

FP25–03b Executive Summary

General Description	<p>Proposal FP25-03b requests that the Board recognize the customary and traditional use of freshwater fish in the Copper River drainage upstream from Haley Creek by residents of Tolsona. <i>Submitted by: Tolsona Community Corporation</i></p>
Proposed Regulation	<p>Customary and Traditional Use Determination—Freshwater Fish</p> <p>PRINCE WILLIAM SOUND AREA</p> <p><i>Copper River drainage upstream from Haley Creek</i> <i>Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tolsona, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.</i></p>
OSM Preliminary Conclusion	<p>Neutral</p>
OSM Conclusion	<p>Oppose</p>
Southcentral Alaska Subsistence Regional Advisory Council Recommendation	<p>Oppose</p>
Eastern Interior Alaska Subsistence Regional Advisory Council Recommendation	<p>Oppose</p>
Interagency Staff Committee Comments	<p>The Interagency Staff Committee found the analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and the Federal Subsistence Board action on this proposal.</p>
ADF&G Comments	<p>Neutral</p>

FP25-03b Executive Summary

Written Public Comments	1 Oppose
--------------------------------	-----------------

STAFF ANALYSIS

FP25-03b

ISSUES

Proposal FP25-03b, submitted by Tolsona Community Corporation, requests that the Federal Subsistence Board (Board) recognize the customary and traditional use of freshwater fish in the Copper River drainage upstream from Haley Creek by residents of Tolsona.

DISCUSSION

The proponent of FP25-03b states that residents of Tolsona have customarily and traditionally harvested fish in the Chitina area. The proponent describes Tolsona as a small community with strong ties between residents who rely on one another to survive in an environment that lacks economic opportunities. Residents rely upon and share a diverse set of resources locally and in the wider region. The proponent states that depending on the year, up to 70% of residents use subsistence resources. Lake fish and river fish are important resources for the community. Finally, the proponent states that use of subsistence resources is vital not only to the survival of Tolsona residents but also to their sense of identity and connection to others.

Companion proposal FP25-03a, also submitted by Tolsona Community Corporation, requests that the Board recognize the customary and traditional use of salmon in the Chitina Subdistrict of the Upper Copper River District by residents of Tolsona. FP25-03a is the master analysis for this set, and the reader is referred to FP25-03a throughout this analysis.

Existing Federal Regulation

Customary and Traditional Use Determination—Freshwater Fish

PRINCE WILLIAM SOUND AREA

<i>Copper River drainage upstream from Haley Creek</i>	<i>Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.</i>
--	---

Proposed Federal Regulation

Customary and Traditional Use Determination—Freshwater Fish

PRINCE WILLIAM SOUND AREA

Copper River drainage upstream from Haley Creek *Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tolsona, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.*

Extent of Federal Public Lands/Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. The area affected by this proposal is the Federal public waters of the Copper River drainage upstream from Haley Creek within and adjacent to the exterior boundaries of Wrangell-St. Elias National Park and Preserve (See [Map 12, Prince William Sound Area](#) in the Federal Subsistence Fish and Shellfish Management Regulations Booklet). The Federal public waters of the Gulkana National Wild and Scenic River are located within the Copper River drainage upstream from Haley Creek. However, there is a separate customary and traditional use determination for this area. Additionally, there are BLM general domain lands located within the proposal area. On general domain lands, Federal subsistence regulations apply only to non-navigable waters.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in non-navigable waters within and adjacent to Federal public lands (57 Fed. Reg. 22940 [May 29, 1992]). In 1999, the Board also adopted Federal regulations for fish in navigable waters within and adjacent to Federal public lands where there is a Federal reserved water right (64 Fed. Reg. 1276 [January 8, 1999]).

Copper River Drainage Upstream from Haley Creek: Freshwater Fish

In 2001, the Board adopted FP02-15, submitted by the Subsistence Resource Commission for Wrangell-St. Elias National Park, with modification to recognize the customary and traditional use of freshwater fish in the Upper Copper River drainage upstream from Haley Creek by residents of many communities in the region. The communities included: Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road. The customary and traditional use determination has not changed since this

time. Since 2001, the Board has received proposals to add Lake Louise and Paxson to the determination but rejected these requests. More detail is given on these requests below.

