

RC 014



IN REPLY REFER TO

# United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE  
1011 East Tudor Road MS 121  
Anchorage, Alaska 99503-6199



FWS/OSM 150070.GP

**JAN 06 2016**

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

Dear Chairman Kluberton:

The Alaska Board of Fisheries will deliberate 55 proposals, among other issues, at its Arctic/Yukon/Kuskokwim Finfish meeting beginning January 12-17, 2016.

The U.S. Fish and Wildlife Service, Office of Subsistence Management, working with other Federal agencies, has developed the enclosed preliminary recommendations on proposals that have potential impacts on Federal subsistence users and fishery resources in the Kuskokwim River Drainage.

We appreciate the opportunity to comment on these important regulatory matters and look forward to working with your Board and the Alaska Department of Fish and Game on these issues. Please contact George Pappas, State Subsistence Liaison, 907-786-3822, with any questions you may have concerning this material.

Sincerely,

Eugene R. Peltola Jr.  
Assistant Regional Director, OSM

Enclosure

cc: Sam Cotten, ADF&G  
Tim Towarak, Chair FSB  
Lisa Olson, ADF&G, Anchorage  
Hazel Nelson, ADF&G, Anchorage  
Scott Kelley, ADF&G, Juneau  
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Glenn Haight, ADF&G, Juneau  
Drew Crawford, ADF&G, Anchorage  
Jill Klein, ADF&G, Anchorage  
Chuck Ardizzone, OSM, Anchorage  
Interagency Staff Committee  
Administrative Record

**FEDERAL STAFF COMMENTS ON  
ALASKA BOARD OF FISHERIES PROPOSALS**

**ARCTIC-YUKON-KUSKOKWIM**

**State of Alaska  
Board of Fisheries Meeting  
January 12-17, 2016  
Anchorage, Alaska**

**Federal Comments**

The following comments address these proposals only as they affect Federally qualified subsistence users and resource conservation. This document contains comments responding to Kuskokwim River Drainage fisheries proposals.

**Proposal 92** seeks to modify the Kuskokwim River Salmon Management plan to manage the Chinook Salmon subsistence fishery based on the Bethel Test Fishery when the preseason outlook is for a Chinook Salmon return of less than 150,000 fish.

**Current Federal Regulations**

*§100.14 Relationship to State procedures and regulations.*

*(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part.*

*§100.27 Subsistence taking of fish.*

*(4)(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.*

**Current State Regulations**

*5 AAC 07.365. Kuskokwim River Salmon Management Plan.*

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

**Impacts to Federal subsistence users/fisheries:** Yes. Adoption of this proposal, as written, would install a management threshold in regulation which may result in foregone harvest by subsistence users during years when the Bethel Test Fishery index or preseason outlook underestimates the Chinook Salmon return. Conversely, adoption of this proposal may result in excessive harvest during years when the Bethel Test Fishery index may not track with previous years, when accuracy is undefinable, or during years when the run timing is late or the run strength is weak or both.

Additionally, if this proposal is adopted, and the Chinook Salmon run timing and size are not reflected by the pre-season outlook, a measure of conservation will be insured prior to exploitation by any user group resulting in continuance of subsistence uses in the future if the return is not significantly in excess of biological needs.

**Federal Position/Recommended Action:** The Office of Subsistence Management **opposes** this proposal as written. Adoption of the proposal could lead to over exploitation of certain portions of the Kuskokwim River Chinook Salmon if harvest is focused on the second half of the run. Focusing harvest efforts on portions of the run may result in unnatural distribution of salmon in the watershed and could unintentionally result in higher exploitation rates on some of the lesser Kuskokwim River drainage Chinook Salmon stocks. Adoption of this proposal will also remove some management flexibility, potentially leading to forgone harvest when surplus is available.

**Proposal 93** requests modifying the Kuskokwim River Salmon Management Plan to establish a Chinook Salmon inriver run goal above the Bethel Test Fishery replacing the current drainagewide Sustainable Escapement Goal. The inriver run goal would be 95,000 Chinook Salmon above the Bethel Test Fishery.

#### **Current Federal Regulations**

*§100.14 Relationship to State procedures and regulations.(a).*

*§100.27 Subsistence taking of fish.(4) (ii)*

#### **Current State Regulations**

*5 AAC 07.365. Kuskokwim River Salmon Management Plan.*

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

**Impacts to Federal subsistence users/fisheries:** Yes. Adoption of this proposal may result in additional Chinook Salmon passage to the middle and upper portions of the Kuskokwim River drainage thus increasing subsistence user opportunities during times of abundance.

