

**KENAI RIVER COMMUNITY GILLNET  
THRESHOLD ANALYSIS  
REQUEST FOR RECONSIDERATION RFR15-01**

## **ISSUE**

In response to Fisheries Proposal FP15-10 submitted by the Ninilchik Traditional Council (NTC) and supported by the Southcentral Alaska Subsistence Regional Advisory Council (Council), the Federal Subsistence Board (Board) approved a community gillnet fishery for Sockeye, Chinook, Coho, and Pink Salmon as well as certain sizes of resident species in the Kenai River for residents of Ninilchik. Subsequently, the Board received 740 requests for reconsideration (RFRs) of FP15-10. The majority of the correspondence received was in one of two form letter formats with some degree of personalization of messages. Of the RFRs received, 237 were in Form Letter 1 format, 472 were in Form Letter 2 format, and 22 were unique responses. The RFRs are listed in **Appendix A** and copies of individual letters are available upon request.

The Office of Subsistence Management (OSM) collected, organized, and reviewed each request to identify substantive claims that may meet the criteria outlined in 36 CFR 242.20(d) and 50 CFR 100.20(d) (**Appendix B**): (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 regulation is in error or contrary to existing law.

In an effort to efficiently address the RFRs, it was decided that relevant claims would be summarized from the various requests and analyzed in a single threshold analysis. This same process was used to analyze claims related to FP15-11 through RFR15-02. A total of 40 substantive claims were identified and summarized in relation to the community gillnet fishery for the Kenai River (**Appendix C**). The original staff analysis for FP15-10, submitted to the Board in January 2015, is also included in this threshold analysis as a reference document (**Appendix D**).

## **Background**

Through FP15-10, NTC requested the establishment of a community gillnet fishery in the Kenai River to provide additional subsistence harvest opportunities for residents of Ninilchik (**Appendix E**). NTC asserted that currently authorized harvest methods of dip net and rod and reel with multiple hooks and bait in the Kenai River did not allow for sufficient subsistence fishing opportunities for Ninilchik residents.

The proposal stipulated that only one community gillnet would be utilized and limited to 10 fathoms in length or less. In addition to the gillnet size limit, the proponent would also be required to develop an operational plan and submit it to the Federal in-season manager for approval prior to commencement of the fishery. This operational plan would include fishing time and a methodology for distributing the catch among those households and residents of Ninilchik that signed up to participate in the fishery.

All salmon taken in the Kenai River community gillnet fishery would be included as part of each households' limit and would be deducted from the annual total harvest limits for the Kenai River, as provided in § \_\_.27(i)(10)(iv)(D)(3). The annual total harvest limits are used as management tools for the specific geographic area of the Kenai River by residents of Cooper Landing, Hope, and Ninilchik.

**Table 1** provides an overview of seasons and possession limits by species. These limits are specific to three Federal Subsistence fishing areas: at the Russian River Falls, in the mainstem Kenai River below Skilak Lake, and in the mainstem Kenai River at Moose Range Meadows. Only Sockeye Salmon may be retained at the Russian River fishing site. Other fish species may be retained in the fisheries, except that Rainbow Trout and Dolly Varden 18 inches or longer must be immediately released.

**Table 1.** Season and possession limits for the dip net/rod and reel fishery in the Kenai River. These limits also apply to the community gillnet fishery.

Species	Season	Household Limit/ Each Additional Household Member	Annual Total Harvest Limit
Late-run Chinook	July 16–Sept. 30	10/2	1,000
Sockeye	June 15–Aug. 15	25/5	4,000
Coho	July 16–Sept. 30	20/5	3,000
Pink	July 16–Sept. 30	15/5	2,000
Other species	Mandatory release of Rainbow trout/steelhead and Dolly Varden/Arctic Char 18 inches or longer.		

#### Existing Federal Subsistence Regulations

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

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Section § \_\_.27(i)(10)(iv)(D) sets the Kenai River salmon harvest seasons, annual total catch limits, and annual household harvest limits.

*§ \_\_.27(i)(10)(iv)(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly*

*Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident species.*

*(1) The household dip net and rod and reel gear fishery is limited to three sites:*

*(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).*

*(ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).*

*(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.*

*(2) Fishing seasons are as follows:*

*(i) For sockeye salmon at all fishery sites: June 15-August 15;*

*(ii) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16-September 30; and*

*(iii) Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

*(3) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net, rod and reel and gillnet fishery by Ninilchik households will be included as part of those household's annual limits for the Kaslof River.*

*(i) For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;*

*(ii) For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;*

*(iii) For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and*

*(iv) For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.*

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The adoption of FP15-10 resulted in the Kenai River community gillnet section §\_\_\_\_.27(i)(10)(iv)(J).

*§\_\_\_\_.27(i)(10)(iv)(J) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released.*

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

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

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

*(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons*

*or households operating the gear, hours of operation, and number of each species caught and retained or released.*

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

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

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

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

*(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.*

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

#### Existing State Regulations

Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

#### *5 AAC 56.180. Riparian Habitat Fishery Management Plan for the Kenai Peninsula Area*

*(a) The Board of Fisheries (board) finds that freshwater fisheries in upper Cook Inlet, including the Kenai Peninsula Area, subject to access limitations of federal, state, and local landowners, are a recognized use of the fishery resources of upper Cook Inlet. The board also finds that, in some situations, freshwater fisheries negatively affect riparian habitats of upper Cook Inlet.*

*(b) The board recognizes the importance of maintaining the structural and functional integrity of upper Cook Inlet riparian habitats. Given this, the board will consider, as part of its deliberations, avoidable impacts to upper Cook Inlet riparian habitats related to sport fishing.*

*(c) If the commissioner determines that freshwater fisheries are likely to result in riparian habitat loss that could negatively affect the fishery resources of upper Cook Inlet, the commissioner may close, by emergency order, those riparian areas to fishing. This authority extends only to riparian areas in which there is a state, federal, or municipal property interest. The commissioner may reopen, by emergency order, those riparian areas to fishing if the commissioner determines that an opening will not compromise the integrity of the riparian habitats the emergency order is designed to protect. During seasons in areas opened by emergency order, the commissioner may*

*establish fishing periods and may designate any or all of the following as locations from which fishing may occur:*

- (1) boats;*
- (2) boardwalks or similar structures;*
- (3) docks;*
- (4) gravel bars;*
- (5) natural formations identified by the commissioner;*
- (6) other areas identified by the commissioner as areas where use for fishing will not compromise the integrity of the habitat the closure is designed to protect.*

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*5 AAC 57.121. Special provisions for the seasons, bag, possession, and size limits, and methods and means for the Lower Section of the Kenai River Drainage Area*

*(2) the following waters of the Kenai River are closed to sport fishing, as follows:*

*(1) from July 1 - August 15, the Kenai River riparian habitats described in 5 AAC 57.180(d) are closed to all sport fishing, except to sport fishing from a boat that is more than 10 feet from shore and is not connected to the shore or any riparian habitat;*

*(3) a person may not sport fish from a boat*

*(A) on any Monday in May, June, and July, except Memorial Day, in that portion of the Kenai River from the Sterling Highway Bridge upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, except that unguided sport fishing from a non-motorized vessel is allowed on Mondays in May, June, and July as described in 5 AAC 21.359(c) (3); for the purposes of this subparagraph, "non-motorized vessel" is a vessel that does not have a motor on board;*

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*5 AAC 21.359. Kenai River Late-Run King Salmon Management Plan*

*(c) In the sport fishery,*

*(3) that portion of the Kenai River downstream from an ADF&G regulatory marker located at the outlet of Skilak Lake is open to unguided sport fishing from a non-motorized vessel on Mondays in July; for purposes of this paragraph, a non-motorized vessel is one that does not have a motor on board.*

#### Federal Public Lands and Waters affected by FP15-10

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kenai River, Federal public waters under consideration for this threshold analysis include two sections of the

mainstem Kenai River within the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Map 1**). This includes approximately 2.5 miles of the mainstem Kenai River between RM 26.5 and RM 29 (known locally as Moose Range Meadows), approximately 2.5 miles of the mainstem Kenai River between RM 45.5 and RM 48 (below Skilak Lake), and the waters from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls, downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls.

#### The Southcentral Regional Subsistence Advisory Council's (Council) recommendation on FP15-10

Following deliberations at the October 15-16, 2014 meeting in Kenai, the Council unanimously supported FP15-10. The Council received testimony in opposition to the proposal from the Alaska Department of Fish and Game (ADF&G), the U.S. Fish and Wildlife Service (USFWS), and OSM staff, and received testimony in support of the proposal from the proponent and Council members. The public was offered the opportunity to give public testimony to the Council; however, no general public was in attendance or provided testimony for FP15-10 during the meeting (SCRAC 2014). During the Board's January 2015 regulatory meeting, the Council recommended the following:

**Support** Proposal FP15-10. The Council stated that the proposal, if enacted into regulation, would provide for a meaningful subsistence preference. Chinook and rainbow trout harvest will be limited and conservation concerns can be addressed through an operational plan. The operational plan, with review by the in-season manager, would require prior approval with the land managing agency prior to any fishing. The proponent provided public comments and stated that gillnet is a customary and traditional use method.

#### Federal Subsistence Board Action on FP15-10

During its January 22-23, 2015 meeting, the Board adopted FP15-10 as written. The new regulations: set the season for the use of the gillnet to June 15- August 15 unless restricted or closed by Federal special action; required that an operational plan be submitted to the Federal in-season manager for approval prior to the season; stipulated that a single registration permit will be issued based upon the merits of the submitted plan; and prohibited the harvest of Rainbow Trout and Dolly Varden 18 inches in length or longer (exact regulations listed on page 4). The Board received testimony in opposition to the proposal from ADF&G, USFWS, and OSM staff, and testimony in support of the proposal from the proponent, and Council members. The public was offered the opportunity to give testimony to the Board regarding FP15-10, however no general public participated and no other testimony was provided during the regulatory meeting (FSB 2015).

#### **Regulatory Language Regarding Requests for Reconsideration**

The applicable regulatory language associated with RFRs can be found in **Appendix B**.

#### **PRELIMINARY ASSESSMENT OF REQUESTOR'S CLAIMS**

The Board will accept a RFR only if the request meets one or more of the following criteria from 36 CFR 242.20(d) and 50 CFR 100.20(d) (**Appendix B**):

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 regulation is in error or contrary to existing law.

**Criterion 1. Information previously not considered by the Board.**

A total of four substantive claims were categorized under Criterion 1 in relation to the Kenai River community gillnet fishery.