In 2002, the Board rejected FP03-12, submitted by Office of Subsistence Management, which would have added Lake Louise and Paxson to the customary and traditional use determination for freshwater fish in the Upper Copper River drainage upstream from Haley Creek. The Board rejected the proposal in deference to the Southcentral Alaska Regional Subsistence Advisory Council (Council). The Council stated that there was insufficient evidence to establish a pattern of customary and traditional use. Additionally, the Council stated that it would not be reasonable for Lake Louise and Paxson to travel so far to harvest freshwater fish when they are located adjacent to abundant freshwater fish resources.

In 2003, the Board considered FP04-20, submitted by Paxson Fish and Game Advisory Committee, which requested adding residents of Paxson and those living along the Richardson Highway between milepost 169 and milepost 200 to the customary and traditional use determination for freshwater fish in the Copper River drainage upstream from Haley Creek. The Board instead created a new customary and traditional use determination specific to the Gulkana National Wild and Scenic River and added the Paxson-Sourdough area to that determination. **Figure 1** shows the current communities and areas with customary and traditional use determinations for freshwater fish in the Copper River drainage upstream from Haley Creek.

A subsistence fishing permit is required under Federal regulations for the Prince William Sound Area for fish other than eulachon.

Community Characteristics

See FP25-03a for a discussion of Tolsona's community characteristics.

Eight Factors for Determining Customary and Traditional Use

See FP25-03a for a discussion of the eight factors.

See FP25-03a for information on Tolsona's broad pattern of subsistence use as documented by Alaska Department of Fish and Game's (ADF&G) subsistence surveys of Tolsona and the East Glenn Highway area.

Comprehensive subsistence surveys conducted by ADF&G, Division of Subsistence provide important information on communities' patterns of subsistence use. The 2013 study year is the only one for which subsistence survey data specific to Tolsona are available. During that year, surveyed Tolsona households harvested six different species of freshwater fish, which contributed relatively small amounts of food in terms of weight but were still important components of the harvest, especially in terms of the percentage of household using these species (Holen et al. 2015). Seventy-five percent of surveyed households used Burbot, 63% used Rainbow Trout, 28% used char (Lake Trout and

Grayling), and 25% used whitefish (Humpack, Round, and unknown whitefish) (Holen et al. 2015; ADF&G 2024).

