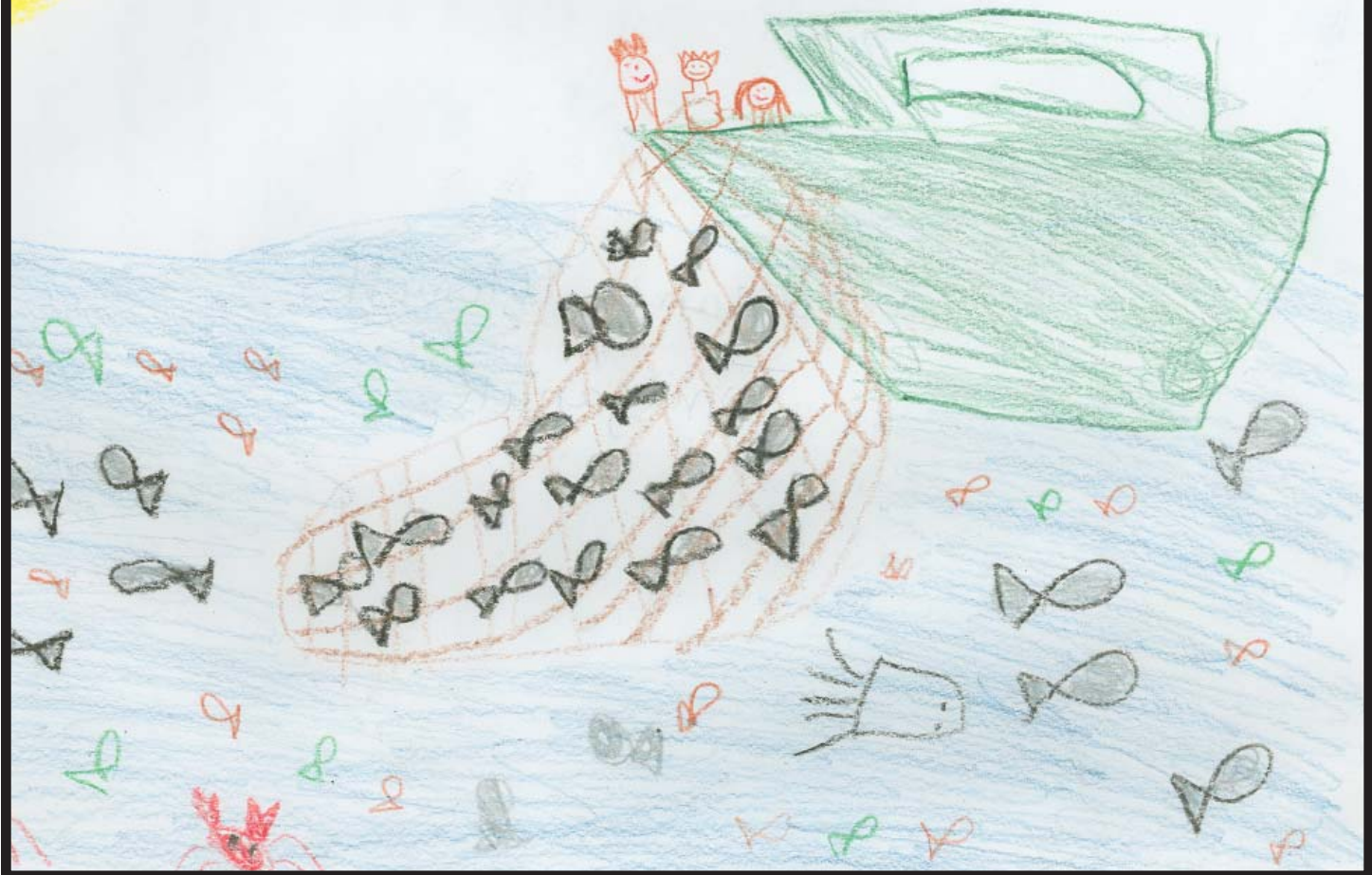


Federal Subsistence Kenai Fisheries Proposals 2007/08



Joanne Totemoff, 14, Tatitlek Community School, Tatitlek

Comment period open through January 5, 2007

Send your written comments on the enclosed proposals to:

Federal Subsistence Board
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503
E-mail: subsistence@fws.gov
Fax: 907-786-3898 (attn: Bill Knauer)



FISH and WILDLIFE SERVICE
BUREAU of LAND MANAGEMENT
NATIONAL PARK SERVICE
BUREAU of INDIAN AFFAIRS

Federal Subsistence Board

3601 C Street, Suite 1030
Anchorage, AK 99503



FOREST SERVICE

2007/08 Kenai Peninsula Fisheries Proposal Book

The Federal Subsistence Board invites your comments on the enclosed proposals to change Federal subsistence fishery regulations for the Kenai Peninsula for the 2007/08 regulatory year (April 1, 2007 to March 31, 2008). These proposals seek changes to existing regulations, including Federal customary and traditional use determinations and Federal subsistence open seasons, harvest limits and methods for the taking of fish on Federal public lands of the Kenai Peninsula in Alaska. These proposals were not included with the 2007/08 fisheries proposal book published in April 2006, as the Board extended the deadline for proposals to change Federal subsistence fishing regulations on the Kenai Peninsula through Oct. 20, 2006.

You may mail your comments to the Board at the above address, fax them to (907) 786-3898, or e-mail them to subsistence@fws.gov. All comments received by January 5, 2007, will be included in the meeting books for the regional council to discuss at its winter meeting. Comments received after the winter regional council meetings will be submitted to the Board at its spring meeting.

Written comments should refer to a specific proposal number.

Before making decisions on these proposals, the Board considers technical analyses prepared by its staff, recommendations from the 10 regional councils, and any public comments or testimony it receives on the proposals. Once the Board makes its decisions, the changes will be published as final regulations for the 2007/08 regulatory year. The Board will publish the regulations book, with distribution throughout Alaska.

Thank you for your interest and participation in the Federal Subsistence Management Program.

For information on Regional Advisory Council membership, see inside back cover.