Claim 1.1

The Board was not informed that Federally qualified subsistence users of Hope and Cooper Landing did not support FP15-10. This information may have changed the Boards' determination had it been available during deliberations.

Excerpt from Letter # 1, dated July 6, 2015:

Although the proponent stated several times during the meeting that the Kenaitze Tribe supported its proposal (Federal Subsistence Board Public Meeting 1/22/15 Transcript Volume II, 206: 38-47, 208: 32-33), FSB members were not informed by the SRAC that the majority of the subsistence users in Cooper Landing and Hope absolutely did not support the use of a gillnet as a Federal subsistence tool on the Kenai River. In essence, the SCRAC didn't inform the FSB of our objections because they didn't bother to ask what we thought. We believe knowledge of our lack of input, and our arguments objecting to FP 15-10 would have changed the course of both the FSB's deliberations and the final decision to approve this proposal.

*Preliminary assessment of Claim 1.1*

The Federal public records, meeting materials, and meeting transcripts illustrate the absence of participation by residents of Cooper Landing and Hope in the Federal subsistence regulatory process leading up to the adoption of FP15-10. Though Federally qualified subsistence users from Cooper Landing and Hope did not participate in the regulatory process, extensive opportunity for public input and involvement in compliance with the Administrative Procedure Act (APA) was provided by the Board. The public opportunities provided by the Board included publishing a proposed rule in the Federal Register, Regional Advisory Council meetings, additional public review and comment periods on all proposals for regulatory change, and the opportunity for additional public comment during the January 2015 regulatory meeting prior to Board deliberation on FP15-10.

The Board followed the process stipulated in 36 CFR 242.18 and 50 CFR 100.18. The Departments of the Interior and Agriculture (Departments) published a proposed rule on January 10, 2014 (79 FR 1791), to amend the fish section of subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a 78-day comment period, which closed on March 28, 2014. The Departments advertised the proposed rule by mail, radio, and newspaper, and comments were submitted via [www.regulations.gov](http://www.regulations.gov) to Docket No. FWS-R7-SM-2013-0065. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received



a total of 18 proposals for changes to subparts C and D; this included one proposal that the Board had deferred from the previous regulatory cycle. After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also available online. The public then had 30 days in which to comment on the proposals for changes to regulations.

It is beyond the scope of this RFR process to discern how the Board may have reacted or may have considered public testimony from Hope and Cooper Landing that was not received during the regulatory process. However, it is worth noting that considerations related to the communities of Hope and Cooper Landing were addressed by the Board during the January 2015 regulatory meeting. There was discussion between the Board members, the Council Chair, the proponent, and Federal and State staff regarding the potential for exclusion from subsistence opportunities for these two communities that have the same customary and traditional (C&T) use determination in the Kenai River as Ninilchik. Concerns were expressed by Board members on whether or not FP15-10, which identifies only the residents of Ninilchik as beneficiaries, would deny the residents of Hope and Cooper Landing a meaningful subsistence opportunity. The discussion also included the potential for magnified conservation concerns from the USFWS if Hope and Cooper Landing submitted regulatory proposals to have gillnets of their own, which could result in multiple gillnets on the Kenai River. Ultimately, the Board decided to move forward focusing on the community of Ninilchik, as identified in FP15-10, with the understanding that a decision on this proposal would not preclude any future decisions should Hope and Cooper Landing submit proposals of their own.

In the RFRs received after the January 2015 regulatory meeting, the residents of Hope and Cooper Landing firmly oppose FP15-10 and the use of any gillnet in the Kenai River. The residents cited conservation concerns and claim that they were not aware of the Council meeting process, the Federal Subsistence Board process, or the Federal subsistence fisheries proposal process. Residents of the communities became active in the Federal subsistence regulatory process after they became aware of the adoption of FP15-10. Various complaints and comments were fielded by OSM and Refuge staff ranging from utilization of “stealth tactics” to lack of Council representation for their communities. Members from these communities have attended subsequent Board meetings in person or telephonically with the intent to testify in opposition of the adoption of FP15-10. More recently, residents from Hope and Cooper Landing have submitted a proposal to the Board (FP17-06) for the current 2017-2019 fisheries proposal cycle seeking a reversal of the Board’s decision on FP15-10. Though the Federally qualified subsistence users residing in Hope and Cooper Landing have coordinated an effort to express their opposition to usage of a gillnet in the Kenai River, these efforts began after the Board adoption of FP15-10 in January 2015.

The Federal subsistence regulatory process operated and functioned as required by regulation.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 1.2

Combined State and Federal fisheries data indicates the annual harvest limit of 4,000 sockeye for Hope, Cooper Landing, and Ninilchik is being exceeded.

Excerpt from Letter # 5, dated June 14, 2015:

Cook Inlet Area Subsistence Fishing regulations for the Kenai Peninsula – Special Regulations state that a person may not accumulate any harvest limits for a particular species under Federal subsistence regulations with any other harvest limits specified in State regulations for that species. Since harvest limits may not be accumulated for sockeye salmon under Federal subsistence regulations with sockeye harvest limits in State regulations, it is fair and reasonable to look at the combined harvest totals for dip net fisheries for residents of Hope, Cooper Landing, and Ninilchik in both federal and state managed dip net fisheries.

Excerpt from Letter # 7, dated May 25, 2015:

Cook Inlet Area Subsistence Fishing regulations for the Kenai Peninsula – Special Regulations indicate that a person may not accumulate harvest limits for a particular species under Federal subsistence regulations with any other harvest limits specified in State regulations for that species. The annual total harvest limit for the communities of Hope, Cooper Landing and Ninilchik is 4,000 sockeye salmon. Existing fishery data of sockeye salmon for these three communities using just dipnet as the harvest method indicates that more than the annual total harvest limit of 4,000 sockeye are being harvested in the combined federal and state managed sockeye fisheries for these communities.

#### *Preliminary assessment of Claim 1.2*

Claim 1.2 suggests the Board should have considered the total harvest for Federal subsistence and State personal use and sport fisheries for the entire Kenai Peninsula and surmised from those numbers that harvest by residents of Ninilchik, Hope, and Cooper Landing is in excess of the annual total harvest limit for Sockeye Salmon associated with the Federal subsistence fishery. The claimants assert that these total harvest numbers constitute new information that should have been considered by the Board.

Federal subsistence regulations 36 CFR 242.27 (a)(1) and (2) and 50 CFR 100.27 (a)(1) and (2) state:

*(1) Regulations in this section apply to the taking of fish or their parts for subsistence uses. (2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in paragraph (e) of this section. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.*

Federal subsistence regulations 36 CFR 242.25(c) (1) and (3) and 50 CFR 100.25(c)(1) and (3) further define Harvest limits as:

*(1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated unless specified otherwise in §100.26, §100.27 or §100.28.*

(3) A harvest limit may apply to the number of fish, wildlife, or shellfish that can be taken daily, seasonally and/or during a regulatory year or held in possession.

The annual total harvest limit of 4,000 Sockeye Salmon is for a limited geographical area—Russian River Falls, Kenai River mile 48 (at the outlet of Skilak Lake), Kenai River at Moose Range Meadows, and the Kasilof River at the Tustumena Lake outlet—and is specific to gear type used in all or some of those areas. The annual total harvest limit should not be confused with individual or household limits, which individuals are prohibited from accumulating between Federal subsistence and State harvest limits in regulation. The annual total harvest limit of 4,000 Sockeye Salmon only applies to the limited geographical area and applies only to the subsistence dip net/rod and reel fishery for the Russian River Falls, Kenai River at river mile 48, Kenai River at Moose Range Meadows, and the community gillnet and dip net fisheries on the Kasilof River. Annual total harvest limits are included in regulation as management tools to ensure that over harvest of the salmon populations within the specified areas does not occur.

Further, it is reasonable to ascertain that since the regulations apply only to a limited geographical area, then harvest data from that same area should only be considered when deliberating on whether or not the subsistence annual total harvest limit of Sockeye Salmon has been exceeded.

The FP15-10 analysis presented to the Board at the January 2015 regulatory meeting included the 2007-2013 harvest data for the Kenai and Kasilof Rivers Federal subsistence fisheries for the Board to consider. The annual total harvest of Sockeye Salmon ranged from 21 to 254 fish (**Appendix D, Table 2**). Since 2013, additional harvest totals have been reported for subsistence Sockeye Salmon harvest illustrating that annual total harvest remains well below the 4,000 Sockeye Salmon Federal subsistence annual total harvest limit for the Kenai River (see **Table 2** below).

**Table 2.** Total Federal Subsistence Harvest of Sockeye Salmon by Community for Kenai River (Russian River Falls, Kenai River Mile 48, Moose Range Meadows) and Kasilof River at the Tustumena Lake outlet.

<b>2007-2015 Kenai Federal Subsistence Sockeye Salmon Harvest</b>									
	Total Number of Sockeye Salmon Harvested								
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Cooper Landing Residents	606	1,068	752	679	840	1,052	1,057	1,322	1,271
Hope Residents	85	286	121	172	159	287	271	405	402
Ninilchik Residents	21	254	224	52	84	75	80	169	95
Kenai Total	712	1,608	1,097	903	1,083	1,414	1,408	1,896	1,768
<b>2007-2015 Kasilof Federal Subsistence Sockeye Salmon Harvest</b>									
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Ninilchik Residents Only	30	108	7	40	1	24	107	45	288
Annual Total Harvest for Kenai and Kasilof Subsistence Areas	742	1,716	1,104	943	1,084	1,438	1,515	1,941	2,056

Harvest totals for the 2016 season will be available in early 2017.

It would be unreasonable and outside of the Board's purview to prohibit/restrict residents from the Cooper Landing, Hope, and Ninilchik communities who participate in Federal subsistence fisheries from harvesting Sockeye Salmon from other State regulated personal use or sport fisheries on the Kenai Peninsula.

The Board examined a thorough staff analysis that presented available data for FP15-10. The information presented to the Board, the requirement for an operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet during the public meeting provided a sound basis and substantial evidence for the Board decision making.

*Conclusion:* There does not appear to be merit to this claim.

### Claim 1.3

Staff did not provide the Board with enough information on fisheries management and conservation issues on the Kenai River to make an informed decision.