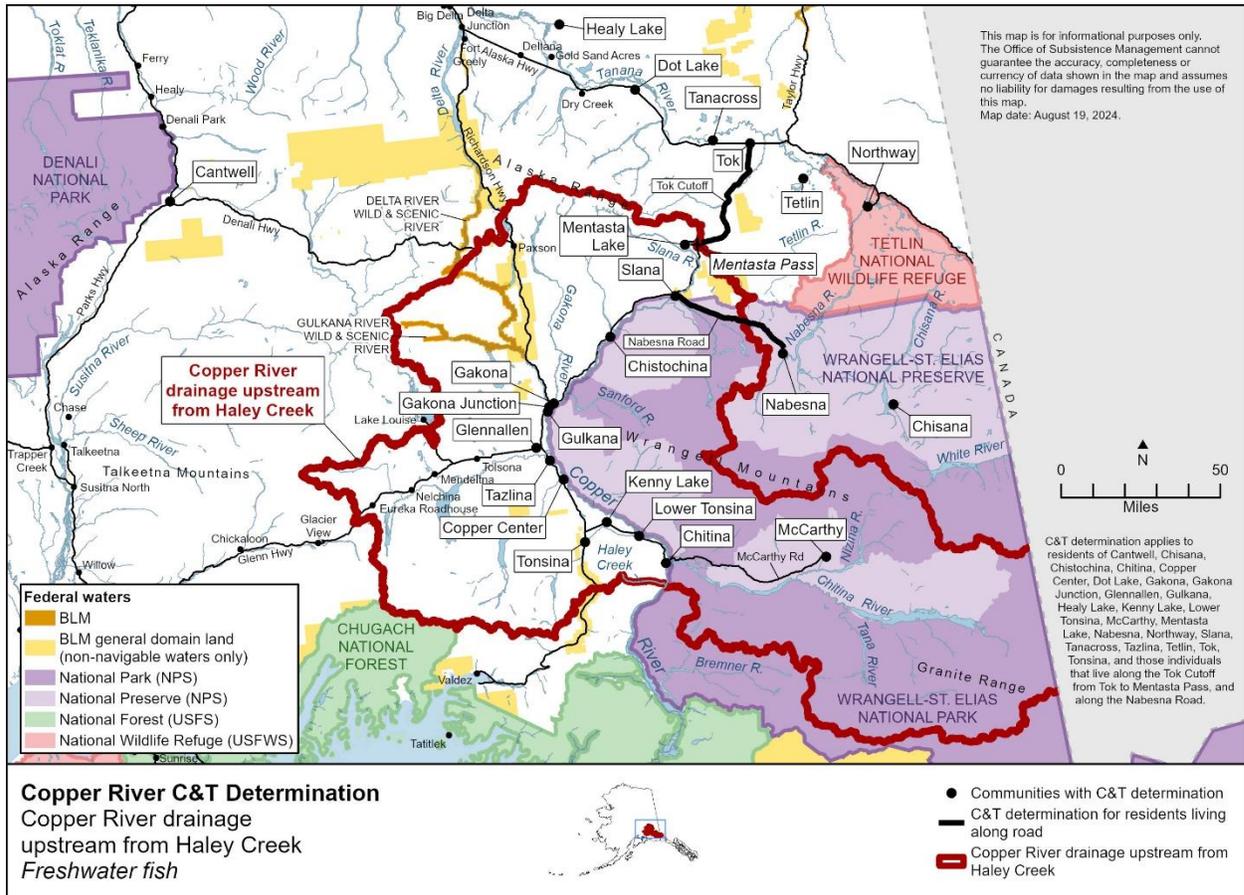


Figure 1. Communities and areas with a customary and traditional use determination for freshwater fish in the Copper River drainage upstream from Haley Creek.

The 2013 study year may underrepresent Tolsona residents' typical harvest and use of nonsalmon fish; of all categories of wild food harvested in 2013, salmon and nonsalmon fish were "reported by the greatest percentage of households as being used less in 2013 than in recent years" (Holen et al. 2015: 214). Half of surveyed households reported experiencing negative impacts from not getting enough nonsalmon fish in particular (Holen et al. 2015). However, it should be noted that the category "nonsalmon fish" includes three marine species in addition to freshwater fish harvested by residents.

In 2013 Burbot were exclusively harvested with subsistence ice fishing gear, whereas Rainbow Trout and Grayling were exclusively caught with rod and reel, and both methods were used for Lake Trout (Holen et al. 2015). Burbot was the most shared freshwater fish, with 50% of households receiving Burbot and 25% giving Burbot away (Holen et al. 2015).

As described in FP25-03a, fish search and harvest locations for Tolsona only, separate from those of Mendeltna and Nelchina, are not available for any survey year. Search area information is only

available in combination for the three East Glenn Highway communities (Stratton and Georgette 1984; McMillan and Cuccarese 1988; Holen et al. 2015). This limitation constrains findings about the customary and traditional use of nonsalmon fish in the areas considered in this analysis. However, findings for the East Glenn Highway communities combined are presented here as the best available information.

For the earlier 1982—1983 study year, ADF&G, Division of Subsistence surveyed the East Glenn Highway area as a single entity. That year, about half of the households surveyed reported freshwater fish harvests, especially Lake Trout, Rainbow Trout, Grayling and Burbot, with most of the fishing occurring locally (Stratton and Georgette 1984).

Mendeltna, Nelchina, and Tolsona’s combined freshwater fish search and harvest locations in 2013 are listed in **Table 1**. As described previously, Burbot was the most used freshwater species for residents of Tolsona in 2013. That year residents of the East Glenn Highway communities fished for Burbot in three lakes north of Tolsona (Holen et al. 2015; **Figure 2**). East Glenn Highway residents fished for Rainbow Trout in small lakes close to Mendeltna and Tolsona, as well as in the Anchorage area (Holen et al. 2015, **Figure 3**). Arctic Grayling, Lake Trout, and whitefish were fished from creeks and lakes in the East Glenn Highway Area (Holen et al. 2015).

