the tail fin in the subsistence fisheries. The Federal Subsistence Management Program requests consideration to minimizing the introduction of bacteria or other contaminants to the flesh of the fish when determining modified marking requirements.

Second, require the commercial fisherman record the retention of the fish on their commercial fish harvest ticket prior to concealing the marked fish from plain view or transfer from the fishing site. Requiring retention recording at time of landing will create a commercial fishery regulation clearly enforceable at all stages of possession. Unlike many sport, personal use, and subsistence fisheries elsewhere in Alaska, state commercial fishing regulations do not require Yukon River commercial salmon fishermen to possess fish tickets, or other licenses or permits which could be used to record harvest in writing, on their person while fishing. In the Yukon commercial salmon fisheries a fish ticket is issued at the time of transfer of possession of harvest to buyers and processors.

In order for commercial fishermen to record retained mortally wounded Chinook salmon, they would need to have a fish ticket, or other form of permit, on their person. In commercial salmon fisheries in other parts of Alaska, commercial fishermen are issued fish tickets with fish transport permits or catcher seller permits which allow commercial fishermen to receive, haul, and deliver other fishermen's harvest or allow direct sale of harvest to consumers. The Federal Subsistence Management Program recommends investigating these two examples as means to require having fish tickets, or some form of permit, to be on the person of a commercial fisherman for recording retained mortally wounded Chinook salmon prior to transport to being forfeited to the State.

The final recommendation is to establish a tracking or reporting mechanism which documents receiving forfeited Chinook salmon. In order for the above recommendations to be enforceable, some form documentation or reporting mechanism should be developed to allow enforcement officers to compare numbers of mortally wounded Chinook salmon retained in the commercial fishery and recorded on fish tickets and the numbers forfeited to the State.

Proposal 377 requests authorizing the use of purse seine gear for commercial harvest of Yukon River summer chum salmon in Districts 1-3 during times of Chinook salmon conservation. This proposal also requests authorizing the use of monofilament purse seine web in this commercial fishery.

Current State Regulation:

Monofilament Purse Seine Web

5 AAC 39.170. Monofilament purse seine web unlawful.

It is unlawful to use single- or multiple-strand monofilament purse seine web. For the purpose of this regulation, "monofilament" means any single filament having more than 50 denier, that is, weighing more than 50 grams per 9,000 meters of filament.

Commercial Fishing

5 AAC 05.362 (k) In Districts 1 - 3, during times when the commissioner determines that it is necessary for the conservation of king salmon, the commissioner may, by emergency order, close the commercial gillnet fishing season and immediately reopen a fishing season during which

(1) a permit holder may fish with

(A) up to four dip nets, as a dip net is defined in 5 AAC 39.105;

(B) beach seine gear, with mesh size that does not exceed four inches stretched measure; and

(2) all king salmon caught in dip net and beach seine gear must be returned immediately to the water alive, except that a dead king salmon may be taken but may not be retained; the dead king salmon must be recorded on a fish ticket and forfeited to the state.

Subsistence Fishing

5 AAC 01.220. Lawful gear and gear specifications

(m) Notwithstanding the provisions of (d), (e)(2), and (f)(2) of this section, during times when the commissioner determines it to be necessary for the conservation of chum salmon, the commissioner may, by emergency order, close the fishing season in the Yukon Area and immediately reopen the season in that area during which the following gear limitations apply:

(3) dip nets may be used; however, all chum salmon caught with a dip net must be released to the water alive.

(n) Notwithstanding the provisions of (d), (e)(2), and (f)(2) of this section, during times when the commissioner determines it to be necessary for the conservation of king salmon, the commissioner may, by emergency order, close the fishing season in the Yukon Area and immediately reopen the season in that area during which the following gear limitations apply:

(3) dip nets may be used, however, all king salmon caught with a dip net must be released to the water alive.

Current Federal Regulation:

§100.27 (e)(3)(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(A) In the Yukon River drainage, you may not take salmon for subsistence fishing using gillnets with stretched mesh larger than 7.5 inches.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes.

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length.

Is a similar issue being addressed by the Federal Subsistence Board? No.

Impact to Federal subsistence users/fisheries: Yes. Authorizing the use of purse seine gear, especially monofilament webbed nets, in the chum salmon commercial fishery during times of low Chinook salmon abundance in the Yukon River, depending upon levels of capture and release related mortality, may impact continuance of subsistence uses by Federally qualified users and result in conservation concern. If this proposal is adopted, negative unforeseen impact on other species of fish (e.g. whitefish, sheefish, resident species, etc.) important to subsistence users may incur.

Currently, both the State and Federal subsistence fisheries are being managed cooperatively to progressively decrease Chinook salmon mortality due to subsistence activity in an effort to attain escapement objectives. Conversely, this gear change could only increase Chinook salmon mortality due to commercial fishing during times when subsistence fishermen are clearly not meeting their needs. In 2013, the Yukon River subsistence harvest estimate indicates that the Chinook salmon harvest was approximately 75% below average.

Since Yukon River Chinook salmon production is expected to be low in the near future with significant management challenges, an increase in commercial fish harvesting related mortality would require offset in the subsistence fishery to provide for escapement.

The Chinook salmon handling mortality and potential spawning success detractors associated with authorizing the use of purse seines, especially purse seines made of monofilament webbing, in this fishery are unknown. Little information is available which suggest whether or not Chinook salmon caught and release in a purse seine survived, migrated potentially over 1,000 river miles, and successfully spawned. A 1997 Joint Chinook Technical Committee (CTC) report for the Pacific Salmon Commission examined non-retention fishing mortality rates of Chinook salmon in marine commercial purse seine fisheries. The CTC recommended using a rate of 72% for total Chinook salmon non-retention mortality rate for all size classes combined based on an average immediate mortality of 49% and a delayed mortality of 23%. Although operation of fishing gear can be quite variable, all operations would subject the non-retained Chinook salmon to some combination level of lost energy and physical injury. Furthermore, non-retained Chinook salmon lost due to operation of this gear type would not be utilized and some portion would be considered waste.

Federal Position/Recommended Action: Oppose 377. The Federal Subsistence Management Program opposes regulatory actions which may increase Yukon River Chinook salmon mortality by an unknown amount during times of low abundance. If this proposal is adopted, an undetermined increase in Yukon River Chinook salmon mortality, as well as other important fish species, can be expected. The Federal Subsistence Management Program encourages promulgation of regulations which reduces or eliminates mortality of Chinook salmon in the Yukon River commercial fisheries especially during times of conservation concerns and low abundance. Additionally, when a resource is in a severely depressed state, it is important to avoid increasing waste.

If this proposal is adopted, the number of Chinook salmon injured while being pursued up in a seine, handled, and released is unknown. How much mortality will result from the potential variety of injuries is also unknown. Adoption of this proposal will result in an overall increase in mortality. Currently, the Federal subsistence fisheries are being managed to decrease Chinook salmon mortality, not increase mortality which would be the effect if this proposal is adopted. Adoption of this proposal has the potential to negate conservation efforts in the Yukon River subsistence fisheries. Gear specifications and operations would need to be specified if adopted and a program would need to be established to evaluate the impact of this fishery expansion on the fully-utilized Yukon River Chinook salmon stock.