**Federal Position/Recommended Action:** The Office of Subsistence Management is **neutral** on this proposal. The Federal in-season manager is required to ensure Federally qualified subsistence users with a customary and traditional use determination for Kuskokwim River Chinook Salmon have a reasonable harvest opportunity when fish are available. Adoption of this proposal will assist managers to achieve escapement goals in the upper and middle watershed tributaries. Conversely, if this proposal is adopted, residents of the lower Kuskokwim River drainage may experience reduced harvest opportunity during years of low abundance when all fish available for harvest have already escaped into the middle and upper drainage and tributaries.

Adoption of this proposal may be problematic as it establishes an inriver numerical threshold for management purposes without the inseason tools to estimate escapement inseason. The Bethel Test Fishery is an index of abundance and not an enumeration project which provides inseason daily escapement estimates. Currently, the Kuskokwim River Drainage does not have the tools to accurately estimate inseason salmon escapement and exact inseason management is not possible.

**Proposal 94** requests establishing an inriver run goal for the Kuskokwim River Salmon Management Plan of 120,000 to 218,000 Chinook Salmon.

#### **Current State Regulations**

*5 AAC 07.365. Kuskokwim River Salmon Management Plan.*

#### **Current Federal Regulations**

*§100.14 Relationship to State procedures and regulations. (a)*

*§100.27 Subsistence taking of fish. (4) (ii)*

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

**Impacts to Federal subsistence users/fisheries:** Yes. Adoption of this proposal would significantly increase the inriver escapement goal, potentially reducing or eliminating subsistence fishing opportunities during years of below average abundance. If the proposed escapement goal range was adopted in 2000, subsistence fishing opportunity would have been significantly restricted or eliminated in seven of the last sixteen years.<sup>1</sup> Conversely, adoption of this proposal could result in additional Chinook Salmon reaching the spawning grounds in the Kuskokwim River watershed, potentially strengthening future returns.

**Federal Position/Recommended Action:** The Office of Subsistence Management **opposes** this proposal. Management towards a higher goal could result in continuance of substantial or potentially absolute fisheries restrictions during times of below average availability of harvestable surplus. Adoption of this proposal could result in reduced management flexibility which could lead to potential loss of opportunity for subsistence users.

If the proposed inriver escapement goal range is adopted, during years of below average abundance, the lower goal will likely be targeted if harvest opportunity is to be provided. Additionally, if the goal range is adopted, and the fisheries are managed towards the upper end of the range, all fisheries targeting Kuskokwim Chinook Salmon would have been closed to all exploitation approximately half of the last 16 seasons and with significant restrictions during four of the remaining eight years.<sup>1</sup>

Additionally, the inseason data provided by the Bethel Test Fishery cannot be utilized as an accurate measure of escapement magnitude, rather this tool provides a general daily assessment of the relative strength and timing of the salmon returns as they pass through the test fish site. The Bethel Test Fishery provides more refined information about the return as the season progresses which assist managers later in the season. If this proposal is adopted, accurately achieving the escapement goals may not be possible without additional tools to measure the magnitude of the returns in-season.

Conversely, the proposed escapement goal range would be higher than the current range and potentially could result in continuance of subsistence uses if the larger escapements result in higher levels of harvestable surplus from future returns.

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<sup>1</sup> T. Hamazaki, Z. Liller. 2015. 2014 Kuskokwim River Chinook Salmon Run Reconstruction and Model Revisions, Alaska Department of Fish and Game Memorandum, March 10, 2015. <http://www.adfg.alaska.gov/static/fishing/PDFs/commercial/kuskokwim/2014RunReconMemo.pdf>. Accessed 12-23-2015.

**Proposal 95** seeks to establish the Kuskokwim River Chinook Salmon subsistence fishery as a Tier II fishery. The proposal alternatively seeks to implement an alternate management system which will effectively ensure an equitable distribution of any harvestable surplus throughout the Kuskokwim River drainage during times when Amounts Necessary for Subsistence cannot be met.

#### **Current Federal Regulations**

Tier II and Amounts Necessary for Subsistence do not exist in Federal Subsistence Regulations

#### **Current State Regulations**

Tier II fishing regulations for the Kuskokwim River watershed do not exist.