Information on the Federal Subsistence Management Program is also available on the web

<http://alaska.fws.gov/asm/home.html>

FEDERAL SUBSISTENCE MANAGEMENT 2007/08 KENAI FISHERIES PROPOSALS

PROPOSAL #	SPECIES	GENERAL DESCRIPTION	PROPONENT	PAGE
COOK INLET AREA				
FP07-09 PROPOSAL WITHDRAWN BY PROPONENT	All fish	Allow harvest by spear, traps, fish wheel, dip net, set or drift gillnet, beach seine, rod and reel, jigging gear, or handline under a subsistence fishing permit.	Ninilchik Traditional Council	
FP07-27	Various species	<ul style="list-style-type: none"> a. Establish customary and traditional use determination for Ninilchik for the Kenai River; b. Provide for set gillnet fishery for Chinook, sockeye, & pink salmon in the Kenai and Kasilof Rivers; c. Provide for set gillnet fishery for coho salmon in the Kenai River and a dip net fishery in the Kasilof River; and, d. Provide for a jigging gear fishery under the ice in the Kenai and Kasilof River drainages for lake trout, Dolly Varden and rainbow trout. 	Ninilchik Traditional Council	2
FP07-28	Various species	Rescind the customary and traditional use determinations for the Kenai Peninsula.	Kenai River Sport-fishing Association	8
FP07-29	Various species	Allow use of gillnets in Kenai, Skilak, Cooper, and Hidden Lakes, both in open water and under the ice.	Robert Gibson, Cooper Landing	15
FP07-30	Lake Trout, Rainbow Trout, and Dolly Varden	Allow use of gillnets and jigging gear under the ice on Tustumena Lake.	Ninilchik Traditional Council	16
FP07-10 (deferred FP06-10)	Steelhead	Establish a 5 fish annual limit and allow use of dip net and gillnet.	Teague Vanek	17
FP07-11 (deferred FP06-11)	Rainbow Trout	Establish a 50 fish annual limit and allow use of dip net or gillnet.	Teague Vanek	18
FP07-12 (deferred FP06-12)	Lake Trout	Establish a 50 fish annual limit and allow use of gillnet.	Teague Vanek	18
FP07-13 (deferred FP06-13)	Dolly Varden	Establish a 50 fish annual limit and allow use of gillnet.	Teague Vanek	19

PROPOSAL FP07-27A

Existing regulation: Cook Inlet Area Customary and Traditional Use Determination

COOK INLET AREA		
<i>Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.</i>	<i>All fish</i>	<i>Residents of the communities of Hope and Cooper Landing.</i>
<i>Waters within the Kasilof River drainage within the Kenai National Wildlife Refuge.</i>	<i>All fish</i>	<i>Residents of the community of Ninilchik.</i>
<i>Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.</i>	<i>Salmon</i>	<i>Residents of the Tuxedni Bay area.</i>
<i>Cook Inlet Area—remainder</i>	<i>Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.</i>	<i>Residents of the Cook Inlet Area.</i>

Proposed regulation: Cook Inlet Area Customary and Traditional Use Determination

COOK INLET AREA		
<i>Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.</i>	<i>All fish</i>	<i>Residents of the communities of Ninilchik, Hope and Cooper Landing.</i>
<i>Waters within the Kasilof River drainage within the Kenai National Wildlife Refuge.</i>	<i>All fish</i>	<i>Residents of the community of Ninilchik.</i>
<i>Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.</i>	<i>Salmon</i>	<i>Residents of the Tuxedni Bay area.</i>
<i>Cook Inlet Area—remainder</i>	<i>Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.</i>	<i>Residents of the Cook Inlet Area.</i>

Reason for changing the regulation: Providing an opportunity for subsistence fishing is long overdue for members of the Ninilchik tribe and other residents of the community.

Effect of change on fish or shellfish populations: The tribe, along with other interested members of the Ninilchik community, look forward to refining this proposal with fishery managers, SCRAC members and other appropriate parties to avoid any conservation concerns. In addition to setting seasons and defining set net gear, it may be appropriate to avoid certain areas in setting nets. It may also be appropriate to set harvest limits for certain lakes for fresh water fish taken by jigging through the ice.

Effect of change on subsistence users: It will provide greater opportunity to meet subsistence uses.

Effect on other uses, i.e. sport/recreational and commercial: The tribe believes that this proposal can be implemented so that it does not cause any disruption to commercial or sport users. The proposal intends to spread the community's fishing effort throughout the Kasilof and Kenai drainages thereby lessening the impact on any particular river, lake, area or fishery. It tries to provide for the tribe's subsistence way of life through a modest community set net fishery open to all members of the community. The proposal seeks to reflect the needs and patterns of the community (taking into consideration the long history of subsistence prohibition), understanding that only a portion of the community has a history and pattern of subsistence set net fishing while others would rather continue to take fish by other means. The proposal thus seeks to allow opportunity without unnecessarily encouraging expansion and change of patterns and uses. The proposal also allows an opportunity for the state to accommodate some of the community's salmon needs through continuation or expansion of the educational fisheries thereby reducing the subsistence fishery's impact on other areas.

Additional Information: Federal Designated Harvester Permits for fishing for elders, others in need or without capacity, and for sharing are an important aspect of the Ninilchik tribe's community set net proposal. The Board should enter into a cooperative agreement with the tribes to facilitate issuing the permits.

Proposed by: Ninilchik Traditional Council

PROPOSAL FP07-27B

Existing regulation: Cook Inlet Area – Salmon

§ __.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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).*

(vi) *Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage.*

Proposed regulation: Cook Inlet Area – Salmon

§ __.27(i)(10)(i) *Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.*

§ __.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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 as otherwise provided in this paragraph __.27(i)(10).*

(A) Residents of Ninilchik may take king salmon, red salmon and pink salmon through a community set gillnet fishery. One community set net site may be established on the Kasilof River and one set net site on the Kenai River by the local Federal fishery manager in consultation with the community of Ninilchik and the Ninilchik Tribe. A maximum of two set nets may be fished at one time from each set net site. (The length, depth and mesh size of set nets, and the seasons, to be

determined through discussions with fishery managers, RAC members, and others as appropriate.) Other fish incidentally taken in the community set net fishery may be retained for subsistence uses.

