

**LOWER COPPER RIVER AREA SALMON FISHERY
FULL ANALYSIS
REQUEST FOR RECONSIDERATION FRFR22-01**

INTRODUCTION

Ahtna, Incorporated, submitted request for reconsideration FRFR22-01 to the Federal Subsistence Management Program asking the Federal Subsistence Board (Board) to rescind its April 2022 decision on Fisheries Proposal FP21-10. Through Proposal FP21-10, the Board created a Federal dipnet and rod and reel salmon fishery one half mile above and below the highway bridge on the lower Copper River.

For the initial threshold assessment of the request, the Office of Subsistence Management (OSM) reviewed the request and identified substantive claims that may meet the criteria outlined in 36 CFR 242.20(d) and 50 CFR 100.20(d). The three criteria are: (1) provides information not previously considered by the Board, (2) demonstrates that existing information used by the Board is incorrect, or (3) demonstrates that the Board's interpretation of information, applicable law, or regulations is in error or contrary to existing law.

A total of eight substantive claims from the request were assessed. Four of the claims were categorized under Criterion 1 and four claims were categorized under Criterion 3.

Board Action on Threshold Analysis

OSM staff presented the threshold analysis to the Board on February 3, 2023. The OSM conclusion was to oppose the request to reconsider Proposal FP21-10, having found no merit to any of the claims. The Board took action on the FRFR22-01 threshold analysis, taking into consideration information from the OSM threshold assessment and testimonies from the public, including proponents of FP21-10, Cordova residents Jesse Carter and Robert Jewell, and Karen Linnell, the Executive Director for Ahtna Intertribal Resource Commission. The Board found potential merit with claim 4.1 and directed OSM staff to initiate a full analysis of the claim.

FULL ANALYSIS OF CLAIM 4.1

The Claim

Claim 4.1 is that the Board based its approval of FP21-10 on an erroneous interpretation of information regarding the estimated impact and popularity of/participation in a new Federal subsistence fishery. In the request for reconsideration, the proponent wrote:

The Board based its approval of FP21-10 on an erroneous interpretation of information regarding the estimated impact and popularity of a new Federal subsistence fishery. OSM's Staff Analysis projected that participation in the fishery would be minimal and that the harvest

of sockeye and Chinook salmon from the Lower Copper River dipnet fishery created by FP21-10 would also be minimal – no more than 2,000 fish. These projections are based upon faulty assumptions that limited participation in and access to a subsistence fishery (that participation in nonetheless met subsistence needs) would translate into a similarly limited participation in – and limited harvest of sockeye and Chinook salmon from – a new subsistence fishery (Anderson, 2022).

Claim 4.1 suggests the Board misinterpreted information on the projected impacts of a new Federal subsistence fishery in the lower Copper River on federally qualified subsistence users in the Upper Copper River Districts. The claim asserts the harvest projections in the analysis were based on faulty assumptions. During a public testimony when the Board acted on FRFR22-01 at the 2023 Winter Board meeting, Karen Linnell, expanded on this claim. She said:

I do believe throughout this meeting we have heard that the Board was missing some information because the C&T was based on the supposed 2,000 people in Cordova that would be using this dipnet fishery but then the whole of Prince of William Sound, including Tatitlek and Chenega and other communities will also be eligible and those numbers were not put before this Board when they were considering this proposal. And when -- you know, we tried to get this -- even part of it is only just to Cordova, it was shot down and so there is information that was withheld from the Board although it might not have been in Ahtna's letter (FSB 2023:77).

Ms. Linnell's explanation suggests that harvest estimates for the Lower Copper River Area Fishery in the FP21-10 staff analysis were erroneously based on the population of Cordova rather than the population of the Prince William Sound Area, who are the residents with a customary and traditional use determination for salmon in the area under consideration - the remainder of the Prince William Sound Area. Her explanation also suggests that harvest estimates based on the population of Cordova were presented to both the Southcentral Alaska Subsistence Regional Advisory Council (Southcentral Council) and the Eastern Interior Alaska Subsistence Regional Advisory Council (Eastern Interior Council) when they took actions on FP21-10 at their respective fall 2020 Council meetings. This was corroborated by Eastern Interior Council Co-Chair Charlie Wright, who in response to her testimony said, "just for the record it was stated for Cordova; that's all we heard. So, I believe that she's right." The Board moved to fully analyze Claim 4.1 to explore potential inaccuracies and misinterpretations of the harvest estimates presented with FP21-10 that may have confused the Councils and the Board. In her justification for the motion for OSM to proceed with a full analysis of Claim 4.1, Board Member Creachbaum of the National Park Service stated, "[the] Justification is there was an erroneous interpretation of information regarding the scope of impacts and communities involved. This will allow for greater input and participation by public and Regional Advisory Councils."