*5 AAC 01.286. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses*

*(a)(2-3), (b)(1, 6, 7)*

*5 AAC 99.010. Boards of fisheries and game subsistence procedures*

*(c)(1-3)*

**Is a similar issue being addressed by the Federal Subsistence Board?** Yes. In 2014 and 2015, the Board supported special action requests and adopted ANILCA Section 804 determinations for Kuskokwim River drainage Chinook Salmon stocks. Section 804 requires that whenever it is necessary to restrict the taking of populations of fish and wildlife for subsistence uses in order to protect the continued viability of such populations or to continue subsistence uses, such a priority shall be implemented through appropriate limitations based on the application of three criteria in Section 804. The criteria are the following: (1) customary and direct dependence upon the populations as the mainstay of livelihood, (2) local residency, and (3) the availability of alternative resources.

As a result of adopting the special action requests, Federal public lands and waters in the Kuskokwim River drainage were closed to the harvest of Chinook Salmon except by residents of the drainage and the four coastal communities of Kwigillingok, Kongiganek, Kipnuk, and Chefomak from late May to early July 2014 and 2015.

The Federal Subsistence Board will be accepting proposals to change permanent fisheries regulations in spring 2016.

**Impacts to Federal subsistence users/fisheries:** Possibly. Adoption of this proposal could reduce participation in the State managed subsistence fisheries; thus, reducing the overall take of Chinook Salmon in waters under State subsistence fisheries jurisdiction. If this proposal is adopted and the abundance of the Chinook Salmon return to the Kuskokwim does not provide enough harvestable surplus for a subsistence fishery without restrictions, waters under Federal subsistence jurisdiction may be restricted to fishing for Chinook Salmon by Federally qualified users only. If this is the case, a Tier II fishery could not take place on Federal public waters as the State of Alaska's selection criteria for a Tier II fishery would not meet the requirements set out in ANILCA.

**Federal Position/Recommended Action:** The Office of Subsistence Management's position is **Neutral** for waters under State of Alaska Subsistence Fisheries Jurisdiction. Adoption of this proposal could

potentially assist the management of the State managed subsistence fisheries outside of Federal public waters of the Kuskokwim River; however, current Tier II regulations are not compatible with Federal subsistence regulations. This incompatibility would likely prohibit application of a Tier II fishery in Federal public waters. This provision is based upon the need to restrict subsistence fisheries in Federal public waters to Federally qualified users only during times when conservation concerns exist for the resource, for continuance of subsistence users, or for public safety purpose as outlined in ANILCA.

Enacting a Tier II fishery under State fisheries regulations would not automatically impact the Federal subsistence fisheries. The conservation concerns likely identified by the State of Alaska to justify adjusting fisheries management into a Tier II status would also be identified by Federal managers potentially triggering restrictions in the Federal subsistence fisheries.

Though Tier II qualification criteria would likely limit some participation in the State-managed subsistence fishery, it is likely most eligible users would be residents of the Kuskokwim River drainage. If the Chinook Salmon returns are low enough to trigger a Tier II scenario and Chinook Salmon fishing in Federal public waters are restricted to Federally qualified users only, differing regulations and eligibility requirements could result in user confusion and enforcement concerns. If this proposal is adopted, the Office of Subsistence Management encourages both the State and Federal programs to work closely together when developing permits and requirements with the goal of reducing differences between the two management systems, ultimately benefiting all subsistence users.

**Proposals 97 and 222** request creation of a subsistence permitting system for regulating the take of Kuskokwim River Chinook Salmon.

Proposal 97 requests limiting permit issuance to one annual permit per household. Additionally, proposal 97 seeks to establish possession, recording, reporting, and compliance requirements.

Alaska Board of Fisheries generated Proposal 222 requests establishing a permitting requirement during times of Kuskokwim River Chinook Salmon conservation concerns. Proposal 222 seeks to define conditions for implementation, applicable seasons and dates, application periods, harvest limits, harvest recording, and reporting requirements. Additionally, Proposal 222 seeks to establish two types of permits, one for a community or group harvest fishery who demonstrate a communal subsistence pattern of use of Chinook Salmon as described in the applicable Board of Fisheries findings and one for households.

#### **Current Federal Regulations**

*§\_\_100.27 (e)(4)(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.*

*§\_\_100.27(b)(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.*

#### **Current State Regulations**

*5 AAC 01.280. Subsistence fishing permits*

*Fish may be taken for subsistence purposes without a subsistence fishing permit.*

**Is a similar issue being addressed by the Federal Subsistence Board?** Not currently but possible if fisheries special action request is submitted spring of 2016. The Federal Subsistence Board will be accepting fisheries proposals in the spring of 2016 for deliberations during its winter 2017 meeting. The Federal Subsistence Board will address Fisheries Special Actions as they are submitted. Fisheries Special Actions were submitted to the Federal Subsistence Board in 2014 and 2015 requesting Chinook Salmon fishery restrictions within Federal public waters of the Kuskokwim.

