

## **Board of Fisheries Federal/State Subsistence Committee – 9 Dec 2015 Meeting**

Prepared by the Alaska Department of Fish and Game, Federal Subsistence Liaison Program

Review of several recent federal subsistence fisheries cycles for Federal Subsistence Board (FSB) actions and impact on Board of Fisheries (BOF) regulations.

### **2011-2013 Federal Subsistence Fisheries Proposals – 19-20 Jan 2011 FSB Meeting (Table 1)**

Chignik Area

**FSB Action:** Fishery Proposal FP11-10 Open closed sections of Chignik River fishery and expand allowable gear Carried as Amended (6-0) Modifications: to 1) open the areas of Black Lk and its tributaries to certain subsistence gear types; 2) remove the requested restriction for using “hook and line” gear in the Chignik River; 3) leave in the current restrictions for taking salmon in the Chignik River from upstream of the ADF&G weir; 4) leave in the restriction for taking salmon in Clark River and Home Creek; and 5) move language from subsection (vi) to subsection (ii). In addition, fishing permit language has been made consistent throughout the regulation, removing the reference to State permits.

#### **Modified Federal Regulations**

##### **§ \_\_.27(c) Subsistence taking of fish: methods, means, and general restrictions**

- (4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.*
- (10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated. § \_\_.27(i)(8)*

##### ***Subsistence taking of fish: Chignik Area***

- (i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time, except as may be specified by a subsistence fishing permit. For salmon, Federal subsistence fishing 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methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.*
- (ii) You may take salmon by seine, spear, and/or snagging (handline or rod and reel) or with gear specified on a subsistence fishing permit. You may also take salmon with a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand. You may not take salmon in the Chignik River from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31.*
- (A) You may take salmon by gillnet in Chignik River, Chignik Lake, and in the open waters of Clark River and Home Creek under the authority of a subsistence fishing permit;*

*(B) In the open waters of Clark River and Home Creek you may take salmon by snagging (handline or rod and reel), spear, bow and arrow, or capture by hand without a permit. The daily harvest and possession limits using these methods are 5 per day and 5 in possession.*

*(C) You may not use purse seines in Chignik Lake.*

*(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit unless otherwise indicated.*

*(iv) You must keep a record on you permit of subsistence caught fish. You must complete the record immediately upon taking a subsistence-caught fish and must return it no later than the due date listed on the permit.*

*(v). If you hold a commercial fishing license, you may only subsistence fish for salmon as a specified on a subsistence fishing permit.*

*(vi) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.*

**State Regulations:** Gillnets and purse seines are allowable gear under state subsistence regulations. The State of Alaska provides a subsistence preference on all lands and provides liberal salmon subsistence fisheries on the Alaska Peninsula. Subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if needed. For the Chignik area subsistence salmon fishery, gear types allowed include gillnet and seines, except purse seines may not be used in Chignik Lake. Gillnet may be used in Clark River and Home Creek one linear mile upstream from their confluence with Chignik Lake. Additional gear types can be added to the state subsistence permit (5 AAC 01.470).<sup>1</sup>

State subsistence permits for each management area carry stipulations specific to that area, such as timing restrictions to separate subsistence and commercial fishing, gillnet length limits in areas open to commercial fishing, and waters closed to subsistence fishing. Commercial salmon license holders and Commercial Fisheries Entry Commission (CFEC) salmon permit holders may subsistence fish for salmon during a commercial salmon fishing period (5 AAC 01.485) but may not subsistence fish 12 hours before or 12 hours after each commercial fishing period. Commercial salmon license holders and CFEC permit holders in the Chignik Management Area that subsistence fish in Chignik Lagoon, Chignik Lake, or Chignik River are required to contact department staff at the Chignik weir in order to separate the reporting of subsistence and commercial harvest.

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<sup>1</sup> **5 AAC 01.470. Lawful gear and gear specifications**

- (a) Salmon may be taken by seine and gillnets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.
- (b) Fish other than salmon may be taken by gear listed in 5 AAC 01.010(a), unless restricted under the terms of a subsistence fishing permit.