The following analysis explores two aspects regarding Claim 4.1. The first section focuses on the projected harvest estimates in the analysis of FP21-10, and the second section focuses on the processes of communicating those estimates and associated information at the Regional Advisory Council meetings and Federal Subsistence Board meeting.

The projected harvest estimates for the Lower Copper River Area fishery

Claim 4.1 suggests the Board based its decision on faulty information from the OSM staff analysis about impacts of the proposed Lower Copper River Area fishery on federally qualified subsistence users in the Upper Copper River Districts. The claim also asserts the harvest projections in the analysis were based on incorrect assumptions.

When it approved FP21-10, the Board listed three items in its justification of the action to create the Federal subsistence fishery. First, the current Federal fisheries in the Cordova area did not constitute a reasonable Federal subsistence priority for those living there. At the Board meeting, member Dave Schmid stated, “[the current Federal subsistence fishery] leaves a significant portion of the Cordova community without a means to obtain Federal subsistence salmon” (FSB 2022: 83). Second, the new Federal subsistence fishery provided opportunity for a subset of federally qualified subsistence users who lacked access to other Federal subsistence fisheries. Board member Schmid explained, “the subsistence fishery would provide a first opportunity for federally qualified rural users that don’t have access to marine waters to obtain Copper River salmon coming out of winter when the need for salmon subsistence fish is greatest.” (FSB 2022:83)

Third, the Board stated that the impacts of harvest from the new Federal subsistence fishery on upstream users would be negligible. On this final point, the Board considered information about Copper River salmon populations and harvesting practices. The Board explained that the projected harvest from the Lower Copper River Area salmon fishery would not have significant impacts on the abundance of fish available to upstream users. Board member Schmid explained:

The proposed subsistence dipnet fishery [harvest] on the Lower Copper is very low and anticipated to be at a maximum of 2,000 sockeye salmon annually. This is less than one-tenth of one percent, .08 percent, of the total average annual Copper River sockeye salmon run and less than one percent, .63 percent, of the total annual Copper River chinook salmon run. Such low harvest levels are not likely to have a significant impact on the overall in-river salmon abundance relative to other existing fisheries (FSB 2022:84).

In the analysis of FP21-10, the harvest estimate of 2,000 Sockeye Salmon and 300 Chinook Salmon was based on harvesting success in adjacent fisheries, harvesting methods of the proposed Federal subsistence fishery, and the likely number of participants. In its analyses of proposals, OSM staff use a variety of data and other information to produce as accurate of estimates and projections as reasonably possible. The analysis of FP21-10 states, “This estimate is based on the annual State subsistence gillnet harvest in the Copper River District; taking into account the smaller pool of qualified users, and reduced efficiency of allowable gear type (dip net compared to drift gillnet). (OSM 2021: 25).

Analysts proceeded with the following two assumptions while estimating the interest and participation in the Lower Copper River dip net fishery: dip nets are less efficient than gillnets and there would be less participation in the Lower Copper River Area Federal subsistence fishery than the area State subsistence fisheries.