In Letter # 360, dated July 15, 2015, the USFWS asserts that staff did not provide enough background information or specific references to the following principals:

- Principals of fishery conservation for selective harvest
- Current conservation status of Kenai River Chinook Salmon stocks
- Effects of gillnets on target and non-target species and stocks
- Importance of fine scale management for Rainbow Trout and Dolly Varden conservation
- Kenai River Chinook Salmon management plans
- Differential run timing and management of early- and late-run Kenai River Chinook Salmon fisheries
- Overlapping run timing of salmon and resident fish populations
- Providing meaningful preference under the ANILCA

Excerpt from Letter # 450 Alaska State Senators Micciche and Dunleavy, dated February 6, 2015:

It is our opinion that the Board did not adequately consider the in-depth biological information regarding Chinook salmon spawning in this reach of the Kenai River. Nor does it appear that the Board was presented potential biological and economic impacts related to non-target species, particularly Rainbow Trout and Dolly Varden. Any take of large rainbows is inconsistent with all other means of harvest presently allowed. Consideration of this information is critical for the Board to make the right decision.

### *Preliminary assessment of Claim 1.3*

Both Federal and State staff provided the Board with written and verbal presentations describing various aspects of the Kenai early- and late-run Chinook Salmon, Sockeye and Coho Salmon runs, and information about the resident species present in the waters under Federal subsistence fisheries jurisdiction where the approved gillnet fishery is to take place. The Staff analysis for FP15-10, presented to the Board, lists all the State Management Plans and regulations utilized to manage the Upper Cook

Inlet commercial, sport, and personal use fisheries (**Appendix D**). Additionally, it was understood that informing the Board of fisheries management and addressing conservation concerns related to a community gillnet on the Kenai River would be similar to the Board discussion and deliberation for FP15-11 on the Kasilof River, which occurred directly prior to the FP15-10 discussion and deliberation. Karen Hyer, OSM Biologist and lead analyst for FP15-10 and FP15-11 stated;

Proposal FP15-10 was submitted by Ninilchik Traditional Council and it is very similar to the Kasilof proposal where it requests a community gillnet. They're asking for one gillnet and they're going to submit an operational plan for this gillnet the same as we talked about on the Kasilof and harvest from this gillnet would be part of their annual household limit (FSB 2015).

During the FP15-11 Kasilof River Board presentation Ms. Hyer indicated, "The operation[al] plan can address Chinook Salmon and steelhead trout conservation, concerns with timing, quotas, mesh size and depth restrictions."

The Southcentral Council Chair, Ralph Lohse added;

Conservation concerns can be addressed and I would have to add will be addressed through an operational plan. The operational plan reviewed by the in-season manager would require prior approval from the land managing agency prior to any fishing, which is another safeguard,...As we've talked about before, we recognize that there are going to be some questions on the distribution and the amount and things like that, but we, as a Council, felt that these could be addressed through an operational plan and the operational plan is going to have to be fairly complicated (FSB 2015).

The USFWS Board member and Regional Director, Geoff Haskett, then asked Mr. Lohse;

So I guess my question is -- I know that there's been lots of discussions between our fisheries folks and the Refuge and I think the concern -- they can correct me if I don't get this quite right, but the operational plans you said would be very complicated. So when you had that kind of discussion, is it going to be too complicated to actually have it work I think was our concern. So did you [the Council] kind of get to that or have any discussion about that (FSB 2015)?

Mr. Lohse replied;

We don't think it would be too complicated to work. With some of the things that have come out with the discussion as far as time is concerned, timing, position and things like that, and recognition of those problems, I think there's a real opportunity to come up with an operational plan that will work. I think the hardest thing will be for finding an operator that's willing to take on the making of the operational plan and the distribution of the fish. I think that's going to be harder than making the conservation concerns work (FSB 2015).

Board Member Haskett further discussed how to address the conservation concerns through an operational plan with Kenai NWR Refuge Manager and In-season Manager and NTC. The FP15-11 Kasilof River Board discussion and deliberation is relevant to this claim as it demonstrates the

amount information shared with the Board in conjunction with presentations and testimony given during the FP15-10 Kenai River deliberation. Further, unlike FP15-11 for the Kasilof River, OSM Staff and USFWS Staff opposed FP15-10 and through the staff analysis and detailed testimony provided the Board with enough to make an informed decision.

Federal and State staff presented information regarding current conservation concerns for Chinook Salmon and resident species. Information presented to the Board described the run timing and the areas both Chinook Salmon runs are expected to utilize based on work completed by ADF&G (Reimer 2013). The record shows staff from OSM, USFWS, and ADF&G presented information that illustrates the potential for conservation concerns resulting from the proposed fishery.

The comments synthesized by the Interagency Staff Committee (ISC) for FP15-10 state “There are conservation concerns with Chinook Salmon in the Kenai River and early- and late-run Chinook salmon are in the Kenai River during the proposed season” (OSM 2015). Additionally, the USFWS Board member and Regional Director, Geoff Haskett, stated during deliberations of FP15-10 (FSB 2015):

There's no distinct time period when gillnets could be used to address our concerns with species or stocks that are spawning, less abundant, are prone to overharvest or of critical size. Gillnets do not allow for species, stock and size selective management of controllable harvest.

The Board examined a thorough staff analysis that presented available data relevant to FP15-10. The information presented to the Board, the requirement of an operational plan to be approved by the Federal in-season manager in consultation with the Refuge manager prior to fishing, and the Board discussion with consideration of potential conservation concerns related to the use of a single community gillnet during the public meeting provided a sound basis and substantial evidence for Board decision making and for the adoption of FP15-10.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 1.4

Gillnetting will pose a serious safety hazard for boat traffic.

Excerpt from Letter # 705, dated February 24, 2015:

The use of a gill net below Skilak Lake will conflict with longstanding existing non-subsistence uses and posed a serious safety hazard for boat traffic. The area proposed for the gill net is a prime location for a “catch and release” trout fishery... In addition, this section of the river is heavily used by power and drift boats which cause safety concerns as boats hit the gillnet leading to potential injury and conflicts.

#### *Preliminary assessment of Claim 1.4*

The transcripts for the Board meeting lack reference to safety or navigation issues that could result from deploying a gillnet anchored to the shore like a set net or operated as a drift net from a boat while being drifted in the current.

During Board deliberations on FP15-10, one member of NTC (the proponent) did identify the Kenai Peninsula as a “very high use area.” In addition, a representative of ADF&G stated that the Kenai River is “a very popular river” that is widely used. ADF&G went on to contrast the differences between the Kenai and Kasilof Rivers. “There are active, fully participatory sport fisheries, sockeye fisheries, drift boats are in this (the Kenai) area. So there are some things that make this different from the Kasilof one and, again, just kind of step it up a little bit” (FSB 2015, page 211, lines 21-28). The Council Chair also indicated “one of the comments that's been brought up is that there's all kinds of other uses on the Kenai River. One of them is drift boats and rafting and things like that” (FSB 2015, page 217, lines 22-25). Though discussions at the Board meeting described the elevated participation in the Kenai River, discussions did not include the topic of public safety concerns potentially resulting from adoption of FP15-10. Introducing a gillnet into the highly transited waters of the Kenai River could result in potential injury, equipment damage, and user conflicts, and further discussion may be warranted.

*Conclusion:* There may be merit to this claim. Claim 1.4 expresses potential public safety concerns resulting from the deployment of a gillnet in a high use area. The Federal Public Record does not contain reference to this issue. Discussion at the Board meeting did not reference this issue nor provide guidance to staff on how to address or prevent potential public safety concerns.

**Criterion 2. The existing information used by the Board is incorrect.**

One substantive claim was summarized and categorized under Criterion 2 in relation to the Kenai River community gillnet fishery.

**Claim 2.1**

The Board utilized incorrect information provided by public testimony.

Excerpt from Letter # 3 submitted by the State of Alaska (ADF&G), dated July 17, 2015:

Among the five individuals who testified in support of the proposal, no one contradicted the concerns testified to by the federal and state scientists.

The board did not hear any evidence to contradict the testimony of the federal and state scientists that (1) concerns exist for the populations of Chinook salmon and resident fish species in the Kenai; (2) there is no time window in the Kenai when these fish are absent and gillnets can be safely used; (3) any fish caught in a gillnet will likely die, making it impossible to release alive fish eighteen inches or greater in length, as required by federal and state law for certain fish; and (4) using a gillnet in fish spawning ground is contrary to best management practices and principles of fisheries conservation.

It was argued that the board should allow Ninilchik residents to use a gillnet in the Kenai because the board had just approved their using a gillnet in the Kasilof: “we don’t see why it would be any different [in the Kenai] even though some have raised the same conservation concerns.” But federal and state scientists testified that the Kenai was different because in the Kenai there is no time window when a gillnet can be used to avoid harvesting Chinook salmon. Other arguments that have no merit:

- Arguing that federal in-season manager could address concerns by closing the fishery, even though the manager testified that using a gillnet on known spawning ground at any time “goes against the principles of fisheries conservation,”
- Arguing that it was not “fair or justified” to deprive subsistence users of the opportunity to harvest salmon with a gillnet based on conservation, even though ANILCA forbids the board from allowing a subsistence use of fish that is “inconsistent with the conservation of natural and healthy populations of fish...

Supportive testimony suggested that the “non-selective use” of a gillnet could somehow be addressed through how the net would be used, even though the federal and state scientists testified that gillnets are by their nature non-selective. It was argued that the board should allow Ninilchik residents to use a gillnet in the Kenai because the State allows gillnets in its educational fishery. However, it was explained that ADF&G does not allow educational fisheries to use gillnets in the Kenai: “The educational fisheries that occur take place in marine waters out front,” i.e., not on the spawning grounds.

#### *Preliminary assessment of Claim 2.1*

Both Federal and State staff provided the Board with written and verbal presentations that described the various aspects of the Kenai early- and late-run Chinook Salmon, Sockeye and Coho Salmon runs, and information about the resident species present in the waters under Federal subsistence fisheries jurisdiction where the approved gillnet fishery is to take place. The OSM staff analysis lists all the State Management Plans, located in State regulations, utilized to manage the Upper Cook Inlet commercial, sport, and personal use fisheries (**Appendix D**).

Federal and State staff presented current conservation concerns for Chinook Salmon and resident species. Information presented to the Board described the run timing and areas both runs are expected to utilize based on work completed by ADF&G (Bendock and Alexandersdottir 1992, Reimer 2013). The record shows staff from the OSM, the USFWS Kenai Field Office staff, and the ADF&G presented information which illustrates the potential for conservation concerns resulting from the proposed fishery if not conducted correctly (FSB 2015). The record also shows that ADF&G apportions sonar counts with drift gillnets in the Kenai River.