**State Regulations** (continued): The Alaska Board of Fisheries established a combined amount reasonably necessary for subsistence for communities in the Alaska Peninsula area as 34,000—56,000 salmon annually. The combined amount necessary for subsistence for the Chignik Area (Chignik Bay and the Central and Eastern districts of the Chignik Management Area) is 7,700 to 14,250 salmon annually. Liberal state subsistence fisheries are allowed on all lands (state, federal, and private), so adoption of this proposal is not necessary to provide a meaningful subsistence opportunity.

## Kodiak Area

**FSB Action:** Fishery Proposal FP11-11 reduced harvest limit of King crab [from six] to three. Carried (6-0). *Note:* this FSB action aligned the federal annual limit per household with the state regulation.

### Modified Federal Regulation

§ \_\_.28(k)(4)(iv) *In the subsistence taking of king crab; (A) The annual limit is three crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed;*

**State Regulation:** The state subsistence fishing harvest limit for red king crab near Kodiak is three male crabs per year per household: 5 AAC 02.420 *Subsistence King Crab Fishery (1) the annual limit is three king crab for a household;*

**FSB Action:** Fishery Proposal FP11-13 revised harvest limit for subsistence caught salmon and herring in federal public waters of the Kodiak Area. Carried (6-0).

### Modified Federal Regulation

§ \_\_.27(i)(9)(iv) *A subsistence fishing permit is required for taking salmon, trout, and char, and herring for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.*

(v) *The annual limit for subsistence fishing permit holders is as follows:*

(A) *In the fresh waters of Kodiak Island, east of a line from Crag Point south to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and the salt waters bordering this area within one mile of Kodiak Island, excluding the waters bordering Spruce Island, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit: an additional permit may be obtained if it can be shown that more fish are needed;*

(B) *In the remainder of the Kodiak area not described in (A) of this subsection, there is no annual limit.*

(vi) *Subsistence fishermen shall keep a record of the number, or if for herring, the number of pounds, of subsistence fish taken by that subsistence fisherman each year. The number of pounds of subsistence fish taken shall be recorded on the reverse side of the permit. The catch must be recorded prior to leaving the*

*fishing site, and the permit must be returned to the local representative of the department by February 1 of the year following the year the permit was issued.*

**State Regulation:**

*5 AAC 01.530 Subsistence fishing permits. (a) A Subsistence fishing permit is required for taking salmon, trout, char, and herring for subsistence purposes.*

*(b) The annual limit for a subsistence salmon fishing permit holder is as follows:*

*(1) in fresh water of Kodiak Island, east of a line from Crag Point south to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and the salt waters bordering this area within one mile of Kodiak Island, excluding the waters bordering Spruce Island, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit; an additional permit may be obtained if it can be shown that more fish are needed;*

*(2) in the remainder of the Kodiak Area not described in (1) of this subsection, there is no annual limit.*

*(c) A subsistence permit holder shall record the number, or if for herring, the number of pounds, of subsistence fish taken by that subsistence permit holder each year as described in this subsection. The subsistence permit holder shall record all harvested fish on the permit in ink, before concealing the fish from plain view or transporting the fish from the fishing site. The subsistence permit holder must return the permit to the local representative of the department by February 1 of the year following the year the permit was issued. For the purposes of this subsection, "fishing site" means the location where the fish is removed from the water and becomes part of the permit holders' s limit.*

*(d) A subsistence herring fishing permit holder may take no more than 500 pounds of herring in a calendar year.*

**Southeast Alaska and Yakutat Areas**

**FSB Action:** Fishery Proposal FP11-16 extended the Klawock sockeye salmon fishery season. Carried as Amended (6-0). Modification to remove the defined season and fishing schedule for subsistence sockeye salmon fishing in the Klawock River drainage from regulation.

**Modified Federal Regulation** *note:* the following regulation was deleted

*§ \_\_.27(i)(13)(xiv) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.*

**State Regulation:**

5 AAC 01.710 Fishing season. (e) From July 7 through August 7, sockeye salmon may be taken in the waters of Klawock Harbor enclosed by a line from the northernmost tip of Klawock Island at 55°33.42'N. lat., 133°06.38'W. long. to Klawock Island Light to the Klawock Cannery Dock at 55°33.47'N. lat, 133°05.96'W long., the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

**2013-2015 Federal Subsistence Fisheries Proposals – 22-24 Jan 2013 FSB Meeting (Table 2)**

**FSB Board Action:** Fishery Proposal FP13-16 to eliminate requirements to remove fins to identify subsistence caught salmon in federal public waters of the Southeast Alaska and Yakutat Areas. Carried as Amended (8-0 vote). Modification: to rescind the fin removal requirement for the Southeast Alaska Area but retain the requirement for the Yakutat Area.