(1) Annual community and household limits for the community set net fisheries are:

(i) for king salmon—1000 king salmon annual community set net harvest limit; an annual household limit of 10 king salmon and 2 additional king salmon for each dependent (a dependent is considered for the purposes of this proposal to be a member of a household consisting of 3 or more members, for example a household of 3 would be entitled to 12 king salmon, a household of 4 would be entitled to 14 king salmon, etc.); king salmon taken by rod and reel under either the federal subsistence fishery or the state sport fishery count toward a household's annual limit (but do not count toward the community net limit); king salmon harvested from educational permits issued by the state of Alaska for residents of Ninilchik count toward the community's annual set net harvest limit;

(ii) for red salmon—4000 red salmon annual community set net harvest limit; an annual household limit of 25 red salmon and 5 additional red salmon for each dependent; red salmon taken by rod and reel under either the federal subsistence fishery or the state sport fishery or personal use fishery count toward a household's annual limit (but do not count toward the community net limit); red salmon harvested from educational permits issued by the state of Alaska for residents of Ninilchik count toward the community's annual set net harvest limit;

(iii) for pink salmon – 2000 pink salmon annual community set net harvest limit; an annual household limit of 15 pink salmon and 5 additional pink salmon for each dependent; pink salmon taken by rod and reel under either the federal subsistence fishery or the state sport fishery or personal use fishery count toward a household's annual limit (but do not count toward the community net limit); pink salmon harvested from educational permits issued by the state of Alaska for residents of Ninilchik count toward the community's annual set net harvest limit;

(vi) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided in this paragraph ___.27(i)(10).

Reason for changing the regulation: Providing an opportunity for subsistence fishing is long overdue for members of the Ninilchik tribe and other residents of the community.

Effect of change on fish or shellfish populations: The tribe, along with other interested members of the Ninilchik community, look forward to refining this proposal with fishery managers, SCRAC members and other appropriate parties to avoid any conservation concerns. In addition to setting seasons and defining set net gear, it may be appropriate to avoid certain areas in setting nets. It may also be appropriate to set harvest limits for certain lakes for fresh water fish taken by jigging through the ice.

Effect of change on subsistence users: It will provide greater opportunity to meet subsistence uses.

Effect on other uses, i.e. sport/recreational and commercial: The tribe believes that this proposal can be implemented so that it does not cause any disruption to commercial or sport users. The proposal intends to spread the community's fishing effort throughout the Kasilof and Kenai drainages thereby lessening the

impact on any particular river, lake, area or fishery. It tries to provide for the tribe's subsistence way of life through a modest community set net fishery open to all members of the community. The proposal seeks to reflect the needs and patterns of the community (taking into consideration the long history of subsistence prohibition), understanding that only a portion of the community has a history and pattern of subsistence set net fishing while others would rather continue to take fish by other means. The proposal thus seeks to allow opportunity without unnecessarily encouraging expansion and change of patterns and uses. The proposal also allows an opportunity for the state to accommodate some of the community's salmon needs through continuation or expansion of the educational fisheries thereby reducing the subsistence fishery's impact on other areas.

Additional Information: Federal Designated Harvester Permits for fishing for elders, others in need or without capacity, and for sharing are an important aspect of the Ninilchik tribe's community set net proposal. The Board should enter into a cooperative agreement with the tribes to facilitate issuing the permits.

Proposed by: Ninilchik Traditional Council

PROPOSAL FP07-27C

Existing regulation: Cook Inlet Area – Coho Salmon

§ __.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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).*

(vi) *Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage.*

Proposed regulation: Cook Inlet Area – Coho Salmon

§ __.27(i)(10)(i) *Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.*

§ __.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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 as otherwise provided in this paragraph __.27(i)(10).*

(A) Residents of Ninilchik may take coho salmon through a community set gillnet fishery on the Kenai River, through a dip net fishery on the Kasilof River, and with rod and reel. The local Federal fishery manager in consultation with the community of Ninilchik and the Ninilchik Tribe may establish one community set net site on the Kenai River. A maximum of two set nets may be fished at one time from the community set net site. (The length, depth and mesh size of set nets, and the season, to be determined through discussions with fishery managers, RAC members, and others as appropriate.) The Kasilof dip net fishery is limited to the mainstem of the Kasilof River. Incidentally caught fish may be retained for subsistence uses, except for Chinook salmon and steelhead/rainbow trout caught on the Kasilof River dip net fishery, which must be released. Coho

Proposals

salmon may be taken by rod and reel on the Kenai or Kasilof River under Alaska sport fish regulations except that the daily bag limit shall be the same as the annual household limit.

(1) The annual community limit for coho salmon shall be 3000 salmon. This includes coho salmon taken in through the Kenai River community set net fishery, the Kasilof River dip net fishery, coho salmon harvested from educational permits issued by the state of Alaska for residents of Ninilchik, and coho taken through the federal subsistence rod and reel fishery.

(2) The annual household limit shall be 20 coho salmon and additional 5 coho salmon for each dependent.

(vi) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided in this paragraph _____.27(i)(10).

Reason for changing the regulation: Providing an opportunity for subsistence fishing is long overdue for members of the Ninilchik tribe and other residents of the community.

Effect of change on fish or shellfish populations: The tribe, along with other interested members of the Ninilchik community, look forward to refining this proposal with fishery managers, SCRAC members and other appropriate parties to avoid any conservation concerns. In addition to setting seasons and defining set net gear, it may be appropriate to avoid certain areas in setting nets. It may also be appropriate to set harvest limits for certain lakes for fresh water fish taken by jigging through the ice.

Effect of change on subsistence users: It will provide greater opportunity to meet subsistence uses.

Effect on other uses, i.e. sport/recreational and commercial: The tribe believes that this proposal can be implemented so that it does not cause any disruption to commercial or sport users. The proposal intends to spread the community's fishing effort throughout the Kasilof and Kenai drainages thereby lessening the impact on any particular river, lake, area or fishery. It tries to provide for the tribe's subsistence way of life through a modest community set net fishery open to all members of the community. The proposal seeks to reflect the needs and patterns of the community (taking into consideration the long history of subsistence prohibition), understanding that only a portion of the community has a history and pattern of subsistence set net fishing while others would rather continue to take fish by other means. The proposal thus seeks to allow opportunity without unnecessarily encouraging expansion and change of patterns and uses. The proposal also allows an opportunity for the state to accommodate some of the community's salmon needs through continuation or expansion of the educational fisheries thereby reducing the subsistence fishery's impact on other areas.