All bodies of water listed in **Table 1** are located in the Copper River drainage upstream from Haley Creek with the exception of Lake Louise and ponds in the Anchorage area. While these data show that residents of the East Glenn Highway area fished for freshwater fish in the Copper River drainage upstream from Haley Creek, they do not show whether these fishers included residents of Tolsona specifically. Of note, none of the named search locations are within or adjacent to Wrangell-St. Elias National Park and Preserve, the Gulkana National Wild and Scenic River, or non-navigable waters associated with BLM general domain lands.

Table 1. East Glenn Highway residents’ freshwater fish search and harvest areas in 2013 (Holen et al. 2015).

Species	Search and Harvest Area
Burbot	Tolsona Lake, Moose Lake, and Crosswind Lake
Rainbow Trout	Buffalo, Tex Smith, Tolsona, and Crosswind lakes, an unnamed lake to the east of Lake Louise Road, Tolsona Creek and several ponds in the Anchorage area
Arctic Grayling	Mendeltna Creek, Tolsona Lake, Lake Louise, Tolsona Creek, and Crosswind and Kaina lakes
Lake Trout	High, Kaina, First Hill, and Crosswind lakes, Lake Louise, and an unnamed lake to the east of Tyone Creek and to the northwest of Susitna Lake
Dolly Varden	Klutina River near Klutina Lake
Whitefish	First Hill Lake