**Modified Federal Regulations**

For the Southeast Alaska Area: *note:* the following fin removal requirement was deleted.

**§ \_\_.27(e)(13)(x) You shall immediately remove both lobes of the caudal (tail) fin of all salmon when taken**

For the Yakutat Area:

**§ \_\_.27(e)(12)(ix) You shall immediately remove both lobes of the caudal (tail) fin of all salmon when taken**

**State Regulation:**

Article 14. Southeast Alaska Area. 5 AAC 01.740. Marking of subsistence-taken salmon. Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

**2015-2017 Federal Subsistence Fisheries Proposals – 21-23 Jan 2015 FSB Meeting (Table 3)**

**FSB Action:** Fishery Proposal FP15-10 to authorize the use of a single gillnet by the community of Ninilchik in federal public waters of Kenai River after the submission of an operational plan and approval by the in-season fisheries manager and the Kenai National Wildlife Refuge Manager. Carried (5-3 vote).

**New Federal Regulation**

**§ \_\_.27(i)(10)(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport**

*fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:*

*(A) Through (H)*

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

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

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

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

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

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

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

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

*(4) Fishing will be allowed from June 15 through October 31 on the Kenai River unless closed or otherwise restricted by Federal special action.*

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

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

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

**State Regulations:**

Since Ninilchik is located in the Anchorage-Matsu-Kenai nonsubsistence area (5 AAC 99.015(a)(3)) subsistence fishing is not permitted. However the following activities are permitted in a nonsubsistence use area (5 AAC 99.016(2)): personal use fishing, sport fishing, guided sport fishing, commercial fishing, and other fishing authorized by permit (i.e., educational fisheries).

**FSB Action:** Fishery Proposal FP15-11 to authorize the use of a single gillnet by the community of Ninilchik in federal public waters of Kasilof River. Carried as Amended (8-0 vote). Modification included a requirement that the set gillnet fishery would need to submit an operational plan (with mesh size, allocation, & location restrictions) to the in-season fisheries manager and the Kenai National Wildlife Refuge Manage and have it approved prior to the season, the time and area available to subsistence gillnet to only allow fishing Jul 1-31, and the amendment also specified that the community gillnet fishery permit will be experimental for five years, then the board will review its performance.

**New Federal Regulation**

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

*(A) through (H)*

*(I) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through a community gillnet in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River.*

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

*(2) One registration permit will be available and will be awarded by the Federal in-season*

*fishery manager, in consultation with the Kenai National Wildlife refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager.*

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

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

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

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

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

*(4) Fishing for sockeye, Chinook, coho and pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for that species is reached or suspended.*

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

*(6) After 200 rainbow/steelhead trout have been taken in the dip net and gillnet fishery, or after August 15, all rainbow/steelhead trout must be released unless otherwise provide.*

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

**State Regulations:** Since Ninilchik is located in the Anchorage-Matsu-Kenai nonsubsistence area (5 AAC 99.015(a)(3)) subsistence fishing is not permitted. However the following activities are permitted in a nonsubsistence use area (5 AAC 99.016(2)): personal use fishing, sport fishing, guided sport fishing, commercial fishing, and other fishing authorized by permit (i.e., educational fisheries).

**FSB Action:** Fishery Proposals FP15-17 to close federal public waters to non-Federally qualified users in the Makhnati Island area near Sitka to the harvest of herring and herring spawn. Carried (7-0 vote).