Inseason management of the Federal subsistence fisheries in Federal public waters of the Kuskokwim River watershed allowed limited Chinook Salmon harvest opportunities during 2014 and 2015. Residents from the identified communities qualified for participation in a limited harvest opportunity for Chinook Salmon under a Federal subsistence community harvest permit within Federal public waters. Specific community allocations were based on each community's average share of the total subsistence harvest of Kuskokwim River Chinook Salmon over the last 20 years. The Community Harvest Permit Program was voluntary and communities did not have to participate. If a community wished to participate, a limited number of fishermen were designated to catch a community's allocation of Chinook Salmon. Only those who were identified as designated fishers in possession of a designated fishing permit could harvest Chinook Salmon under the program in Federal public waters. This opportunity was permitted from June 10-30, 2015, and no other time or day restrictions were established.

Those who resided in communities not adjacent or near Federal public waters, though authorized to participate in the limited Federal subsistence fishery, could not fish under Federal subsistence regulations in non-Federal public waters but could designate their quota to other Federally qualified users for harvest within Federal public waters.

If the Kuskokwim River Chinook Salmon continues in a low abundance trend, the Federal Subsistence Board may receive fisheries special action requests from the public to restrict the fisheries on Federal public lands similarly undertaken in 2014 and 2015.

**Impacts to Federal subsistence users/fisheries:** Variable. Adoption of Proposal 97 could impact Federally qualified subsistence users during years of conservation concerns for Chinook Salmon by requiring users to have a subsistence fishing permit when fishing under State of Alaska regulations throughout the Kuskokwim watershed if Federal public waters are not restricted to Federally qualified users only. Adoption of Proposal 222 could benefit Federally qualified subsistence users fishing in waters outside of Federal public waters while participating in the State managed fisheries as Federal public waters would likely be closed to non-Federally qualified users during times of conservation concerns for Chinook Salmon as identified in the recommended regulatory language.

**Federal Position/Recommended Action:** The Office of Subsistence Management's position is **neutral** for both proposals for waters under State and Federal subsistence fisheries jurisdictions during times of Chinook Salmon conservation concerns.

The Office of Subsistence Management **supports** developing a household or community/group permitting system that would allow the State of Alaska to provide a limited harvest opportunity to target Chinook Salmon during years of low abundance mirroring the Federal Subsistence Management Program's actions in 2014 and 2015.

Adopting some form of proposal 97 and/or 222 could potentially assist the management of the State managed subsistence fisheries upstream of Federal public waters of the Kuskokwim River by providing more defined subsistence harvest information than currently provided by post-season survey efforts. Adoption of Federal regulations would likely prohibit application of a State subsistence permit system in waters under Federal subsistence fisheries regulations. This provision is based upon the need to restrict

subsistence fisheries in Federal public waters during times when conservation concerns exist for the resource, for continuance of subsistence users, or for public safety purposes as outlined in ANILCA.

Determining the amount of subsistence harvested salmon that is removed from the Kuskokwim Management area could be beneficial to the overall management of the Kuskokwim River fisheries by providing data that managers could utilize during post season run reconstructions and forecasting. Additionally, adoption of some form of proposal 97 and/or 222 could be beneficial for Federally qualified users that live distant from Federal public waters, as the Federal subsistence opportunity would only apply to Federal public waters. Adoption of some form of 97 and/or 222 would also allow Federally qualified subsistence users residing in the middle and upper river communities to fish for themselves and/or residents of their communities and groups (important to maintain cultural and traditional activities), rather than delegating another Federally qualified user closer to Federal public waters to fish for them.

If a household harvest permit system was adopted by the Alaska Board of Fisheries, its implementation should be closely calibrated to the existing postseason harvest survey program. Successful permit systems in rural areas of Alaska require gradual implantation, over 10 to 20 years, and results are regularly validated and interpreted by knowledgeable people. The implementation of the permit system should be formalized in a detailed operation plan subject to public review.

**Proposal 98** seeks to establish descriptions of subsistence fishing sections for the Kuskokwim River during times of Chinook Salmon conservation.