The first assumption about dip net efficiency, which is the most efficient legal gear in the Lower Copper River Area fishery, holds true in nearly all cases. Comparative gear efficiency depends on several factors. In large glacial river deltas like the Copper River, it is reasonable to assume that an up-to 300-foot gillnet in marine waters in front of the river mouth is considerably more efficient than a dip net in the river. The second assumption is that there would be less participation in the Lower Copper River Area fishery compared to the State subsistence gillnet fishery. Residents of the Prince William Sound Area have a customary and traditional use determination for salmon in the remainder of the Prince William Sound Area, which includes the Federal waters of the Lower Copper River Area. However, it is unlikely that residents throughout the Prince William Sound Area will use the Lower Copper River Area fishery and instead would elect to fish closer to home because it is more efficient and economical. The only reasonable access to the Lower Copper River Area is the Copper River Highway, and the only community connected to the Copper River Highway is Cordova. Those not residing in Cordova would need to first travel by air or boat to Cordova, then drive over 30 miles to access the Copper River. Air transportation to Cordova is expensive from Prince William Sound Area communities so harvesters from those communities are more likely to fish for salmon closer to home. Harvesters from Whittier, Chenega Bay, Tatitlek, and Ellamar who have boats capable of reaching Cordova could participate in the fishery. However, they would have a much higher probability of success fishing in the State fishery in marine waters at the mouth of the Copper River rather than boating to Cordova and driving to the Lower Copper River Area. Based on this, a reasonable conclusion would be that most harvesters participating in the Lower Copper River Area fishery would be residents of Cordova.

It is also unlikely that all residents of Cordova that harvest Copper River salmon would use the Lower Copper River Area fishery. First, many of the harvesters have access to more productive marine fisheries and it is unlikely that those residents would choose to participate in the Lower Copper River Area fishery instead of harvesting from more productive fisheries. The primary means for a number of Cordova residents to harvest Copper River Salmon is through homepack from commercial fisheries, which is salmon caught in the commercial fishery that is kept for personal use, or via the State subsistence fishery in the marine waters near the mouth of the Copper River. It is easier for commercial fishers to access the commercial fisheries than the Lower Copper River Area and the gear types used for commercial fishing are far more effective than dip netting in the Lower Copper River Area. After the commercial fishery, the second most productive salmon fishery near the mouth of the Copper River is the State subsistence gillnet fishery. The recent 10-year average of permits fished in this fishery is 231 with an average of 530 Chinook Salmon and 3,674 Sockeye Salmon harvested annually (Scannell et al. 2023). As already explained above, gillnets are more efficient than dip nets, and it is unlikely that participants of this State fishery would switch to a less productive fishery when they have access to boats and drift gillnets. However, like the commercial fishery, the State subsistence gillnet fishery takes place only in boat accessible marine waters in the Copper River District and is open to all Alaska residents. Therefore, it is assumed that most of those who would participate in the Lower Copper River Area salmon fishery are Cordova residents that are unable to participate in the State marine fisheries. Following this logic, reasonable estimates were made about the number of households that would participate in the Lower Copper River Area fishery. Further,

harvest from the Lower Copper River Area fishery is not additive to other Copper River salmon harvest so harvesters could not take a limit from both fisheries.

As part of its justification, the Board concluded that the projected harvest from the Lower Copper River Area Federal subsistence fishery would be “the smallest of any user group in the Copper River system” (FSB 2022). The harvest estimates outlined in the analysis have not been contested with other sources of data, and information from the first season of the new Federal subsistence fishery supports the predicted insignificant magnitude of the harvest relative to other Copper River salmon fisheries.

The Lower Copper River Area fishery commenced in 2022 and only residents of Cordova participated, with 69 household permits issued to Cordova households. Harvest reports and local accounts of the fishery indicate that the fishing was difficult and confined almost exclusively to one small portion of the Lower Copper River Area. Total reported harvest for the 2022 season was 111 Sockeye Salmon and 3 King Salmon.

The component of the Board’s justification relating to the estimated annual harvest from the Lower Copper River Area fishery was based on a reasonable interpretation of best available information contained in the OSM analysis. OSM analyses follow a lengthy process and are subjected to several reviews by a diverse group of experts. The resulting Board version of the analysis was vetted twice by the Interagency Staff Committee, who was satisfied with the quality of the analysis and the OSM conclusion and provided a comment in support of the proposal.

Aside from the reasonable estimate of potential harvest from the fishery, the Board also considered the deliberations and recommendations of the Southcentral Council, the comment of the Eastern Interior Council, the comments developed at the joint meeting of the Councils, comments provided in Tribal consultations, written public testimony, and oral public testimony provided at the Board meeting.