The Department does have -- we have used driftnets to do apportionment past the sonar. We can use the sonar to determine the number of targets that pass and then do a drift with the nets to do apportionment of the age classes and the species for that. That’s a short net that’s put in. I don’t know the length right offhand, but it’s drifted, it’s watched and they can release the kings from that. So we have a very low mortality that’s associated with that.

The driftnet location is at river mile 9 of the Kenai River, and crews drift gillnets every day from mid-May to mid-August (ADF&G 2016). The Board was fully aware of the aforementioned subject matters when they voted to adopt FP15-10.



The Board was presented with a thorough analysis of FP15-10 that utilized the best available data to consider when deliberating on the proposal. The lead analyst from OSM, along with the Federal in-season manager, the affected Refuge Manager, the affected Council Chair, and staff from the State, were available and answered inquiries from the Board during the public meeting. These specialists also participated in a detailed discussion with the Board. This information and the substantial discussion that was captured for the administrative record provided a sound basis for Board decision making.

*Conclusion:* There does not appear to be merit to this claim.

**Criterion 3. The Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law.**

A total of thirty-four substantive claims were summarized and categorized under Criterion 3 in relation to the Kenai River community gillnet fishery.

Claims 3.1, 3.2, and 3.3

These claims all reference the comment period associated with the regulation adoption process:

Claim 3.1

The comment period on FP15-10 was not adequate.

Excerpt from Letter # 4, dated July 7, 2015:

The public comment period was grossly inadequate and failed to inform me of the opportunity to comment on the changes in regulation that affect my use, in violation of 50 CFR 100.18; ANICLA 803, and Administrative Procedures Act (APA) 5 U. S. C.550-555 et seq.

Excerpt from Letter # 6, dated May 14, 2015:

I and many residents of the Kenai Peninsula, did NOT receive ANY public notice of the proposed and drastic changes to the subsistence regulations to allow gillnetting in the Kenai River and Kasilof River, and that affect my use of the rivers. The public comment period was grossly inadequate and failed to inform me of the opportunity to comment on the changes in regulations that affect my use, in violation of 50 CFR 100.18; ANILCA 803, and Administrative Procedures Act (APA) 5 U.S.C. 552-555 et seq.

Excerpt from Letter # 420, dated January 29, 2015:

B. I, and many residents of the Kenai Peninsula, did not receive adequate public notice of the proposed drastic changes to the subsistence regulations to allow subsistence gill netting in the Kenai and Kasilof Rivers, that adversely affect my rights and use of the fisheries. The previous public comment period was grossly inadequate and failed to adequately inform or allow concerned residents of the Kenai Peninsula the opportunity to timely comment on the drastic adverse changes in regulations that allow gill netting on the Kenai and Kasilof Rivers.

Excerpt from Letter # 481, dated July 17, 2015:

As mayor of the Kenai Peninsula Borough (“Borough”), I respectfully urge you to reconsider your decision to allow gillnetting in the Kasilof and Kenai Rivers outside of the tidal influence and take special action to re-open the public comment period.

### Claim 3.2

The Board failed to cooperate with or provide adequate notice to the public.

Excerpt from Letter # 4, dated July 07, 2015:

The Board failed to notice or cooperate with local land owners (Kenai Peninsula Borough, City of Soldotna, and City of Kenai), local organizations, sportsman’s groups, fishing and river guides, and other users, in violation of ANILCA Section 803 and 50 CFR 100.18, and 5 U.S.C. 552-559 et seq.

Excerpt from Letter # 705, dated February 24, 2015:

The public notice was inadequate to solicit meaningful input from the public affected by this decision. The record of the public hearing reveals no meaningful participation by the public despite opposition to the subject proposal by state and federal agencies. It appear the public was not aware of the subject proposal would be seriously considered given the obvious conservation concerns discussed below. Reopening the public comment period would allow for the public to weigh in on this controversial proposal and allow the Subsistence Board the benefit of that input.

### Claim 3.3

Other communities with Customary and Traditional use determination for subsistence salmon in the Kenai River, Hope and Cooper Landing, did not receive adequate notice.

Excerpt from Letter # 1, dated July 6, 2015:

As All FSB member are aware, the Regional Advisory Councils were formed to provide a public forum for subsistence issues, encourage and promote local participation in the decision-making process affecting subsistence harvests on Federal public lands, and to provide open forum for public expression of opinions regarding any matter related to subsistence (ANILCA Title VIII). Members of the Cooper Landing and Hope Federal subsistence communities have serious concerns regarding our complete lack of inclusion by Southcentral Regional Advisory Council (SRAC) when its members were gathering input on FP 15-10 for the Board. We maintain the SC RAC was grossly negligent of their duty to provide public outreach and promote participation in decisions affecting subsistence harvests (in violation of 50 CFR 100.18; ANILCA §803, and Administrative Procedures Act (APA) 5 U.S.C. 552-555 et seq.). The Federal subsistence users of Cooper Landing and Hope (the largest group of users in the Cook Inlet area Federal subsistence fisheries) were not included in the RAC’s discussions regarding this proposal

or the affect it would have on our Federal subsistence priorities. In fact, the subsistence users in our communities were not even aware this proposal existed.

*Preliminary assessment of Claims 3.1, 3.2, and 3.3*

The Board followed the process stipulated in 36 CFR 242.18 and 50 CFR 100.18 which states:

*(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in §100.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the FEDERAL REGISTER, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.*

*(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in §100.11, whichever is earlier.*

*(2) The Board shall publish notice throughout Alaska of the availability of proposals received.*

*(3) The public shall have at least thirty (30) days to review and comment on proposals.*

*(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.*

*(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the FEDERAL REGISTER.*

*(b) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.*

The Board provided extensive opportunity for public input and involvement in compliance with the Administrative Procedure Act, including publishing a proposed rule in the Federal Register, participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation.

The Departments published a proposed rule on January 10, 2014 (79 FR 1791) to amend the fish section of subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a 78 day comment period, which closed on March 28, 2014. The Departments advertised the proposed rule by mail, radio, and newspaper, and comments were submitted via [www.regulations.gov](http://www.regulations.gov) to Docket No. FWS-R7-SM-2013-0065. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public.

The Board received a total of 18 proposals for changes to subparts C and D; this included one proposal that the Board had deferred from the previous regulatory cycle. After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also available online. In June of 2014, the Fishery Proposal book was distributed statewide and posted on the Federal Subsistence Management Program website, again asking for public comment. The public then had 30 days in which to comment on the proposals for changes to the regulations.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 3.4

The Board ignored staff and agency (ADF&G, USFWS) recommendations at the Federal Subsistence Board meeting.

Excerpt from Letter # 6, dated May 14, 2015:

The proposals passed by the Board ignored and are contrary to comments made by experts from the US Fish & Wildlife Service and the Alaska Department of Fish and Game, who stated that there existed a conservation concern with the use of nonselective gear, such as gillnets.

Excerpt from Letter # 420, dated May 20, 2015:

The Board failed to allow adequate and timely public comment, and ignored expertise review comments including Alaska Department of Fish & Game, Federal Wildlife Service, and Kenai National Reserve management recommendations and comments against allowing subsistence gill netting on the Kenai and Kasilof Rivers.

#### *Preliminary assessment of Claim 3.4*

The Board was provided written and electronic copies of the staff analysis for FP15-10 that utilized the best available data to consider when deliberating on the proposal. The record shows staff from OSM, USFWS, and ADF&G presented the analyses and background information for FP15-10 at the January 22, 2015 meeting in Anchorage.

The Board members asked many questions of the presenters and considered and evaluated the information during their deliberations. The claimant states the Board ignored staff and agency recommendations, when in fact the Board was provided opportunity to review all available materials prior to the beginning of the meeting. These materials and information provided during the meeting were considered during the Board discussion, deliberation, and final decision making process. The lead analyst from OSM, along

with the Federal in-season manager, the affected Refuge Manager, the affected Council Chairs, and staff from the State, were available and answered inquiries from the Board during the Public Meeting and participated in a detailed discussion with the Board, the Council, and the Proponent. This information and the substantial discussion captured for the administrative record provided a sound basis for Board decision making.

The following questions were asked by the Board members, as found in the meeting transcripts:

Page 201, lines 26-30:

MR. HASKETT: So, actually, I would like to hear from Andy [Loranger] and Jeff [Anderson] on this one because this is different from the last proposal in terms of -- I mean the spawning area and the amount of fish and what it would do. So if you can just kind of expand on our concerns with this one, I think that would be helpful.

Page 201, lines 45 and 46:

MR. CHRISTIANSON: Exactly what is the window for the chinook? I mean is there a peak time and then it trails off?

Page 212, lines 1-15:

MR. CHRISTIANSON: Mr. Christianson for the record. Mr. Chairman. I had a question for the State. There's a lot of talk that there's a huge commercial fishery on this same stock. Most of it must take place in the saltwater. Being a conservation concern for the chinook, what measures do the commercial fisheries take to stop the interception of this conservation concern they have for the king salmon fish? I mean it seems there should be some measures taken there as well if we're going to deny subsistence users a priority or even a crack at the fishery. What measures are taken in the commercial fishery to help alleviate that chinook concern?

Page 213, lines 31-38:

MR. CHRISTIANSON: ...Again, I was just wondering what measures are even taken in the saltwater. Like you said, you reduced the hours and stuff, but I was wondering if there's a mesh size difference or something that helps try to not catch those kings because we could probably use the same measures for the subsistence user in the river if we go ahead and support this proposal. I don't see why we wouldn't.

Page 218, lines 4-11:

MR. CHRISTIANSON: Mr. Chair. A question for Mr. Lohse. So it was unanimous. There was a lot of discussion about the conservation concern with chinook. I was just wondering how that discussion went as far as how the proponent would help deal with that low escapement of the chinook or the conservation concern there if they were to be allowed to operate the gillnet.

Page 218, lines 31-40:

MR. HASKETT: So actually what I'm looking for is -- my understanding is even if the chinook population was high we'd still have a conservation concern. So I'd like to hear a little bit more about that. What the spawning concerns are, what the conservation concern specifically is so that when we talk about it, it's not just kind of we use this conservation concern thing, but people have specifics in their mind about what it is that we're talking about. So either Andy or Jeff.

As stated earlier, the Board was provided the opportunity to review all available materials prior to the beginning of the January 2015 meeting, was presented with additional information at the Board meeting, and the collective information reviewed was weighed during the deliberation and final decision making process for FP15-10.