### **New Federal Regulation**

#### **36 CFR 242 and 50 CFR 100**

*§ \_\_.27(i)(13)(xx) The Federal public waters in the Makhnati Island area, as defined in § \_\_.3(b)(5) are closed to the harvest of herring and herring spawn except by Federally qualified subsistence users.*

**State Regulations:** 5 AAC 01.716. Customary and traditional subsistence uses of fish stocks and amount necessary for subsistence uses. (a) The Alaska Board of Fisheries finds that the following fish stocks are customary and traditionally taken and used for subsistence in the following portions of the Southeast Alaska Area outside the nonsubsistence areas described in 5 AAC 99.015(a)(1) and (2):

(11) District 13, as follows: (D) herring and herring spawn, as follows: (i) in waters of Section 13-A, and (ii) in waters of Section 13-B north of the latitude of Aspid Cape;

(b) The board finds that 136,000 – 227,000 pounds of herring spawn are reasonably necessary for subsistence uses in Section 13-A, and Section 13-B north of the latitude of Aspid Cape.

5 AAC 01.717. Customary trade in herring roe on kelp. (a) The limited, noncommercial exchange for cash of subsistence-harvested herring roe on kelp, legally taken in Districts 1-16, under the terms of 5 AAC 01.730, is permitted as customary trade. Persons licensed under AS 43.75.011 to engage in a fisheries business may not exchange, solicit to exchange, or receive for commercial purposes subsistence-taken herring roe on kelp. Allowable possession limits for customary trade and other subsistence uses shall be those specified on permits issued according to 5 AAC 01.730(g). Permits must include the following information: (1) the intended purpose of the harvest and the estimated amount of herring roe on kelp dedicated to each purpose; (2) the name of the individual transporting the herring roe on kelp to the point of sale or transfer.

(b) The permit information provided in compliance with (a) of this section may be changed before herring roe on kelp is taken, by contacting an ADF&G representative where the permit was issued.

5 AAC 01.730. Subsistence fishing permits. (a) ...herring spawn on kelp...may only be taken under the authority of a subsistence fishing permit.

(g) When issuing a herring spawn on kelp subsistence fishing permit, the department may specify on the permit the times and locations for harvesting and the species of kelp that may be taken. The annual possession limit for herring spawn on kelp is 32 pounds for an individual or 158 pounds for a household of two or more persons. The department will, in its discretion, issue an additional permit for herring spawn on kelp above the annual possession limit if harvestable surpluses of herring spawn on kelp are available.

For the majority of subsistence herring egg harvest, the department does not restrict fishing periods, seasons, or amount of herring harvested for subsistence purposes in this area. Harvest of spawn on hemlock boughs or spawn on hair kelp is unrestricted, and no state permit is required. The Alaska Board of Fisheries, in February 2012, closed approximately 25 square kilometers of Sitka Sound to the commercial harvest of herring for the purpose of providing for subsistence herring egg harvesting opportunity. This closure encompasses areas most heavily used by subsistence harvesters and includes a portion of the federal public waters in the Makhnati Island Area north of the causeway. The State closure applies only to the commercial harvest of herring allowing the continued use of this area by non-federally qualified subsistence, personal use and sport harvesters.

Post-season evaluation of subsistence harvest is accomplished by a harvest monitoring program conducted by Sitka Tribe of Alaska in cooperation with the Department's Division of Subsistence. The results of this monitoring program have indicated little subsistence harvesting effort occurs in the Makhnati Island Area federal waters.

The Department requires a permit that may limit harvest of spawn on Macrocystis kelp and requires harvest reporting following the season. (See 5 AAC 01.730(g)) Harvest of Macrocystis kelp accounts for an average of only two percent of the subsistence harvest on all substrate types, so state requirements for spawn on kelp harvest is not a significant limitation.

The Department has authority to issue additional permits for herring spawn-on-kelp above the annual possession limit if harvestable surpluses are available. Commercial herring vessel, permit holders, and crew members may not take or possess herring 72 hours prior to or following a commercial herring fishing period.

The following is a list of fisheries actions by the Federal Subsistence Board that the Alaska Board of Fisheries may need to coordinate on:

- Kenai River subsistence gillnet for sockeye salmon
- Closure near Makhnati Island (Sitka) for commercial herring fishing
- Salmon fin removal for subsistence fish in Southeast Alaska Area
- Chignik area waters (Black Lake) open to subsistence fishing
- Kodiak subsistence permit requirements for salmon and herring
- Klawock River sockeye salmon open season