Additional Information: Federal Designated Harvester Permits for fishing for elders, others in need or without capacity, and for sharing are an important aspect of the Ninilchik tribe's community set net proposal. The Board should enter into a cooperative agreement with the tribes to facilitate issuing the permits.

Proposed by: Ninilchik Traditional Council

PROPOSAL FP07-27D

Existing regulation: Cook Inlet Area – Various Species

§ ____.27(i)(10)(i) *Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.*

§ ____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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).*

Proposed regulation: Cook Inlet Area – Various Species

§ ____.27(i)(10)(i) *Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.*

§ ____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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 as otherwise provided in this paragraph ____.27(i)(10).*

(C) Residents of Ninilchik may take lake trout, rainbow trout and Dolly Varden through the ice with jigging gear in the Kasilof and Kenai River drainages. The annual household limit is 30 fish in any combination of these 3 species (for example, 10 rainbow, 10 lake trout and 10 Dolly Varden, or 20 Dolly Varden and 10 lake trout), and 10 additional fish per dependent. The daily limit is equal to the annual household limit.

Reason for changing the regulation: Providing an opportunity for subsistence fishing is long overdue for members of the Ninilchik tribe and other residents of the community.

Effect of change on fish or shellfish populations: The tribe, along with other interested members of the Ninilchik community, look forward to refining this proposal with fishery managers, SCRAC members and other appropriate parties to avoid any conservation concerns. In addition to setting seasons and defining set net gear, it may be appropriate to avoid certain areas in setting nets. It may also be appropriate to set harvest limits for certain lakes for fresh water fish taken by jigging through the ice.

Effect of change on subsistence users: It will provide greater opportunity to meet subsistence uses.

Effect on other uses, i.e. sport/recreational and commercial: The tribe believes that this proposal can be implemented so that it does not cause any disruption to commercial or sport users. The proposal intends to spread the community's fishing effort throughout the Kasilof and Kenai drainages thereby lessening the impact on any particular river, lake, area or fishery. It tries to provide for the tribe's subsistence way of life through a modest community set net fishery open to all members of the community. The proposal seeks to reflect the needs and patterns of the community (taking into consideration the long history of subsistence prohibition), understanding that only a portion of the community has a history and pattern of subsistence set net fishing while others would rather continue to take fish by other means. The proposal thus seeks to allow opportunity without unnecessarily encouraging expansion and change of patterns and uses. The proposal

Proposals

also allows an opportunity for the state to accommodate some of the community’s salmon needs through continuation or expansion of the educational fisheries thereby reducing the subsistence fishery’s impact on other areas.

Additional Information: Federal Designated Harvester Permits for fishing for elders, others in need or without capacity, and for sharing are an important aspect of the Ninilchik tribe’s community set net proposal. The Board should enter into a cooperative agreement with the tribes to facilitate issuing the permits.

Proposed by: Ninilchik Traditional Council

PROPOSAL FP07-28

Existing regulation: Cook Inlet Area – Customary & Traditional Use Determinations

<i>COOK INLET AREA</i>		
<i>Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest</i>	<i>All fish.</i>	<i>Residents of the communities of Hope and Cooper Landing.</i>
<i>Waters within the Kasilof River drainage within the Kenai National Wildlife Refuge</i>	<i>All fish.</i>	<i>Residents of the community of Ninilchik.</i>
<i>Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.</i>	<i>Salmon</i>	<i>Residents of the Tuxedni Bay area.</i>
<i>Cook Inlet Area—remainder</i>	<i>Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.</i>	<i>Residents of the Cook Inlet Area.</i>

Proposed regulation: Cook Inlet Area – Customary & Traditional Use Determinations

<i>COOK INLET AREA</i>		
<i>Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest</i>	<i>All fish.</i>	<i>Residents of the communities of Hope and Cooper Landing: No Federal subsistence priority.</i>
<i>Waters within the Kasilof River drainage within the Kenai National Wildlife Refuge</i>	<i>All fish.</i>	<i>Residents of the community of Ninilchik.</i>
<i>Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.</i>	<i>Salmon</i>	<i>Residents of the Tuxedni Bay area.</i>

<i>Cook Inlet Area—remainder</i>	<i>Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.</i>	<i>Residents of the Cook Inlet Area.</i>
----------------------------------	---	--

Reason for changing the regulation: The FSB action to make C&T determinations for Cooper Landing, Hope and Ninilchik is not in accordance with law. The action is contrary to the letter and intent of ANILCA and the statutes focus on community patterns and community reliance on subsistence resources. Binding regulations implement the statute and the record reveals that the facts before the FSB did not allow it to demonstrate satisfaction of the eight C&T regulatory criteria. Additionally, other statutory provisions impact FSB actions and require a “balancing” that did not occur here. Lastly, the FSB took action after receiving advice from key advisors that the mandatory regulatory criteria were just too complex and could effectively be ignored. This combination of factual and legal infirmities means that the FSB action was arbitrary and capricious and not in accordance with law and should be reversed.

Effect of change on fish or shellfish populations: This change reduces the possibility of overexploitation of fishery resources in the affected area. It is likely that, over time, more harvest opportunities will be added to these fishery resources, some with gear types that likely could affect sustainability of these already fully utilized fisheries. Also, the regulatory process for managing harvest under this system adds to the complexity of management though its duplicative nature, which can result in over-exploitation of some resources.

Effect of change on subsistence users: The application of a federal subsistence priority to the Kenai Peninsula is a relatively new event. Currently, seasons, harvest and possession limits, and methods and means in the Federal subsistence fisheries are the same as for the taking of those species under Alaska sport fishing regulations. In addition, people eligible for the federal subsistence priority are eligible to participate in state personal use fishing opportunities in the affected area. In combination, the opportunities to harvest fishery resources are actually more diverse and expansive under the state sport and personal use regulations than they are within the Federal program. Since the state system of providing for subsistence, personal use, sport and commercial use would remain there would be no affect on subsistence use by repealing the current C&T finding.