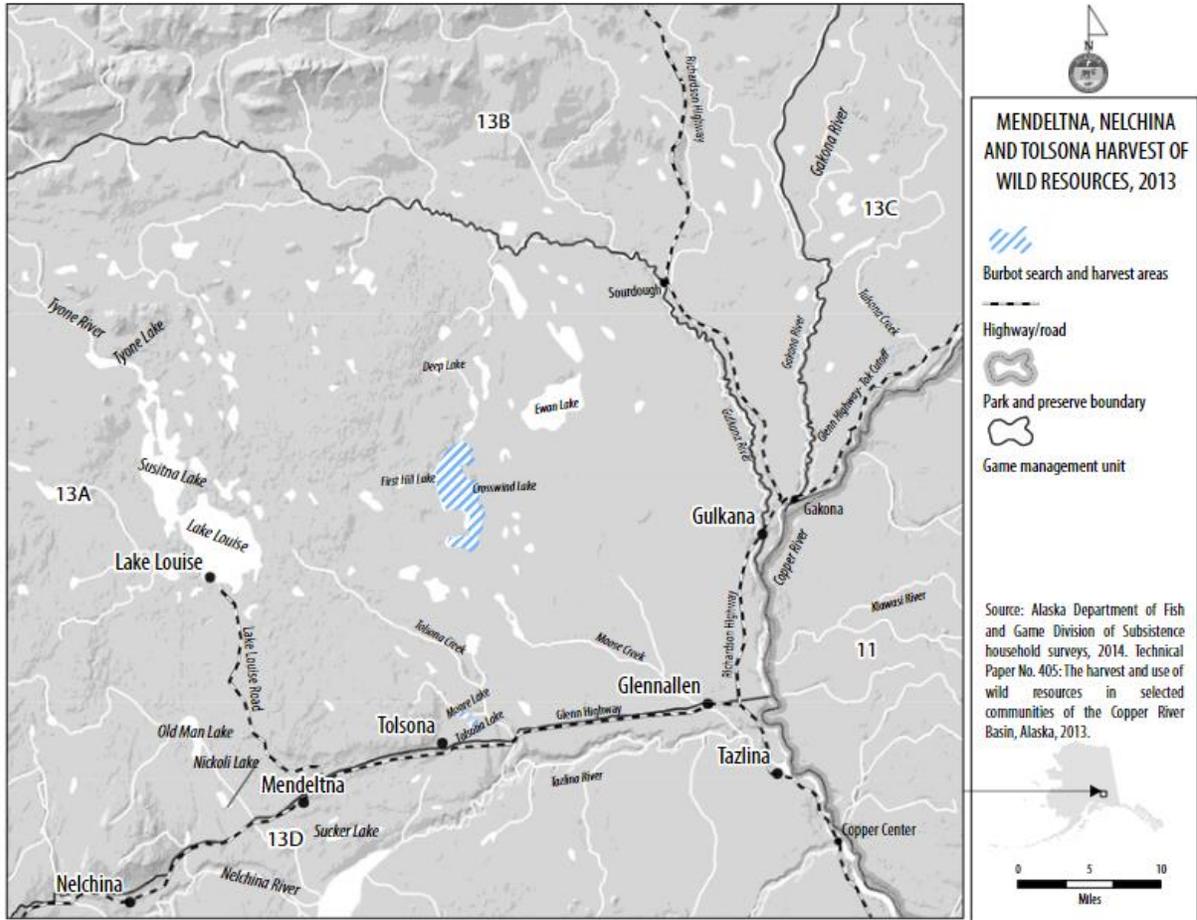


Figure 1. Map showing East Glenn Highway residents' search and harvest areas for Burbot in 2013 (Holen et al. 2015).

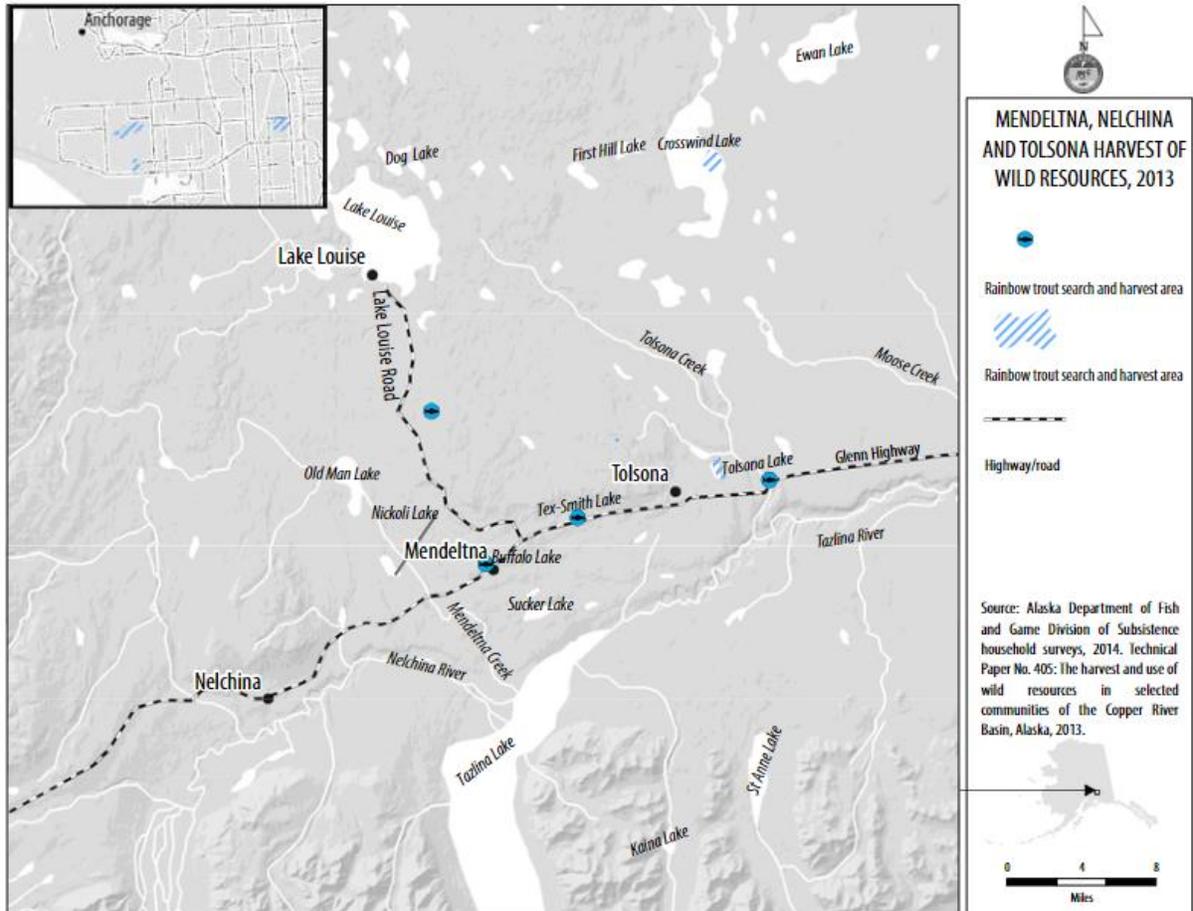


Figure 2. Map showing East Glenn Highway residents' search and harvest areas for Rainbow Trout in 2013 (Holen et al. 2015).