*Conclusion:* There does not appear to be merit to this claim.

### Claims 3.5 through 3.15

These claims principally express conservation concerns associated with the use of gillnets in the Kenai River. Claims 3.12 and 3.13 are assessed with Claim 3.33 below.

### Claim 3.5

Long time professional and local consensus is that gillnets should not be used on Kenai/Kasilof Rivers because they are non-selective.

Excerpt from Letter # 6, dated May 14, 2015:

For many years, multiple facilitated working group discussions including representatives from broad interest groups have resulted in a general agreement that gillnets are not a method and means that should be used in the rivers and streams of the Kenai Peninsula. As a non-selective gear group, the introduction of gillnets as a harvest type is a radical departure from past fishery management practices. Use of gillnets will handicap resource managers to regulate fisheries in heavily used areas on Peninsula rivers.

Excerpt from Letter # 25, dated May 13, 2015:

Over the past 15 years, thorough discussions between subsistence, personal use, sport and commercial user groups in addition to land management agencies and fishery biologists have led to a general consensus that use of gillnets on the Kenai and Kasilof rivers should not be used, as it is a non-selective gear type. Authorization to use gillnets in federally managed fisheries will limit the ability of fisheries managers to address conservation and use issues in areas of high use.

### Claim 3.6

Non-selective nature of gillnet harvest is wasteful.

Excerpt from Letter # 6, dated May 14, 2015:

The Board has no authority to grant or create a NEW subsistence method and means of gillnetting that is extremely wasteful subsistence use do to its non-selective nature of harvest.

Excerpt from Letter # 8, dated July 6, 2015:

We believe that if the FSB had been able to consider this data, they would have been less willing to grant the new subsistence method of gillnetting, particularly since its non-selective in nature of harvest is tremendously wasteful and contrary to the requirements and intent of ANILCA.

### Claim 3.7

The gillnetting regulation increases the conservation concern for Chinook Salmon on the Kenai River.

Excerpt from Letter # 130, dated February 02, 2015:

I am sympathetic to the needs of people who depend on the fish of the Kenai Peninsula rivers. But at a time when some of those species are at risk of loss unless strict conservation measures are taken, use of non-selective gill netting is a step backward.

Excerpt from Letter # 480, dated June 8, 2015:

The introduction of this nonselective gear type will also impact populations of already endangered king salmon as well as resident species.

### Claim 3.8

Incidental harvest of Chinook Salmon could lead to high rate of mortality.

Excerpt from Letter # 52, dated January 26, 2015:

The approved gill-net would not just catch sockeye, but also rainbow trout and king salmon.

Excerpt from Letter # 123, dated March 17, 2015:

Kenai river king salmon are suffering a period of low abundance, and all users have taken significant cuts. We feel that additional pressure in upstream spawning areas with a new gillnet fishery will cause jeopardy to spawning kings salmon in the area, defeating the purpose of regulations that seek to restore king salmon in the Kenai.

Excerpt from Letter # 263, dated January 30, 2015:

These nets will destroy wild king salmon while we are trying to rebuild that decimated, once vibrant run. .... And it should not be done in a way that continues to decimate an already struggling wild Kenai River King Salmon run.

Excerpt from Letter # 415, dated January 26, 2015:

This form of net use will kill off huge populations of fish that are badly needed for our fishery. There has been a severe drop off in the number of Kings in recent years. This will only make it worse.

#### Claim 3.9

Gillnetting of Chinook Salmon will harvest larger and more fecund breeders.

Excerpt from Letter # 13, dated June 19, 2015:

Allowing subsistence gill netting on the Kenai and Kasilof Rivers will interfere with the conservation of healthy fish and wildlife populations. Gillnetting will add to the decline of the Kenai River Chinook king salmon species by harvesting the larger and more fecund breeders.

Excerpt from letter # 348, dated February 1, 2015:

The New Regulations Threaten Our Ability to Bring Back Decimated Runs of Prized Kenai King Salmon in Which All Alaskans Have a Substantial Interest. Sixty-foot gillnets will also further threaten the already reduced Kings Salmon population on the Kenai River. Alaskans of all backgrounds want to see this fishery recover.... Kenai Kings are such a special strain that the world record King Salmon, at 97 pounds, came from this river in 1985. Sixty foot gillnets, like those allowed in the proposed regulations, will take substantial numbers of migrating and spawning kings... The board's proposal should not include gillnets that intentionally or accidentally kill King Salmon so long as we are working hard to re-establish what was once a run so ample that Alaskans flocked to the Kenai River to try to catch this uniquely large strain of King Salmon.

#### Claim 3.10

Gillnetting will be detrimental to salmon spawning beds and habitats.

Excerpt from Letter # 7, dated May 25, 2015:

Allowing subsistence gill netting on the Kenai and Kasilof Rivers will interfere with the conservation of healthy fish and wildlife populations. Gillnetting will add to the decline of the Kenai River Chinook king salmon species by harvesting the larger and more fecund breeders. Gillnetting will be detrimental to spawning beds, to all salmon spawning habitat and to all by-catch of rainbow and lake trout, Dolly Varden and all other fish, as well as to marine-mammal species and numerous birds. When valid conservation concerns are not respected, conflict between users can be expected to be intensified.

#### Claim 3.11

The gillnetting regulation increases the conservation concern for trout and char on the Kenai River.

Excerpt from Letter # 4, dated July 7, 2015:



There is a very clear conservation concern with the introduction of in-river gillnetting, as it will add to the stress upon our already troubled king salmon populations, as well as intercepting non-targeted species such as rainbow trout, lake trout, Dolly Varden, and steelhead.

Excerpt from Letter # 57, dated January 29, 2015:

The notion of allowing in-discriminate method of fish harvest to spawn halfway across the river is both shocking and extremely concerning. Not only will targeted sockeyes wind up in nets, but so will resident Dollies and rainbow trout, as well as prized Kenai Kings. ...

Please reconsider your decision to allow in-river gillnets, and at the very least add strict regulations on smaller net size and limit locations to areas that will have limited impacts on resident fish.

Claims 3.12 and 3.13 are assessed below with Claim 3.33

Claim 3.14

A gillnet in the Kenai River in combination with sport fish harvest levels will result in over-harvest of trout/char.

Excerpt from Letter # 10, dated July 6, 2015:

Our conservation concerns also extend to other resident species in the Kenai River. When the additional number of rainbow trout, Dolly Varden, and steelhead harvested with a community gill net are combined with the harvest levels allowed in the sport fishery, the outcome could be an over harvest of these species., which would pose a threat to conserving healthy population of resident fish.

Claim 3.15

Gillnetting will be detrimental to long-term subsistence and non-subsistence uses.

Excerpt from Letter # 420, dated May 10, 2015:

Gillnetting will be detrimental to the long-term subsistence use, to sustained yield management, and to thousands of non-subsistence users who exercise their use of fish and wildlife resources from the Kenai River and Kasilof River.

*Preliminary assessment of Claims 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.14, and 3.15*

The Board received and reviewed input from both Federal and State fisheries staff through verbal presentations (FSB 2015, pages 199 – 222) and reviewed the OSM staff analysis of FP15-10 (**Appendix D**) in preparation for the January 2015 meeting. The staff analysis and verbal presentations for FP15-10 to the Council and the Board do indicate operation of a gillnet can be non-selective and result in increased mortality of non-target species, sizes, or conditioned fish. The Council Chair [Mr. Lohse] indicated when presenting the Regional Advisory Council recommendation that issues related to authorizing the use of a gillnet in the Kenai River Federal subsistence fisheries (as identified in **Claims 3.5 and 3.6**) will be

addressed through conditions contained in an operational plan that must be approved by the Federal in-season manager and land managing agency prior to commencement of the fishery. Thus, the Board was aware of this issue and addressed this concern when they made the decision to authorize this fishery. As the Council Chair [Mr. Lohse] stated during the Council's recommendation to the Board at the January 2015 meeting:

The Southcentral Alaska Subsistence Regional Advisory Council supported this proposal [FP15-10] unanimously. We stated that the proposal, if enacted into regulation, would provide for a meaningful subsistence preference. Chinook and rainbow trout harvest will be limited and conservation concerns can be -- and I will say will be addressed through an operational plan. The operational plan, with review by the in-season manager, would require prior approval with the land managing agency prior to any fishing (FSB 2015, page 216, lines 41-50).

The proponent provided public comments that stated that the gillnet is a customary and traditional use method and that was shown to us not only by the people that live there, but if any of you followed any of the archeology that's been done on the Kenai River, you can see that goes back a long way (FSB 2015, page 217, lines 1-7).

The regulation for the community gillnet requires an operational plan be submitted by the proponent for approval by the Federal in-season manager in consultation with the Refuge Manager. The intent of the operational plan is to dictate operations of the single community gillnet and address any conservation concerns associated with the fishery. The Board indicated conservation concerns, such as those raised in **Claim 3.7**, can be addressed through this requirement, and thus the Board was aware of this fact when they made the decision to authorize this fishery.

In addition to the required operational plan, the Board has given the Federal in-season manager delegated authority to issue special actions that restrict or close fisheries in Federal public waters to protect continued viability of fish populations, continuation of subsistence uses, or for issues of public safety. The manager is authorized to include provisions, harvest limits, and time and area fishery restrictions to ensure that stocks are not over exploited.

Approximately two dozen RFRs contain some form of **Claim 3.8**, indicating increased rates of mortality are expected if Chinook Salmon are caught in a gillnet or caught and released from a gillnet. Currently, the Federal subsistence fisheries that take place in Federal public waters of the Kenai River watershed below Skilak Lake have an established guideline harvest level of 1,000 late-run Chinook Salmon. The concerns grouped within this claim may not account for this existing guideline harvest level in Federal subsistence regulation, and that targeted harvesting or incidental harvest of late-run Chinook Salmon is authorized in Federal public waters of the Kenai River watershed for rural residents of the communities of Hope, Cooper Landing, and Ninilchik.