Effect on other uses, i.e. sport/recreational and commercial: Repeal of the customary and traditional finding for communities within the Kenai Peninsula will remove the need to configure additional fisheries under special regulations. This will have the effect of maintaining simplicity in regulation by avoiding duplication of management, maintaining more predictable opportunity to participate in fisheries (commercial, personal use, and sport) and more consistent opportunity to meet the consumptive needs of the participants. Also, as new harvest opportunities may over time be provided by the FSB, some of which are likely to affect sustainability of already fully allocated fisheries, potential negative impacts to sport and commercial fisheries would be avoided.

Communities which have used this resource: Alaskan residents from across Alaska participate in harvesting fishery resources under state Personal Use, Commercial, and Sport fishing regulations.

Where the resource has been harvested: Fishery resources have been harvested throughout the waters of the Kenai Peninsula under the state managed fisheries.

When the resource has been harvested: Not applicable.

Proposals

Additional Information:

Introduction

We have reviewed the action taken earlier this year by the Federal Subsistence Board (FSB) to issue Customary and Traditional (C&T) subsistence determinations for the communities of Cooper Landing, Hope, and Ninilchik. See 71 Fed. Reg. 15569 (March 29, 2006). This action violates applicable provisions of the 1980 Alaska National Interest Lands Conservation Act (ANILCA) (P.L. 96-487) as well as legislative regulations implementing the 1980 Act. 50 CFR 100.16. As the FSB action was taken “not in accordance with law”, it violates the Administrative Procedure Act (APA) 5 U.S.C. 5 706 and should be reversed by - either the FSB or a reviewing federal court.

Apparently because of these legal infirmities, the Alaska Department of Fish and Game (ADFG) has formally requested the FSB to reconsider its action on these C&T determinations. We concur with much of ADFG’s analysis. However, that analysis focuses more on the regulations and the information before the FSB when it acted. Our review directs more attention to the statutory provisions of ANILCA (i.e., Title VIII) and the clearly expressed legislative intent of Congress regarding the meaning of the actual legislative language. We are persuaded that the FSB action violates both the letter and spirit of the 1980 Act.

Background and Legal Standards

Customary and traditional: ANILCA Title VIII establishes a “preference” for subsistence uses by “rural residents” on “public lands” in Alaska. “ §§803, 804; 16 U.S.C. §§3313, 3314. Importantly “subsistence uses” are defined as “customary and traditional uses”. §803. The preference is established in section 804 which includes express references to “customary and direct dependence upon the [fish and wildlife] populations as the mainstay of livelihood.”

Congress explained what it meant by the term “customary and traditional”: “the phrase ‘customary and traditional’ is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation.” (Emphasis added). S. Rept. 96-413, p. 269, Nov. 14, 1979. The ANILCA report from the then U.S. House of Representatives Committee on Interior and Insular Affairs used identical language. H. Rept. 96-97, Part I, p. 279-280, April 18, 1979.

Community Focus: The Title VIII program has also been focused on communities and areas, rather than individuals, from the beginning. See S. Rept. 96-413, p. 272, Nov. 14, 1979. Indeed, the focus on areas and communities was a key factor in the Alaska Supreme Court’s ruling that State compliance with Title VIII violated the Alaska Constitution. *McDowell v. State of Alaska*, 785 P.2d 1 (Alaska 1989). Furthermore, when the U.S. House of Representatives completed enactment of ANILCA numerous references were made to the “community” nature of Title VIII and the subsistence program: “customary and traditional subsistence uses must be evaluated on a community or area rather than an individual basis;” “community cohesion” is a factor to be considered; the focus is on “villages” and “similarly situated residents.” Cong. Rec., p. H10546-10547; 10541, NOV. 12, 1980.

The original State law and program, enacted in 1978 (15 1 SLA 1978), which specifically established a community focus as well as community criteria, was picked up by Congress and became a basis for Title VIII and section 803 in particular. See S. Rept. 96-413, p. 268, Nov. 14, 1979. The U.S. House of

Representatives similarly acknowledged the role of the 1978 State law and program in crafting Title VIII. Cong. Rec., p. H 10545, Nov. 12, 1980.

Community Status is Subject to Change: Congress also recognized that community status was not static and that the determinations made in 1979 and 1980 would likely change over time. In 1979, Congress indicated that it believed that Ketchikan, Juneau, Anchorage and Fairbanks were non-rural and these were NOT subsistence communities even though individual residents of these communities “harvest renewable resources from the public lands for personal or family consumption.” S. Rept. 96-413, p. 233, Nov. 14, 1979. On the other hand, Dillingham, Bethel, Nome, Kotzebue, and Barrow were then recognized as being sufficiently rural to qualify for the subsistence preference. Id. Critically though “the Committee does not intend to imply that the rural nature of such communities is a static condition; the direction of the economic development and rural character of such communities may change over time.” (Emphasis added). Id. The House Report made similar references to the “dynamic” nature of subsistence regulation and community eligibility. H. Rept. 96-97, Part I, p. 280, April 18, 1979. Neither the House nor Senate made any indications regarding the status of communities on the Kenai Peninsula.

C&T Criteria: When the Federal government in 1990 took over the subsistence program in the wake of the McDowell decision, it promulgated express regulations to govern the critical C&T determinations. 50 CFR 100.16. The mandatory criteria (i.e., “the Board SHALL make customary and traditional use determinations based on the following factors:” (emphasis added) 100.16(b)) reflect the statutory language of Title VIII and Congressional intent: Specifically, the criteria focus on “long term consistent pattern[s] of use”, handing down customs and practices over “generations”, and demonstrations of community “reliance” on subsistence resources including “substantial cultural, economic, social and nutritional” reliance. 100.16(b)(1)-(8).

The first criterion refers to a “long-term pattern of use, excluding interruptions beyond the control of the community.” Id. At (b)(1). ANILCA’s legislative history reveals that “interruptions” caused by the State of Alaska are the appropriate focus of this rule: “the [ANILCA] subsistence priority requires the State of Alaska to determine the customary and traditional subsistence use of a particular wildlife population or fish which would have reasonably been made by rural residents if their subsistence uses had consistently been respected and adequately protected by State regulation.” (Emphasis added). Cong. Rec., p. H 10546, Nov. 12, 1980. Evidently, pre-Statehood “interruptions” caused by Federal (i.e., Territorial) authorities are not the focus of this criterion.