Communication of Eligibility, Expected Users, and Harvest Estimates

The second component of the analysis of claim 4.1 is an assessment of how well analysts communicated information regarding the projected harvest estimates at public meetings. To analyze this component, OSM staff reviewed the published FP21-10 analysis and transcripts from the Fall 2020 Eastern Interior Council meeting, the Fall 2020 Southcentral Council meeting, the 2021 Board Fisheries Regulatory meeting, the 2022 Eastern Interior Council and Southcentral Council joint meeting on FP21-10, the 2022 Board Wildlife Regulatory meeting, and the 2023 Board Fisheries Regulatory meeting. The results demonstrate that staff communicated the customary and traditional use determinations for salmon in the Lower Copper River Area fishery, the expectations that users of the Lower Copper River Area fishery would primarily be residents of Cordova, and the rationale for developing the projected harvest estimates of the Lower Copper River Area fishery. Results also suggest that this information was not confusing or a matter of concern for attendees at the meetings.

First, examination of the FP21-10 analysis shows that it contained all relevant information. OSM published the FP21-10 analysis in each of the meeting books provided to Council and Board members prior to their public meetings. OSM also published the analysis on its website

(<https://www.doi.gov/subsistence/archives>) for public access. The Customary and Traditional Use Determinations section of the analysis defines the group of eligible federally qualified subsistence users of the Lower Copper River Area fishery: “residents of the Prince William Sound Area have a customary and traditional use determination for salmon in the remainder of the Prince William Sound Area.” (OSM 2021:10). The Effects section of the proposal analysis says, “[the Lower Copper River Area fishery] would provide additional subsistence opportunities for federally qualified subsistence users living in the Prince William Sound Area, especially those in the community of Cordova.” (OSM 2021:25). As explained above, the Lower Copper River Area fishery is in Cordova and can only be accessed by residents of other communities by boat or plane. The analysts therefore reasoned that residents of Cordova would be the primary users. The Effects section of the proposal analysis explains the parameters staff used to develop the projected harvest estimates, as already stated above:

The projected harvest would be the smallest of any user group in the Copper River system, up to 2,000 Sockeye Salmon and 300 Chinook Salmon annually (Figures 4 and 5). This estimate is based on the annual State subsistence gillnet harvest in the Copper River District; taking into account the smaller pool of qualified users, and reduced efficiency of allowable gear type (dipnet compared to drift gillnet) (OSM 2021:26).

Thus, the analysis specifies all the relevant information: residents of the Prince William Sound Area have a customary and traditional use determination for salmon in the Lower Copper River Area fishery, eligible residents of Cordova are expected to be the primary users of the Lower Copper River Area fishery, and the projected harvest estimates are based on best available information including the likely number of participants.

Second, review of the transcripts of presentations of FP21-10 also demonstrates that staff communicated the relevant information at all meetings. In each of the meetings, the presenter of the analysis explained that all rural residents of Prince William Sound Area had a customary and traditional use determination for the Lower Copper River Area fishery and that it was expected that the residents of Cordova would be the primary users of the fishery. The standard statement made in most presentations was, “[the fishery] would provide additional subsistence opportunities for federally qualified subsistence users living in the Prince William Sound area, especially those in the community of Cordova” (SCRAC EIRAC FP21-10 joint-meeting, FSB 2022, FSB 2021). The presentation of the analysis at the Fall 2020 Southcentral Council meeting was the briefest, and the statement on the eligible users of the Lower Copper River Area fishery was likewise the shortest. At the Fall 2020 Southcentral Council meeting, the presenter stated, “The proposal provides an opportunity for federally qualified users in Cordova that do not have access to a saltwater capable boat and drift gillnet gear to fish for salmon in the lower Copper River” (SCRAC 2020:40). The presenter did not explicitly state that rural residents of Prince William Sound Area had a customary and traditional use determination for the Lower Copper River Area fishery. However, his statement implies that there are more federally qualified subsistence users than just those living in Cordova and explains that residents of Cordova will be the primary users. The presenter at the Fall 2020 Eastern Interior Council meeting provided a more thorough explanation about eligibility in the Lower Copper River Area fishery. He said:

For reference, residents of the Prince William Sound area have a customary and traditional use determination for salmon in the remainder of the Prince William Sound area. What this means is that all residents of the Prince William Sound area which includes the Prince William Sound and the entire Copper River drainage, even upriver, would qualify for this fishery but functionally because of restrictions and access and with the limitations in ferry service, functionally it would probably be just rural residents of Cordova that would participate in this fishery (EIRAC 2020:133).