More than two dozen received RFRs contain some form of **Claim 3.9** indicating gillnets will indiscriminately harvest Chinook Salmon including larger and more fecund breeders. This claim could be partially correct depending upon the mesh size of the gillnet used, how the mesh is hung, and how the net is operated. Depending upon the mesh size of the gillnet authorized, selectivity for different size ranges is

increased. The larger the mesh size authorized, the more efficient the nets will become at targeting larger “more fecund” fish. The smaller the mesh size authorized, the more likely larger fish will not be caught or mortally entangled in the net. Federal subsistence fisheries regulations and management practices in Alaska incorporate this fact when making decisions regarding which size fish to target or avoid when gillnets are authorized. The operational plan for this fishery is anticipated to address these concerns. It was also noted during the Board meeting that the State currently uses drift gillnets in the Kenai River each day to collect Chinook Salmon fish lengths and scale samples (for age and sex) and to apportion the sonar data. Mr. Matt Miller, ADF&G Sport Fish Regional Management Coordinator for Cook Inlet, was asked by RAC Chair Lohse if there were educational or Fish and Game nets in either the Kasilof or Kenai Rivers during the Board discussion on FP15-11 (Kasilof). Mr. Miller’s Kenai River reply:

The Department does have -- we have used driftnets to do apportionment past the sonar. We can use the sonar to determine the number of targets that pass and then do a drift with the nets to do apportionment of the age classes and the species for that. That's a short net that's put in. I don't know the length right offhand, but it's drifted, it's watched, and they can release the kings from that. So we have a very low mortality that's associated with that (FSB 2015, page 188).

Also, Mr. Ivan Encelewski discussed the Kenai apportionment net during his testimony for FP15-10 (Kenai):

Again we stress and want to point out that the State does have a gillnet fishery that they do as part of their monitoring project in this Kenai River system, so we don't see how one community gillnet could be any different than the State and we're not asking for that, you know, this big, huge net that's going to stay out there all the time. We would be satisfied with a drift gillnet opportunity behind a boat. We believe we could structure it through that process in the same manner as the State does every day in their system. So I think it's a concern once again that they would be allowed to do it and obviously we can't as the number one priority (FSB 2015, page 205).

The degradation of riparian habitat as a result of human activities while fishing (**Claim 3.10**) is well documented but is mostly limited to shore based damage in the Kenai River drainage. Longstanding and intensive studies of Kenai River watershed shore degradation from foot traffic or boat wakes have resulted in significant closures of riparian zone habitat to fishing activities and tens of millions of dollars of restoration, stabilization, and enhancement efforts over the years for the purpose of benefiting juvenile salmonids. The use of a gillnet that results in significant stream bed damage is not conducive to the longevity of a net’s lifespan and would be an expensive practice. Damage would be expected if an anchor is used to hold the seaward end of the net stationary in high cross currents, with the anchor set in spawning beds or riparian zone habitat.

Riparian zone habitat damage could occur when deploying, operating, and retrieving a gillnet if the net is fished with a shore or near shore attachment point and or a running line. Vegetation trampling and even denuding the shoreline is possible depending upon usage frequency, soil and vegetation conditions, how the area is used, and the number of participants operating the gillnet. Issues of how the gillnet fishery will be executed should be addressed under the operational plan.

Additionally, both Federal and State fishing regulations identify significant habitat closure zones in the Kenai River drainage. For example, fishing is prohibited within the riparian zone of the Moose Range Meadows public lands shoreline. Current Federal and State regulations governing these habitat closure zones would prohibit operations or attachment of a gillnet from the shore in much of the Federal public waters where this gillnet fishery is authorized.

Many of the RFRs reference conservation concerns about over harvest of trout and Char as a result of the community gillnet usage in the Kenai River (**Claims 3.11 and 3.14**). Information presented to the Board contained in the staff analysis of FP15-10 included estimated participation, catch and release, and harvest of trout and char in the Kenai River sport fisheries. If a conservation concern for trout or char develops within waters under Federal subsistence fisheries jurisdiction, or if continuance of subsistence uses is potentially impacted, ANILCA authorizes the prohibition of participation by non-Federally qualified subsistence users for the species and area of interest. The Federal in-season manager has delegated authority to issue special actions when necessary to assure conservation of healthy fish stocks and to provide a subsistence priority as mandated under Title VIII of ANILCA.

**Claim 3.15** suggests gillnetting will be detrimental to long-term subsistence and non-subsistence uses. However, the use of gillnets in freshwaters of Alaska is a wide-spread, traditional method and means of harvesting salmon and other fish, and is approved for various Federal and State fisheries.

The Board examined a thorough staff analysis for FP15-10 that presented the best available data. The information presented to the Board, the requirement for an operational plan from the proponent to be approved by the Federal in-season manager in consultation with the Refuge Manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

*Conclusion:* There does not appear to be merit to these claims.

#### Claim 3.16

There already exists sufficient opportunity for subsistence harvest of salmon that is selective including dipnet on the Kenai River and dipnet and fishwheel on the Kasilof River.

Excerpt from Letter # 189, dated June 14, 2015:

Since harvest limits may not be accumulated for sockeye salmon under Federal subsistence regulations with sockeye harvest limits in State regulations, it is fair and reasonable to look at the combined harvest totals for dipnet fisheries for residents of Hope, Cooper Landing, and Ninilchik in both federal and state managed dip net fisheries.

Excerpt from Letter # 348, dated January 30, 2015:

Sockeye Salmon Runs Provide Sufficient Access to Nutrition for Subsistence Fishermen, and can be Enhanced if Needed in the Lower River with State Cooperation. The healthy Kenai and Kasilof Sockeye fisheries can and do provide ample nutrition to satisfy the subsistence needs of local communities. The Kenai and Kasilof Rivers return over a million Sockeye Salmon a year, leaving enough for subsistence, commercial and sport fishermen if managed properly. Currently the state allows dipnet fisheries for all

Alaskans and the Lower Kenai River and Kasilof Rivers in a manner that minimizes the chance Kings will be intercepted, and in areas where Rainbow trout and Dolly Varden are nearly non-existent. The current fisheries allow the take of up to 35 Sockeye Salmon, additional numbers of pinks and flounder, and an extra ten fish for each family member. ... In addition, sustainable nutrition, through traditional subsistence fishing for Sockeye Salmon (the primary historical subsistence fish taken by First Alaskans) is available through other permits. ... There is no evidence that the dipnet and educational fisheries, which grant a substantial preference to these groups above the rights of other Alaskans, fail to provide sufficient nutrition and traditional subsistence opportunities in a manner that also respects the right of other Alaskans.

#### *Preliminary assessment of Claim 3.16*

Claim 3.16 asserts that there is sufficient opportunity for subsistence harvest of salmon for the communities of Hope, Cooper Landing, and Ninilchik. FP15-10 was submitted solely by NTC for the community of Ninilchik and through their proposal gave testimony that they were unable to achieve a meaningful harvest opportunity using the methods and means permitted in Federal subsistence regulations at the time FP15-10 was submitted. The proponent further testified that operation of the fishwheel in the Kasilof River has not caught a single salmon in the seasons that it was operated.

Federal subsistence harvest records for the residents of Ninilchik indicated a total cumulative harvest of 1,054 Sockeye Salmon in the Kenai River Federal subsistence dip net and rod and reel fisheries between their inception in 2007 and 2015 (**Table 2**). Hope and Cooper Landing have harvested 2,188 and 8,647 Sockeye Salmon, respectively.

At the time of Board deliberation on FP15-10, the staff analysis (**Appendix D**) provided harvest information by community from 2007 – 2013 which indicated Federally qualified subsistence users from Ninilchik harvested only 790 Sockeye Salmon for subsistence use in the Kenai River since the inception of the Federal subsistence fisheries. This harvest report in conjunction with the proponent's testimony and the Council recommendation implicated that the current subsistence harvest opportunities were not fulfilling the needs of the community and that additional opportunity, in this case methods and means, was warranted.

The Board examined a thorough staff analysis for FP15-10 that presented the best available data. The information presented to the Board, the requirement for an operational plan from the proponent to be approved by the Federal in-season manager in consultation with the Refuge Manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 3.17

Gillnetting is not a traditional and customary or "long-time continuous use" on the Kenai and Kasilof Rivers. The Board has no authority to create a new method.

Excerpt from Letter # 6, dated May 14, 2015:

There is no subsistence need to use gillnets as a new harvest method and means in the federally managed fisheries on the Kenai and Kasilof Rivers. Gillnetting is not a necessary subsistence method where it is NOT traditional and customary, not a “long-term continuous use” on the Kenai or Kasilof River (50CFR 100.4; ANILCA 804(a). The Board has no authority to grant or create a NEW subsistence method and means of gillnetting that is extremely wasteful subsistence use do to its non-selective nature of harvest.

Excerpt from Letter # 420, dated January 29, 2015:

C. Subsistence gill netting is an unnecessary subsistence use that is NOT traditional and customary on the Kenai or Kasilof River. The proposal and Board record is void of adequate factual data justifying the alleged need for racial priority subsistence gill netting on the Kenai and Kasilof Rivers over all other subsistence and non-subsistence methods and means.

#### *Preliminary assessment of Claim 3.17*

ANILCA does not prohibit the Federal Subsistence Board from authorizing methods and means for use in the Federal subsistence fisheries of the Kenai River in waters under Federal subsistence fisheries jurisdiction. This claim conflates two aspects of the Board’s authority – making customary and traditional use determinations to recognize subsistence uses and authorizing gear types. A customary and traditional use determination is used to determine *who* is eligible for the Federal subsistence priority, not *how* harvest may take place. When making a customary and traditional use determination, Federal subsistence regulations state, “*a community or area shall generally exhibit the following factors, which exemplify customary and traditional use*” (§\_\_.16(b)). One of the factors that may be considered by the Board is “*a long-term consistent pattern of use, excluding interruptions beyond the control of the community or area*” (§\_\_.16(b)(1)). In the claim, the use of the phrase “long-time continuous use” suggests a relationship between the Board’s decision on FP15-10 and customary and traditional use determinations. No such relationship exists. The Board’s decision on FP15-10 specifically authorized a methods and means of harvest for residents of a community that already had a customary and traditional use determination for salmon in the Kenai River drainage. ANILCA Title VIII does not require “long-time continuous use” of authorized methods and means.

When adopting regulations, the Board may consider “*traditional use patterns when adopting new methods and means*” (§\_\_.18(a)(4)). Since the regulations governing customary and traditional use determinations refer to patterns of use, they offer some guidance and emphasize the importance of “efficiency and economy of effort and cost”: “*A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics*” (§\_\_.16(b)(3)). This guidance was considered by the Board when reaching a decision about the methods and means proposed in FP15-10. The proponent of FP15-10 claimed that other authorized methods and means of harvest, such as dip net and rod and reel were inefficient and not yielding sufficient harvest to meet their subsistence needs. The Board examined a thorough staff analysis that included the best available data related to the issue. This information and a thorough discussion during the public meeting provided a sound basis and substantial evidence for Board decision making.