Other Statutory Provisions: It is not well recognized that other statutory provisions also impact FSB actions especially on the Kenai Peninsula. Much (if not most) of the “public land” on the Kenai is within the Kenai National Wildlife Refuge (“Refuge”). The Refuge was established in 1941 as the Kenai National Moose Range and redesignated in as a Refuge unit in ANILCA. 5 303(4); 16 U.S.C. 5 668dd note. Of the 16 Wildlife Refuge units created or expanded by ANILCA, the Kenai unit is the ONLY one in which provision of “continued subsistence uses” is NOT a purpose. Moreover, it is the ONLY ANILCA Refuge unit in which provision of “opportunities for fish and wildlife-oriented recreation” (e.g., sport fishing) is a specific statutory purpose. Id.

This unique status was buttressed in 1997 by enactment of the National Wildlife Refuge System Improvement Act (NWRISA), P.L. 105-57 (Oct. 9, 1997). Incidentally, Rep. Don Young (R-AK) was the Act’s primary sponsor. NWRISA prescribes that “wildlife dependent recreation” including sport fishing is the “priority public use” of the Refuge System, including the Kenai Refuge. ‘8 3, 5. Furthermore, the Secretary of the Interior is obligated “facilitate” such activities when determined to be “compatible” and to “provide INCREASED opportunities” for compatible wildlife dependent recreation. (Emphasis added). 5 5. Although these duties are not to “affect” the Secretary’s other duties under Title VIII of ANILCA, the

Proposals

FSB (as the Secretary's delegate) and the U.S. Fish and Wildlife Service must try to harmonize the statutory directions in ANILCA Title 111, Title VIII, and NWRSA.

The existence of these other statutory duties brings into play the "balancing" referred to by the U.S. Court of Appeals for the Ninth Circuit in 2000: "Read as a whole, then, ANILCA provides for a number of important purposes all of which must be balanced by the Secretary of the Interior. Subsistence living, although at the heart of ANILCA, is not a per se preemptive statutory priority." *Ninilchik Traditional Council v. United States*, 227 F.3d 1186 at 1192 (9th Cir. 2000). In simple terms, subsistence considerations do not "rule the roost" on the Kenai to the exclusion of other interests and objectives.

Federal APA: This array of statutes, express Congressional intent, and mandatory agency regulations promulgated to implement Congressional intent govern and direct the FSB's determinations regarding C&T subsistence uses on the Kenai. Action by the FSB not consistent with these mandates would be considered "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance in law" (APA, 5 U.S.C. 5706(2)(A)) and subject to being struck down by a reviewing Federal court.

FSB Non-Compliance with Its Statutory and Regulatory Duties

Our review of the record and the consideration exercised by the FSB persuades us that the issuance of C&T determinations for Cooper Landing, Hope, and Ninilchik are contrary to applicable law - statutes, regulations, and case law. As noted above, compliance with the regulatory criteria that arise from ANILCA require findings of fact about long term patterns of use crossing generations and substantial community reliance (rather than individual reliance) on subsistence resources. The facts before the FSB did not allow it to make C&T findings for these communities consistent with these mandatory criteria. Moreover, it appears that the FSB acted after it was advised that these mandatory legislative rules were not applicable or could be effectively disregarded. Insufficient facts and disregard of mandatory requirements means that the FSB action clearly violated the APA.

Factual Record: Factually, the FSB had before it substantial evidence that the Kenai Peninsula, and the three communities, had undergone radical transformation over the last hundred years that fundamentally altered the nature of these communities. This level of dynamic change arose from numerous factors:

- 1) The advent a century ago of the gold rush and the disease that followed "decimated" the Native population of the Kenai Peninsula. (Federal Subsistence Board, Public Regulatory Meeting, Anchorage, Alaska, January 11-12, 2006, Transcript, Volume 11, p. 205).
- 2) Homesteaders arrived on the Peninsula during the 1930's and 1940's. Id. 206.
- 3) The Federal government established the Kenai National Moose Range in 1941 (which subjected much of the public land to new restrictive management). Id.
- 4) In 1951, a road was built from Anchorage to the Kenai ushering in more demographic and use changes. (Id. at 212).
- 5) In 1952, the federal Territory of Alaska outlawed gillnetting on the Peninsula which closed customary and traditional fisheries on Kenai. Id.
- 6) In 1957, oil development came to the Peninsula causing further transformation. Id.

- 7) These and other changes that continued over the years created transformational demographic changes in Kenai communities to such a degree that many communities now consist of 75 to 80 percent new arrivals. Id. at Vol. 111, p. 323.
- 8) These systematic changes transformed Ninilchik to such a degree that its Native population “now live in permanent homes and no longer move seasonally to hunt and fish” and in recent times “few harvested fish from Federal public waters.” Id. at Vol. 11, p. 212.
- 9) Within Ninilchik, only one to five percent of the community households participate in subsistence fishing. Id. at Vol. 111, p. 331-332.
- 10) These low participatory rates (i.e., 90 percent plus of the community does not engage in customary and traditional subsistence) prompted Ninilchik leaders to acknowledge that there are “two communities” in Ninilchik, a small “core” which participates in subsistence and the remainder that does not. Furthermore, it is recognized that Ninilchik continues to be transformed and is a “community in flux” that is “rapidly growing.” Id. at Vol. 111, p. 324.
- 11) In Cooper Landing and Hope, there are comparable numbers of low subsistence participation. Id. at Vol. 11, p. 210-212. The radical transformation of these communities since 1951 has manifested itself in a lack of interest in the C&T determination in Hope (Id. at Vol. 111, p. 338) and opposition from Cooper Landing to the determination. Id. at Vol. 11, p. 261.