#### **Current Federal Regulations**

§ 100.27 *Subsistence Taking of Fish (e)(4)(ii-iv)*

#### **Current State Regulations**

*5 AAC 01.255. Description of districts and subdistricts*

*5 AAC 07.200. Fishing districts, subdistricts, and sections (a)(1), (a)(2)(a-b), (b-d)*

**Is a similar issue being addressed by the Federal Subsistence Board?** No. If this proposal is adopted, a proposal may be submitted to the Federal Subsistence Board which will be accepting fisheries proposals in the spring of 2016 for deliberations during its winter of 2017 meeting.

**Impacts to Federal subsistence users/fisheries:** Yes. Adoption of this proposal may establish new fisheries section boundaries potentially adjusting fishing times and areas for Federal subsistence users.

**Federal Position/Recommended Action:** The Office of Subsistence Management **supports** this proposal. The Office of Subsistence Management supports clear, predictable, and understandable regulations regarding boundary identification. Adoption of this proposal will also address the small portion of the Kuskokwim River upstream of the Refuge boundary in the vicinity of Aniak, proposed Section 3/4 boundary, thus removing regulatory complexity and will reduce user confusion.

**Proposal 99** seeks to limit the use of four-inch mesh subsistence gillnets to one gill net per household when subsistence users are restricted to four-inch mesh size for the conservation of Chinook Salmon.



**Current Federal Regulations**

*§\_100.27 Subsistence Taking of Fish*

*(e)(4)(ii, ix)*

**Current State Regulations**

*5 AAC 01.270. (a, b, h(2), m (1)(B))*

**Is a similar issue being addressed by the Federal Subsistence Board?** No. If this proposal is adopted, a proposal may be submitted to the Federal Subsistence Board which will be accepting fisheries proposals in the spring of 2016 for deliberations during its winter 2017 meeting.

**Impacts to Federal subsistence users/fisheries:** No. Adoption of this proposal will not impact Federal subsistence users as current Federal subsistence regulations and authority delegated to the Federal subsistence in-season manager do not authorize restriction of amounts of gear used by a household. Current regulations do restrict cumulative gear an individual may use in other areas. For example, Federal subsistence fisheries regulations governing the Kodiak king crab fishery do restrict the users to only one King Crab pot per boat, but the number of households present on that vessel is not restricted.

**Federal Position/Recommended Action:** The Office of Subsistence Management is **neutral** on this proposal. If this proposal is adopted, Federally qualified subsistence user households could continue to operate more than one four-inch mesh subsistence gill net under Federal subsistence regulations. Adoption of this proposal may benefit all users by reducing incidental catch mortality rates of Chinook Salmon in gill nets specifically authorized to target non-salmon species during times of Chinook Salmon conservation concerns in the Kuskokwim River drainage. Additionally, adoption of this proposal may also reduce cumulative harvest of non-salmon species such as whitefish, burbot, and trout which may be detrimental to subsistence users but potentially beneficial to fish populations experiencing additional compensatory targeting during recent times of Chinook Salmon fisheries restrictions and closures.

**Proposal 100** seeks to establish subsistence beach seine specifications in the Kuskokwim Area.

**Current Federal Regulations**

*§\_100.27 Subsistence Taking of Fish*

*(e)(4)(ii, ix)*

**Current State Regulations**

*5 AAC 01.270. Lawful gear and gear specifications and operation.*

*(a)*

**Is a similar issue being addressed by the Federal Subsistence Board?** No. If this proposal is adopted, a proposal may be submitted to the Federal Subsistence Board which will be accepting fisheries proposals in the spring of 2016 for deliberations during the winter of 2016-2017.

**Impacts to Federal subsistence users/fisheries:** Possibly. Adoption of this proposal may assist with reducing mortal injuries to Chinook Salmon incidentally captured and released from beach seines by subsistence users. Adoption of this proposal may allow greater quantities of Chinook Salmon to escape to the spawning grounds. Adoption of this proposal would not restrict Federal subsistence users from using beach seines out of compliance of the proposed specifications.

**Federal Position/Recommended Action:** The Office of Subsistence Management is **neutral** on this proposal as it will not impact the Federal subsistence fisheries if adopted. The Office of Subsistence Management supports the development of gear specifications with the intent to reduce mortality rates of incidentally captured and released non-target species. Establishing similar or identical gear specifications for the Federal subsistence fisheries can be done either through a Fisheries Special Action by Federal managers or a proposal could be submitted to the Federal Subsistence Board to establish a similar or identical definition of beach seine.