*Conclusion:* There does not appear to be merit to this claim.

Claims 3.18, 3.19, and 3.20

These claims relate to ANICLA Section 804 subsistence priority rights.

Claim 3.18

There is no shortage of red salmon – ANILCA 804(a) does not apply.

Excerpt from Letter # 348, dated January 30, 2015:

The Kenai and Kasilof Rivers return over a million Sockeye Salmon a year, leaving enough for subsistence, commercial and sport fishermen if managed properly.

Excerpt from Letter # 420, dated January 29, 2015:

Contrary to the applicant Ninilchik Traditional Council Tribe proposal assertion that Alaska National Interest Lands Act (ANILA) 16 U.S.C. 3101 et seq (ANILCA) Section 804 “rural” preference, thus gives them a tribal-racial subsistence priority preference for subsistence uses of all the rivers resources without concern or review for species and habit detrimental affects, and without regard to the detriment to other native and non-native users, is a total misunderstanding and ignorant interpretation of §804, and in violation of Alaska Native Claims Settlement Act (ANCSA) 43 U.S.C §1601 et seq, Section 4(b) that extinguished all aboriginal hunting and fishing preference priority rights.

Excerpt from Letter # 717, dated March 3, 2015:

The Kenai and Kasilof Rivers return over a million Sockeye Salmon each year, leaving enough for subsistence, sport and commercial users if managed appropriately.

Claim 3.19

FP15-10 adversely affects the subsistence priority of, and does not extend the same opportunity to, the subsistence users from the communities of Cooper Landing and Hope.

Excerpt from Letter # 699, dated July 6, 2015:

The decision of the Federal Subsistence Board (FSB) on FP15-10 that allows the community of Ninilchik to place a community gillnet in the Federal public waters of the Kenai River adversely affects the Federal subsistence priority of Cooper Landing and Hope subsistence users. ...

While we firmly maintain that the FSB’s approval of FP15-10 adversely affects our subsistence priority by allowing Ninilchik an exclusive priority to place a community net in the Kenai river, we do not believe allowing all three communities to place a gillnet in the Kenai would rectify this adverse effect.

Claim 3.20

The Board did not comply with ANILCA Section 804 because it failed to apply appropriate limitations on Chinook Salmon caught in this fishery.

Excerpt from Letter # 481, dated July 17, 2015:

By approving the use of the in-river gillnets to catch Chinook and other salmon, the board did not comply with ANILCA Sec. 804 because it failed to apply appropriate limitations on this proposed fishery of Chinook salmon. Restrictions are clearly needed to protect the continued viability of Chinook salmon. Gillnets do not discriminate between species are likely to catch and kill these fish. Alternate resources such as sockeye salmon are available to Ninilchik residents through many means other than indiscriminate gillnets without further endangering Chinook salmon and rainbow trout.

*Preliminary assessment of Claims 3.18, 3.19, and 3.20*

Section 804 of ANILCA establishes a subsistence prioritization process often triggered by conservation concerns or increased competition among users and uses. Once initiated, the Section 804 Prioritization Process first closes Federal public lands or waters to all but Federally qualified subsistence users to ensure that subsistence is the priority consumptive use. If further restrictions are required due to a shortage of a particular resource, it then further prioritizes among Federally qualified subsistence users.

**Claim 3.18** suggests that there exists sufficient opportunity or “no shortage” on the Kenai Peninsula for subsistence harvest of salmon for the communities of Hope, Cooper Landing, and Ninilchik. It is important to note that “sufficient opportunity” for the continuation of subsistence uses has as much to do with method and means of harvest (e.g., gear type) and traditional practices of processing, preservation, and distribution, as it does with having access to a productive resource. Through their proposal, NTC provided testimony that the residents of Ninilchik did not have a reasonable harvest opportunity in Federal public waters for salmon using the methods and means currently authorized in Federal subsistence regulations.

NTC made no claims relative to abundance or scarcity of the resource, nor did the proponent request that non-subsistence uses or non-Federally qualified users be restricted by invoking the ANILCA Section 804 subsistence prioritization process. As such, no Section 804 analysis was included in the proposal or discussed by the Board during its deliberations.

**Claim 3.19** indicates the Kenai River community gillnet adversely affects the subsistence priority of, and does not extend the same opportunity to, Cooper Landing and Hope subsistence users. However, the Federal administrative record for both the October 2014 Council meeting and the January 2015 Board meeting indicates the proponent’s intent was not to preclude other Federally qualified communities from participating in a similar fishery, but to have the Board establish a new fishery utilizing a more efficient method and means.

The adoption of FP15-10 by the Board did not require a Section 804 analysis, nor were other Federally qualified subsistence users exempted or restricted from participating in the existing fisheries targeting Sockeye Salmon. The Board further recommended that, in the event the other two communities are



interested in a community gillnet subsistence opportunity, they could submit a proposal to the Board during a future fisheries proposal cycle.

**Claim 3.20** indicates the community gillnet fishery should require a Chinook Salmon harvest limit for that method and means of harvest. Daily and annual harvest limits were established by the Board when the Board originally enacted the Federal subsistence fisheries in Federal public waters of the Kenai River. The Board established a drainage-wide total seasonal harvest limit of 4,000 Sockeye, 1,000 late-run Chinook, 3,000 Coho, and 2,000 Pink Salmon. The annual total harvest limit of the combined gill net and dip net/rod and reel late-run Chinook Salmon fisheries that take place in two of the three dip net/rod and reel Federal subsistence fisheries areas (retention of Chinook Salmon above Skilak Lake is prohibited) is 1,000 fish with a household limit of ten fish for the head of the household with an additional two fish for each additional household member.

The intent of FP15-10 was to provide a meaningful Federal subsistence fishery opportunity to Federally qualified subsistence users on the Kenai River. The Board examined a thorough staff analysis that presented available harvest and methods and means data related to the Kenai River drainage. The information presented to the Board, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

*Conclusion:* There does not appear to be merit to these claims.

#### Claims 3.21 and 3.22

These claims express concerns that the Board did not follow other Federal regulations in the process of approving the Kenai River community gillnet fishery for the residents of Ninilchik.

#### Claim 3.21

The Board passed proposals without an EIS, in violation of CFR 100.18.

#### Claim 3.22

The proposed regulation did not have required NEPA and Clean Water Act reviews.

Excerpt from Letter # 6, dated May 14, 2015:

I and many residents of the Kenai Peninsula, did NOT receive ANY public notice of the proposed and drastic changes to the subsistence regulations to allow gillnetting in the Kenai River and Kasilof River, and that affect my use of the rivers. The public comment period was grossly inadequate and failed to inform me of the opportunity to comment on the changes in regulations that affect my use, in violation of 50 CFR 100.18; ANILCA 803, and Administrative Procedures Act (APA) 5 U.S.C. 552-555 et seq. The proposals passed by the board ignored and are contrary to comments made by experts from the US Fish & Wildlife Service and the Alaska Department of Fish and Game, who stated that there existed a conservation concern with the use of nonselective gear, such as gillnets. The Board passed proposals also included no environmental assessment or environmental impact statements, or any consideration of long-term environmental or social-impact on

other river users. The Board acted in violation of 50 CFR 100.18, and the clear intent and objectives of ANILCA.

Excerpt from Letter # 420, dated January 29, 2015:

The Board passed proposals are without any environmental assessment (“EA”) or environmental impact statements (“EIS”), or any long-term environmental or environmental-social-impact consideration of the passed proposals, in clear violation of the National Environmental Policy Act (NEPA) 42 U.S.C. §4321 *et seq.*, where federal regulatory actions of the U.S. Department of Interior Federal Subsistence Board are imposed, which requires the EA and EIP reviews and approvals of federal “public lands” [i.e., “public waters”. Compare *Alaska v. Babbitt*, 72 F.3d 698 (9<sup>th</sup> Cir. 1995) (“Katie John I”)].

The Clean Water Act 33 U.S.C. §1251 *et seq.*, requires review of any stationary in-river placement to determine whether it will be an acceptable point-source or non-point pollution source in order to uphold the biological integrity of the waters and will provide adequate species and habitat protection and conservation.

#### *Preliminary assessment of Claims 3.21 and 3.22*

The Board followed the process stipulated in 36 CFR 242.18 and 50 CFR 100.18 which states:

*(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in §100.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the FEDERAL REGISTER, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.*

*(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in §100.11, whichever is earlier.*

*(2) The Board shall publish notice throughout Alaska of the availability of proposals received.*

*(3) The public shall have at least thirty (30) days to review and comment on proposals.*

*(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or*

*would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.*

*(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the FEDERAL REGISTER.*

*(b) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.*

A programmatic Environmental Impact Statement (EIS) for Subsistence Management for Federal Public Lands in Alaska was finalized in 1992, which included the regulation adoption process and provided draft regulations that were later adopted and amended by the Secretaries and by the Board. Programmatic EIS reviews are implemented when agencies are establishing policies, plans, and programs and can effectively frame the scope of subsequent Federal actions. They provide the general approach for subsequent decision making, providing broad programmatic decisions and the parameters for subsequent analyses. Such programmatic EIS reviews are authorized by the National Environmental Policy Act (NEPA). The 1992 EIS satisfies the NEPA requirements pertaining to adopting new regulations for subsistence management on Federal public lands in Alaska.

The Clean Water Act (CWA) does not apply to methods and means authorized for use in a subsistence fishery. According to the Environmental Protection Agency, the CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.<sup>1</sup> Such discharges of pollutants are governed by the National Pollutant Discharge Elimination System (NPDES). Under that system, a “pollutant” is defined as industrial, municipal, or agricultural waste. Currently, the State of Alaska, Department of Environmental Conservation, manages the NPDES permit system under the CWA. There is nothing in the record to suggest that gillnets discharge pollutants as defined by law.

*Conclusion:* There does not appear to be merit to these claims.

### Claim 3.23

Section 802 – decisions be consistent with sound management principles and conservation of healthy populations of fish and wildlife.