As part of their proposal, Tolsona Community Corporation submitted written testimony that was collected from residents of Tolsona, although it is unclear whether the individuals listed are current or former residents of Tolsona. With respect to fishing, the testimony focused on the Copper River in the vicinity of O'Brien Creek, with no specific accounts of harvesting freshwater fish or fishing at other locations. See **Appendix 1** in FP25-03a.

Information on handling, preparing, preserving, and storing of freshwater fish by residents of Tolsona is not readily available. Similarly, no information is available regarding handing down of knowledge and values related to freshwater fishing.

Fishing under Current Opportunities open to Tolsona Residents

Currently, residents of Tolsona can fish for freshwater fish in the Copper River drainage upstream from Haley Creek under State sport fishing and subsistence regulations. ADF&G, Sport Fish Division conducts an annual mail survey to estimate total harvest from sport fishing for areas, including the upper Copper River drainage. However, the results are not presented by community of residence, so it is impossible to use this data to identify any harvest specifically conducted by residents of Tolsona.

Data on any fishing of freshwater fish in the Copper River drainage upstream from Haley Creek under State subsistence opportunity was requested, but none was available (Mulligan, pers. comm. 2024).

Other Alternatives Considered

One alternative considered was to modify the customary and traditional use determination area to clarify that the Gulkana Wild and Scenic River is excluded. The modified area would read, “Copper River drainage upstream from Haley Creek and excluding the Gulkana Wild and Scenic River.” The Gulkana River is a separate C&T area and continuing to include it in the Copper River drainage area was a regulatory oversight dating to 2003 (see Regulatory History). However, this oversight can also be corrected administratively, so this alternative was not considered further.

Effects of the Proposal

If this proposal is adopted, residents of Tolsona will be added to the customary and traditional use determinations for freshwater fish in the Copper River drainage upstream from Haley Creek. They would become federally qualified to harvest freshwater fish in the Copper River drainage upstream from Haley Creek under Federal subsistence regulations. A permit is required to harvest freshwater fish in the Prince William Sound Area under Federal regulations. If the proposal is rejected, residents of Tolsona could continue to fish in this area under State subsistence and sport fishing regulations.

OSM CONCLUSION

Neutral on Proposal FP25-03b.

Justification

OSM is seeking additional information and feedback through the regulatory process to determine whether residents of Tolsona meet the eight factors for determining customary and traditional use of freshwater fish in the proposal area. While there is evidence of freshwater fish use by residents of Tolsona, the location of harvests and time-depth of this use is unknown. There are several points of evidence that lend support to this proposal, but which alone are insufficient. Tolsona is located within the Copper River drainage upstream from Haley Creek, the area in which the proponent has requested a customary and traditional use determination for freshwater fish. The Board has previously recognized Tolsona’s customary and traditional uses of wildlife species in Units 11 and 13, and it is possible that residents of Tolsona harvest freshwater fish in tandem with subsistence activities in these areas.

There is a single survey year in which ADF&G, Division of Subsistence documented Tolsona’s subsistence use as an individual community. This survey showed that surveyed households harvested six different species of freshwater fish in 2013, and a large percentage of surveyed Tolsona households used freshwater fish. While it is reasonable to assume that Tolsona residents harvested these fish close to home, the subsistence survey did not provide this information, as Tolsona’s search area for freshwater fish was not separated from that of the neighboring communities of Mendeltna and Nelchina.