FSB Legal Considerations: The record also indicates the FSB was effectively advised by its legal counsel and the Regional Advisory Committee (RAC) chairman that it could ignore the regulatory criteria in 50 CFR 100.16 despite the fact that these criteria are mandatory on their face and reflect the clear provisions and intent of ANILCA. As legal counsel explained at one point “I hope we don’t get tangled up in these eight factors. ANILCA does not mandate eight factors.” Id. at Vol. 111, p. 326. To the contrary, ANILCA’s legislative history discussed exactly what Congress meant when it defined subsistence uses to be “customary and traditional uses” and the Department of the Interior promulgated legislative regulations outlining the eight factors/criteria as the agency’s binding interpretation of what ANILCA requires. The RAC Chairman accepted this legal advice on its face: “We can just dispense with this. We can take the general applicability that’s in the regulations, which as [legal counsel] said, were foisted on us” Id. at 334.

Legal counsel’s apparent difficulty with these regulations and eight criteria were later made clear: “the statute [ANILCA], in my opinion, works perfectly well if we dispensed with this whole process [C&T determinations as guided by 50 CFR 100.161.” Id. at 335. Again, the RAC Chairman endorsed this approach by later advising the FSB “as [legal counsel] said, you don’t need to satisfy these eight criteria” (Id. at 346) and “nowhere do I read in section 804 or anywhere else in ANILCA, as [legal counsel] said, you are required to do a C&T determination.” (Id. at 353).

Evidently the FSB was misinformed by both its counsel and the RAC chairman regarding the mandatory duty to apply, and satisfy, these eight regulatory criteria in rendering C&T determinations.

FSB C&T Determinations Violate ANILCA and Regulations

The facts before the FSB about the transformation of the Kenai Peninsula and the concomitant fundamental changes over half a century in the communities of Cooper Landing, Hope, and Ninilchik clearly reveal that these communities no longer satisfy the criteria specified in 50 CFR 100.16. And the determination must be made on a community - not individual basis - as prescribed in § 100.16 (a). Of course, this rule is in keeping

Proposals

with the express intent of ANILCA found in statutory language, committee reports, and floor debate in Congress.

“A long term consistent pattern of use” is the first criterion. 100.16(b)(1). None of these three communities can demonstrate the requisite long term pattern of use. First, traditional subsistence fishing was effectively outlawed over half a century ago in 1952 by the federal Territorial government. The State of Alaska is not responsible for the “interruption” and ANILCA’s history indicates that State (not federal) “interruptions” are the focus of this rule. Secondly, each of these communities has been demographically, economically, and culturally transformed over decades to the point that only a very small number of households (e.g., five percent or less) engage in any form of customary and traditional subsistence uses. These are the kind of dynamic changes referenced by the Senate Committee on Energy and Natural Resources when it stated that community status, for purposes of Title VIII, would not be static and community eligibility for a subsistence preference would reflect changes in condition and character. The fact that individuals or some number of households within a community might participate in subsistence uses is not sufficient to make those residents, or the community eligible, for the Title VIII subsistence preference. Congress acknowledged that individuals and households in communities like Anchorage or Ketchikan traditionally engaged in subsistence uses. Nonetheless, since the overall community did not engage in these uses, the community was deemed non-subsistence. S. Rept. 96-413, p. 233, Nov. 14, 1979. Subsistence participation by only one to five percent of a community is not enough to give it the required subsistence character to be eligible for a C&T determination and the ANILCA preference.

“A pattern of use which includes handing down of knowledge . . . from generation to generation” is another criterion. 100.16(b)(6). Generational subsistence continuity on most of the Kenai Peninsula was shattered, for better or for worse, many years ago. The last generation to legally engage in customary and traditional subsistence uses did so before 1952 - over 54 years ago. It is now nearly three generations later and the required continuity was broken long before most present residents of the three communities were born.

“A pattern of use which relates to reliance” on subsistence resources and “substantial” contributions of subsistence uses to community cultural, economic, social, and nutritional needs is one more criterion. 100.16(b)(8). The three communities do not have this required reliance on subsistence resources nor do these resources make the necessary substantial contributions (economic, nutritional, social or cultural). In Ninilchik, only one to five percent of households engage in subsistence activities meaning that 95 percent of the community neither rely on, nor derive substantial contributions from, subsistence resources. Similar numbers occur in Cooper Landing and Hope which is why the former did not support a C&T determination for their community and the latter simply isn’t interested.

The record is replete with additional facts which do not square with or satisfy the mandatory C&T regulatory criteria. The foregoing is only a small sample but is illustrative of the substantial incongruity of the FSB action with the rules (and the underlying statutes) it is obligated to follow.

Conclusion

The FSB action to make C&T determinations for Cooper Landing, Hope and Ninilchik is not in accordance with law. The action is contrary to the letter and intent of ANILCA and the statutes focus on community patterns and community reliance on subsistence resources. Binding regulations implement the statute and the record reveals that the facts before the FSB did not allow it to demonstrate satisfaction of the eight C&T regulatory criteria. Additionally, other statutory provisions impact FSB actions and require a “balancing” that did not occur here. Lastly, the FSB took action after receiving advice from key advisors that the mandatory regulatory criteria were just too complex and could effectively be ignored.

This combination of factual and legal infirmities means that the FSB action was arbitrary and capricious and not in accordance with law and should be reversed.

Proposed by: Kenai River Sportfishing Association, Soldotna

PROPOSAL FP07-29

Existing regulation: Cook Inlet Area – Various Species

§ __.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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).*

(vi) *Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage.*

Proposed regulation: Cook Inlet Area – Various Species

§ __.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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 as otherwise provided in this paragraph __.27(i)(10).*

(vi) *Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided in this paragraph __.27(i)(10).*

(vii) *Gillnets may be used to harvest whitefish, Dolly Varden, rainbow trout, lake trout, sockeye salmon and coho salmon in Kenai, Skilak, Hidden, and Cooper Lakes.*

(A) *Nets may be used both in open water and under the ice.*

(B) *Nets may not be set in proximity to known spawning streams.*

(C) *You may take whitefish, Dolly Varden, and rainbow trout with gillnets that have a stretched-mesh size between 3.5 and 4 inches and are not more than 60 feet in length, nor more than 29 meshes in depth.*

(D) *You may take lake trout and coho salmon with gillnets that have a stretched-mesh size of 5¼ inches and are not more than 60 feet in length, nor more than 45 meshes in depth.*

(E) *You may take sockeye salmon with gillnets that have a stretched-mesh size of 5 inches and are not more than 60 feet in length, nor more than 29 meshes in depth or with gillnets that have a stretched-mesh size of 5½ inches and are not more than 60 feet in length, nor more than 45 meshes in depth.*

(F) *Permittees will make themselves available for assistance in research of harvest results.*

(G) *Harvest limits will be for one family (4 members).*

Reason for changing the regulation: Make this resource available to rural residents.