These results show that presenters of the analysis communicated that rural residents from throughout the Prince William Sound Area were eligible to harvest salmon from the Lower Copper River Area fishery and that it's expected that the primary users would be residents of Cordova.

Third, the review of transcripts of the presentations likewise indicate that presenters clarified that the projected harvest estimates were based on the resident population of Cordova at all meetings. For the most part, presenters repeated above the statement from the analysis that explains the analyst "[took] into account the smaller pool of qualified users, and reduced efficiency of allowable gear type" to produce the harvest estimate (SCRAC 2020:40, EIRAC and SCRAC 2022:46, FSB 2022:450). At the 2021 Federal Subsistence Board Fisheries Regulatory meeting, the presenter provided the least number of details on the projected harvest estimates. He read the projected estimate of 2,000 salmon but did not explain that this estimate was partially based on a limited number of Cordova residents. The presenter at the Fall 2020 Eastern Interior Council meeting, on the other hand, provided more details than was written in the analysis. He explained:

And I made a couple assumptions in the generation of that number of 2,000 salmon and that is that a smaller user pool of people could participate in this fishery, whereas the State subsistence gillnet fishery, all State residents can participate in and whereas, you know, because of the access to Cordova being limited, it's the pool of people that are in Cordova in the summertime, but it includes a large part of the commercial fleet that don't live in Cordova year-round, and namely that's the Russian component of the fleet, they're allowed to participate in the State subsistence fishery say when there is no commercial fishery open. So it would only be year-round Cordova residents that could participate in this fishery. And also I assumed that the dipnetting, mostly from the bank would be less effective than these boats using gillnets, so that's where I arrived at roughly 2,000 fish would be projected as harvested from this fishery, which as you can see, is, you know, a very, very minor amount in comparison to other fisheries on the river and then total estimated run size and spawning escapement" (EIRAC 2020:138).

The results confirm that in nearly all cases, presenters explained to meeting attendees that the projected harvest estimate for the Lower Copper River Area fishery was based on the pool of eligible federally qualified subsistence users living in Cordova.

Lastly, review of the discussions on FP21-10 from meeting transcripts suggest that the meeting attendees were not confused about the relevant information. Throughout the discussions, no one asked the presenters questions about the customary and traditional use determinations of the Lower Copper River Area fishery, the assumption that the users of the Lower Copper River Area fishery will primarily be residents of Cordova, or the rationale used to develop the projected harvest estimates. Likewise, the Councils, the Board, and other meeting attendees did not discuss these topics during the meetings. The discussions on FP21-10 focused on the abundance of salmon in the Copper River, the recent declines in run sizes of Copper River Salmon, and the accessibility of alternative fisheries for residents of Cordova. The results therefore suggest that attendees were not concerned or confused by the information that had been written in the analysis and presented to them at the meetings on the eligibility of the Lower Copper River Area fishery, the expected users of the fishery, and the projected harvest estimates.

OSM PRELIMINARY CONCLUSION

Oppose the request to reconsider FP21-10.

Justification

The Board's purview is to provide opportunity for federally qualified subsistence users to harvest fish and wildlife, to conserve those populations when necessary, and to uphold the Federal rural subsistence priority. FP21-10 asked to establish a Federal subsistence fishery in the Prince William Sound Area where none meaningfully existed. Through the proposal process and analysis, the Board determined there is a need for additional Federal subsistence fishing opportunities in the Prince William Sound Area. The OSM staff analysis used the best available information about current harvest levels, harvest practices, and potential participants to estimate the possible harvest from this fishery. OSM staff then presented this information at meetings and were available to answer questions. Board adoption of the proposal was not based solely on the estimated future harvest from this fishery. The Board used information from the analysis, as well as input from the Councils and public, to extend opportunity to federally qualified subsistence users. The primary reason the Board approved this fishery was the underserved Cordova residents that did not have adequate access to, or a meaningful Federal priority for, Copper River salmon.

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