In earlier subsistence surveys, Tolsona was studied as part of a combined East Glenn Highway area and use patterns specific to Tolsona cannot be identified from the data. No information is available on Tolsona residents' fishing under State sport or subsistence opportunities. While testimony by Tolsona residents on their subsistence harvests was provided as part of the proposal (see FP25-03a), most of this testimony focuses on use of salmon. While Tolsona may have a pattern of customary and traditional use of freshwater fish in the area under consideration, data on areas fished and the time-depth of this fishing are currently lacking. OSM seeks the input of the Council, public, tribes, and ANCSA corporations to further inform consideration of this proposal.

ADDENDUM

OSM CONCLUSION

Oppose FP25-03b.

Justification

In the preliminary conclusion and justification, Office of Subsistence Management adopted a neutral stance, and sought additional information about Tolsona residents' use of freshwater fish through the regulatory process. However, additional information in support of Tolsona's customary and traditional use of freshwater fish in the proposal area did not emerge through opportunities for public comment, tribal consultation, or Council deliberation. Significant gaps in knowledge about the characteristics of Tolsona residents' use of freshwater fish persist. Specifically, there is currently a lack of information about the location and time-depth of Tolsona residents' freshwater fish harvest.

LITERATURE CITED

ADF&G. 2024. Community Subsistence Information System, ADF&G, Div. of Subsistence. <https://www.adfg.alaska.gov/sb/CSIS/>. Retrieved: June 10, 2024.

Holen, D., S. M. Hazell, and G. Zimpelman, eds. 2015. The harvest and use of wild resources in selected communities of the Copper River basin and East Glenn Highway, Alaska, 2013. ADF&G, Div. of Subsistence. Tech. Paper No. 405. Anchorage, AK.

McMillan, P. and S. Cuccarese. 1988. Alaska over-the-horizon backscatter radar system: Characteristics of contemporary subsistence use patterns in the Copper River basin and upper Tanana area. Vol. I: Synthesis. Arctic Environmental Information and Data Center. Anchorage, AK.

Mulligan, B. 2024. Deputy Commissioner. Personal communication: email. ADF&G. Anchorage, AK.

Stratton, L. and S. Georgette. 1984. Use of fish and game by communities in the Copper River basin, Alaska: A report on a 1983 household survey. ADF&G, Div. of Subsistence. Tech. Paper No. 107. Anchorage, AK.

SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Southcentral Alaska Subsistence Regional Advisory Council

Oppose FP25-03b. Several significant data gaps exist. However, there does not appear to be a long-term history of passing on traditions. It is unclear if the proponent has a history in the area, and the Council had questions about the individuals named as having histories of use in the area in the proposal; discussion indicated that many of these individuals had not lived in the area for a long time or are deceased. It is unknown if there is support for this proposal from the community, and more information is needed. The Council appreciated receiving written comments from the proponent during the meeting and encourages proponents to attend their meetings in the future. The Council was surprised that the Wrangell-St. Elias Subsistence Resource Commission did not act on this proposal.

Eastern Interior Alaska Subsistence Regional Advisory Council

Oppose FP25-03b. The Council opposed the proposal because not enough of the eight factors for determining customary and traditional use were met. Although the Council noted that significant conservation concerns are not present for nonsalmon fish as they are for salmon, they re-iterated that there was no strong evidence presented for longstanding historical use or passing on of knowledge and practices through generations.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Proposal FP25-03b

This proposal would modify the customary and traditional (c&t) use determination for freshwater fish in the Copper River drainage upstream from Haley Creek to include residents living in the community of Tolsona.

Position

The Alaska Department of Fish & Game (ADF&G) is **NETURAL** on eligibility requirements for participation in the subsistence program provided under the Alaska National Interest Lands Conservation Act (ANILCA). ADF&G recommends the Federal Subsistence Board (FSB) thoroughly and carefully reviews the data relevant to the 8 criteria for those communities that lack a customary and traditional use finding.

Background

The Upper Copper River District of the Prince William Sound Area is described in state regulation as all waters of the mainstem Copper River from the mouth of the Slana River downstream to an east–west line crossing the Copper River approximately 200 yards upstream of Haley Creek as designated by ADF&G regulatory markers (5 AAC 01.605). Permits are required for subsistence fishing under state and federal regulations. Harvest and use of finfish is also documented through Division of Subsistence compressive household harvest surveys, described below.