Effect of change on fish or shellfish populations: None

Proposals

Effect of change on subsistence users: Make a huge untapped resource available to rural residents.

Effect on other uses, i.e. sport/recreational and commercial: Will not affect at all.

Additional Information: Proponent wishes to know which species would be permitted to be used as dog food.

Proposed by: Robert Gibson, Cooper Landing

PROPOSAL FP07-30

Existing regulation: Cook Inlet Area – Various Species

§ ____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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).*

(vi) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage.

Proposed regulation: Cook Inlet Area – Various Species

§ ____.27(i)(10)(i) *Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.*

§ ____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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 as otherwise provided in this paragraph ____.27(i)(10).*

(A) You may take fish in Tustumena Lake with a gillnet no longer than 60 feet fished under the ice or jigging gear, under authority of a Federal subsistence fishing permit. The total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden. The gillnet fishery will be closed when any of these quotas are achieved.

(1) You may harvest fish under the ice only in Tustumena Lake. The Kasilof River and tributaries to Tustumena Lake are closed to harvest. Gillnets are not allowed within 300 yards of any tributary or the Kasilof River.

(2) Permits will be issued by the Federal fisheries manager or designated representative, and will be valid for the 2006/2007 winter season, unless the season is closed by special action.

(3) All harvests must be reported within 72 hours to the Federal fisheries manager. Reported information shall include number of each species caught; number of each species retained; length, depth (number of meshes deep), and mesh size of gillnet fished; location fished; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing area.

(4) Gill nets must be checked at least once in every 48-hour period.

(5) For unattended gear, the permittee's name and address must be plainly and legibly inscribed on a stake at the deepest end of each gillnet fished.

(6) Incidentally caught fish may be retained and must be recorded on the permit.

(7) Failure to return the completed harvest permit by May 31, 2007 may result in issuance of a violation notice and/or the denial of future permits.

(vi) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided in this paragraph _____.27(i)(10).

Reason for changing the regulation: Providing an opportunity for subsistence fishing is long overdue for members of the Ninilchik tribe and other residents of the community.

Effect of change on fish or shellfish populations: The tribe, along with other interested members of the Ninilchik community, look forward to refining this proposal with fishery managers, SCRAC members and other appropriate parties to avoid any conservation concerns.

Effect of change on subsistence users: It will provide greater opportunity to meet subsistence uses.

Effect on other uses, i.e. sport/recreational and commercial:

Additional Information:

Proposed by: Ninilchik Traditional Council

PROPOSAL FP07-10 (DEFERRED FP06-10)

Existing regulation: Cook Inlet Area - Steelhead

§____.27(i)(10)(iv) You may only take salmon, Dolly Varden, trout, and 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).

Proposed regulation: Cook Inlet Area - Steelhead

§____.27(i)(10)(iv) You may only take salmon, Dolly Varden, trout, and 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), except that:

(A) You may harvest 5 steelhead annually, by means of rod and reel, dip net, or gillnet.

Reason for changing the regulation: Currently, people cannot retain steelhead even in the sport fishery. I personally haven't been able to eat a steelhead for many years, even as I watch them swimming past my house.

Effect of change on fish or shellfish populations: It would have to be monitored, but currently there is no harvest on steelhead, so it would seem there is room for some harvest.

Proposals

Effect of change on subsistence users: Subsistence users would now have access to this valuable food source.

Effect on other uses, i.e. sport/recreational and commercial: None. There is currently no other legal harvest of steelhead.

Additional Information:

Proposed by: Teague Vanek, Ninilchik

PROPOSAL FP07-11 (DEFERRED FP06-11)

Existing regulation: Cook Inlet Area – Rainbow Trout

§ ____.27(i)(10)(iv) You may only take salmon, Dolly Varden, trout, and 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).

Proposed regulation: Cook Inlet Area - Rainbow Trout

§ ____.27(i)(10)(iv) You may only take salmon, Dolly Varden, trout, and 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), except that:

(A) You may harvest 50 rainbow trout annually, by means of dip net or gillnet.

Reason for changing the regulation: To allow for a subsistence harvest of rainbow trout.

Effect of change on fish or shellfish populations:

Effect of change on subsistence users: Subsistence users would now have access to this valuable food source.

Effect on other uses, i.e. sport/recreational and commercial:

Additional Information:

Proposed by: Teague Vanek, Ninilchik

PROPOSAL FP07-12 (DEFERRED FP06-12)

Existing regulation: Cook Inlet Area – Lake Trout

§ ____.27(i)(10)(iv) You may only take salmon, Dolly Varden, trout, and 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).

Proposed regulation: Cook Inlet Area - Lake Trout

§____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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), except that:*

(A) You may harvest 50 lake trout annually, by means of a gillnet.

Reason for changing the regulation: To allow for a subsistence harvest of lake trout.

Effect of change on fish or shellfish populations:

Effect of change on subsistence users: Subsistence users would now have access to this valuable food source.

Effect on other uses, i.e. sport/recreational and commercial:

Additional Information:

Proposed by: Teague Vanek, Ninilchik

PROPOSAL FP07-13 (DEFERRED FP06-13)

Existing regulation: Cook Inlet Area – Dolly Varden

§____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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).*

Proposed regulation: Cook Inlet Area - Dolly Varden

§____.27(i)(10)(iv) *You may only take salmon, Dolly Varden, trout, and 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), except that:*

(A) You may harvest 50 Dolly Varden annually, by means of a gillnet.

Reason for changing the regulation: To allow for a subsistence harvest of Dolly Varden.

Effect of change on fish or shellfish populations:

Effect of change on subsistence users: Subsistence users would now have access to this valuable food source.

Effect on other uses, i.e. sport/recreational and commercial:

Additional Information:

Proposed by: Teague Vanek, Ninilchik