Tolsona is located near mile 170 of the Glenn Highway, approximately 14 miles west of Glennallen. The community is in Game Management Unit 13D, outside of the Anchorage-MatSu-Kenai Nonsubsistence Area. The most recent Subsistence Section comprehensive household harvest survey was conducted in Tolsona for the 2013 study year. At this time, there were an estimated 12 households and 24 residents in the community (Holen et al. 2015). In 2013, Tolsona households harvested six different species of freshwater finish, including burbot (249 lb; 10 lb per capita), humpback whitefish (118 lb; 5 lb per capita), and lake trout (111 lb; 5 lb per capita). Burbot were the most widely used, with 75% of households using, 50% harvesting, and 50% receiving from other households. Published spatial harvest data for the 2013 study year were combined for the three communities of the East Glenn Highway (Tolson, Mendeltna, and Nelchina) to protect the confidentiality of respondents (Holen et al. 2015). Internal records indicate that residents of Tolsona fished for nonsalmon fish in lakes and streams within the Copper River drainage during the 2013 study year.

Impact on Subsistence Users

This proposal would increase the pool of federal subsistence users eligible to participate in freshwater fish harvesting opportunities provided under ANILCA. Specifically, residents of Tolsona would be able to harvest freshwater fish in the Copper River drainage upstream from Haley Creek under federal subsistence regulations. Adoption of the proposal could increase competition among federally qualified users by increasing the number of people fishing under federal regulations. If this proposal is rejected, residents living in the community of Tolsona will still be able to fish for freshwater fish under state subsistence or sport regulations in the Copper River drainage.

Impact on Other Users

Impact on other users would depend on future actions taken by the FSB.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries has made a positive customary and traditional use (C&T) finding for freshwater finfish, other than salmon, in the Prince William Sound Area (5 AAC 06.616(e)).

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the Board of Fisheries to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. The Board does this by reviewing extensive harvest

data from all Alaskans, collected either by ADF&G or from other sources. The board finds that 25,000 - 42,000 usable pounds of freshwater finfish, other than salmon, are reasonably necessary for subsistence uses in the Prince William Sound Area (5 AAC 06.616(f)).

Conservation Issues

There would only be conservation concerns if the FSB and federal in-season managers allowed these additional FQUs to overharvest fish populations in a given area.

Enforcement Issues

There is no known enforcement issues directly related to this proposal.

WRITTEN PUBLIC COMMENT

Subject: Proposal

Federal Subsistence Management Program/Federal Subsistence Board

Re: Proposal FP25-03 Tolsona C&T Freshwater Fish and Salmon in
Copper River

To Whom It May Concern:

This letter is in reference to the Tolsona Community's proposal to acquire subsistence rights in the Wrangell St. Elias National Park.

My name is Kirk Wilson. I have been living in the Tolsona community for 43 years. I live on Tolsona Lake right next to the lodge. I have talked with my neighbors and they have not heard anything about this proposal either. The proposer does not represent me in this matter. The Tolsona Community recognizes a land or business owner as a full time resident in order to serve on the local board or directors. This is in direct conflict with the State of Alaska and the United States Federal Government's qualifications as a resident for subsistence rights.

The federal government doesn't recognize a person that is not a permanent resident for use of federal land. I would recommend that you require individuals of Tolsona community to provide proof of their customary and traditional use patterns of the federal land in question. With caribou and moose populations in decline, this is not the time to be adding new user groups. The true subsistence hunter that uses these Federal lands are going through a hard enough time harvesting as it is now.

The people and their families that are listed in the proposal that claim they have historically used federal lands have not lived in the Tolsona community for more than 20 years. Many others have very short lived or questionable residency in the Tolsona community. In addition to residency questionability, the testimony refers to many historical users fishing in O'Brien Creek. This area can be fished by state subsistence permit and would seem to give this group ample opportunity without being federally qualified. It looks as if this group would like to be federally qualified more for hunting than fishing. I do not believe there is 1 person in this group of Ahtna decent.

It would be a shame for the Wrangell St. Elias National Park to approve a proposal where the lion's share of the community have never used these

federal lands for subsistence purposes.

Respectfully,

Kirk Wilson