Excerpt from Letter # 3 from the State of Alaska (ADF&G), dated July 17, 2015:

The federal and state scientists who testified to the board unanimously recommended that the board reject this proposal. For example, the Office of Subsistence Management (OSM) in its written comments on the proposal explained that “[b]oth early and late-run Chinook salmon [in the Kenai] have been experiencing a period of low productivity and below average run strength.” Because of these low returns the State of Alaska (State) has closed the taking of Chinook salmon in the sport and personal use fisheries in the Kenai River. OSM stated that “[a]llowing the proposed gillnet fishery [in the Kenai] could

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<sup>1</sup> Summary of the Clean Water Act 33 U.S.C. §1251 et seq. (1972), [www.epa.gov](http://www.epa.gov)

result in a harvest of Chinook salmon that would be above sustainable harvest levels” and “would be inconsistent with conserving healthy fish populations.” “Of particular concern is the Chinook salmon which are experiencing below average returns and the potential incidental harvest of stocks or species that are spawning, less abundant, and prone to over harvest.”

Excerpt from Letter # 536, dated July 6, 2015:

While we firmly maintain that the FSB’s approval of FP 15-10 adversely affects our subsistence priority by allowing Ninilchik an exclusive priority to place a community net in the Kenai River, we do not believe allowing all three communities to place a gillnet in the Kenai would rectify this adverse effect. We agree with the OSM staff analysis that such a move would be inconsistent with the policy requirements of ANILCA and maintain that allowing any gillnet fishery on the Kenai River is a violation of recognized practices of fish and wildlife.

ANILCA §802. “It is hereby declared to be the policy of Congress that–

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public land in Alaska is to cause the least adverse impact possible on rural residents who depend on subsistence uses of the resources of such lands: consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to Titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.”

### *Preliminary assessment of Claim 3.23*

This claim implies that the adoption of FP15-10 goes against Section 802 of ANILCA, in that the decision to adopt the community gillnet fishery regulation was not consistent with sound management principles and conservation of healthy populations of fish and wildlife.

The Board received and reviewed the input from both Federal and State fisheries staff through verbal presentation (FSB 2015, pages 199 – 222) and reviewed the staff analysis of FP15-10 (**Appendix D**) in preparation for the January 2015 meeting. Additionally, the Board had access to the Federal public records containing the Council’s October 2014 meeting transcripts and meeting materials (OSM 2014, SCRAC 2014). Fisheries staff from OSM, the Kenai Refuge, and the State all noted the potential for conservation concerns resulting from the use of a gillnet in the Kenai River. The Board indicated conservation concerns can be addressed through the required operational plan thus the Board was aware of the potential for conservation concerns when they made the decision to authorize this fishery.

In addition, the Board stated there are several other Federal and State fisheries open in marine and freshwater environments that target these same fish. For example, Board member Christianson during discussion of FP15-10 at the January 2015 regulatory meeting.

Page 213, lines 21-29:

Yeah, it kind of does answer my question, but my point is that there still is a large commercial fishery taking place at the mouth of the river with a concerned stock and we're talking about limiting the ability of subsistence users to fish, albeit it's in the river and they are fishing terminally, which means we usually have a bigger impact to subsistence users on the stock because we're right there in the river.

Page 214, lines 31-40:

So looking at trying to find a way to support this activity because by any means necessary we should be helping the subsistence user meet their need. This is just again what we call another tool in the box that might help them meet that need. Seeing as there is such a large fishery of every type on that, I don't see why we should exclude another fishery type, especially if it's a singular net for the purpose of feeding people. Some measures can probably be put in place that would make that achievable.

The Board examined a thorough staff analysis that included the best available data related to this issue. The information presented to the Board, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet on the Kenai River during the public meeting, provided the Board a sound basis and substantial evidence for deliberation and decision making.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 3.24

Section 815 – The Board permitted a level of subsistence uses within a conservation unit inconsistent with the conservation of healthy fish and wildlife populations.

Excerpt from Letter # 3 submitted by the State of Alaska (ADF&G), dated July 17, 2015:

The board violates the congressional policies declared in ANILCA when the board fails to ensure the public lands in Alaska are utilized “consistent with sound management principles,” “recognized scientific principles,” and the “conservation of healthy populations of fish and wildlife.” 16 U.S.C. § 3112(1). Under ANILCA, the board may not permit a “level of subsistence uses of fish and wildlife... inconsistent with the conservation of natural and healthy populations [] of fish and wildlife.” Id. § 3125(1).

#### *Preliminary assessment of Claim 3.24*

Claim 3.24 voices concern indicating that the level of subsistence uses authorized by the Board through the adoption of FP15-10 could threaten the conservation of healthy fish populations on the Kenai River. In an effort to avoid threatening the conservation of fish populations, daily and annual harvest limits were established when the Board originally enacted the Federal subsistence fisheries in Federal public waters of the Kenai River. The Board established annual total harvest limits of 4,000 Sockeye, 1,000 late-run Chinook, 3,000 Coho, and 2,000 Pink Salmon. The Board also established daily and annual household

harvest limits of both salmon and resident species, and adopted size and slot limits for resident species and Chinook Salmon to protect fish within certain size ranges.

The Board received input from both Federal and State fisheries staff through verbal presentation and written documentation at the January 2015 Board meeting. Additionally, the Board had access to the Federal public records containing the Council's December 2014 meeting transcripts and meeting materials. The referenced materials contained full analyses of this proposal. Most of the documents do reference the potential for various conservation concerns resulting from the use of a gillnet in the Kenai River. The Board examined a thorough staff analysis that included the best available data related to this issue. The information presented to the Board, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet on the Kenai river during the public meeting, provided the Board a sound basis and substantial evidence for deliberation and decision making.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 3.25

The Board based support for the proposal only on proponent testimony.

Excerpt from Letter # 516, dated July 6, 2015:

The SRAC based its unanimous support of FP15-10 (Federal Subsistence Board Public Regulatory Meeting 1/22/15 Transcripts Volume II, 206;18-19. 216, 41-43) solely on public comments and input provided by the proponents of the proposal.

MR. LOHSE (SRAC): ... For those that have been around for a long time, I'll just make a couple of observations. I can't believe that we're dealing with an issue on the Kenai River. We don't have 20 public testimonies out there in opposition to this proposal. We don't have any public testimonies in opposition to this proposal other than the Alaska Department of Fish and Game. (Federal Subsistence Board Public Regulatory Meeting 1/22/15 Transcript Volume II, 217: 1-20).

At line 46, Chairman Towarak asks:

"You said it was unanimous vote?"

Mr. Lohse: It was an unanimous vote.

Chairman Towarak: Thank you that tells me something." (Federal Subsistence Board Public Regulatory Meeting 1/22/15 Transcript Volume II, 217/218: 46-2)

The transcript of the meeting shows that our input was not sought by the SCRAC, and our voice was not represented, ... FSB members were not informed by the SRAC that the majority of subsistence users in Cooper Landing and Hope absolutely did not support the use of a gillnet as a Federal subsistence tool on the Kenai River.

*Preliminary assessment of Claim 3.25*

The Board was provided copies of the staff analysis for FP15-10 prior to the January regulatory meeting. The record shows that OSM, USFWS, and ADF&G presented analyses and background information for FP15-10 during the January 22, 2015 regulatory meeting in Anchorage. The Board members asked pertinent questions to the presenters (examples inserted below) of Federal and State subject matter experts to further expand their understanding of the issues and differences between the Kenai and Kasilof rivers. Opportunity was also afforded to the public to give testimony during the meeting; however, no affected public attended either the Council or Board meetings with exception of the proponent.

Examples of questions asked by the Board members, as found in the meeting transcripts:

Page 201, lines 26-30:

MR. HASKETT: So, actually, I would like to hear from Andy and Jeff on this one because this is different from the last proposal in terms of -- I mean the spawning area and the amount of fish and what it would do. So if you can just kind of expand on our concerns

Page 201, lines 45 and 46:

MR. CHRISTIANSON: Exactly what is the 5 window for the chinook? I mean is there a peak time and then it trails off?

Page 218, lines 4-11:

MR. CHRISTIANSON: Mr. Chair. A question for Mr. Lohse. So it was unanimous. There was a lot of discussion about the conservation concern with chinook. I was just wondering how that discussion went as far as how the proponent would help deal with that low escapement of the chinook or the conservation concern there if they were to be allowed to operate the gillnet.

Page 218, lines 31-40:

MR. HASKETT: So actually what I'm looking for is -- my understanding is even if the chinook population was high we'd still have a conservation concern. So I'd like to hear a little bit more about that. What the spawning concerns are, what the conservation concern specifically is so that when we talk about it, it's not just kind of we use this conservation concern thing, but people have specifics in their mind about what it is that we're talking about. So either Andy or Jeff.

The claimant states the Board based support for the proposal on information from only one source (the proponent) when in fact the Board was provided the opportunity to review all available materials prior to the beginning of the January 2015 meeting, was presented with additional information at the Board meeting, and the collective information reviewed was weighed during the deliberation and final decision making process for FP15-10.

*Conclusion:* There does not appear to be merit to this claim.

Claim 3.26

Comparisons between the Federal subsistence gillnet and the ADF&G test fishery gillnet are invalid given that both are employed for different purposes (harvest vs. capture and release).

Excerpt from Letter # 10, dated July 6, 2015:

[T]he Board was presented with information that was incorrect. The proponents of FP 15-10 compared the use of a gillnet as a subsistence harvest tool to the use of a gillnet by ADF&G for the sonar/count research program (Federal Subsistence Board Public Regulatory Meeting Materials 1/22/15, Transcript Volume II 205:14-20 and 208:28). Such a comparison is invalid and should never have been used as a justification for placing a gillnet on the Kenai River. As Mr. Matt Miller, a biologist and Southcentral Regional Management Coordinator for the State of Alaska testified at the meeting,

To clarify once again the sonar, the netting program that we do down at the lower river sonar site is a sampling project. It is not to be confused with a fishery. The point of the sampling project is to capture the fish and then release alive. The objective of a fishery would obviously be to kill them and eat them. So (they are) two entirely different things and should not be compared in here.” (Federal Subsistence Board Public Regulatory Meeting 1/22/15 Transcripts Volume II 211: 6-12).

*Preliminary assessment of Claim 3.26*

The Board heard testimony suggesting similarities between the use of a gillnet in-river for the pending Federal subsistence fishery and the ADF&G sonar netting program near the mouth of the Kenai River (river mile 9) at the January 2015 Board meeting. The primary purpose of the gillnet program deployed by ADF&G is to collect representative age-sex-length samples of Kenai River Chinook Salmon. Additionally, the netting project records catch per unit effort catch rates and inserts radio telemetry esophageal tags in approximately 50% of captured Chinook Salmon through June 30 (Perschbacher 2016). ADF&G netting crews are trained to capture, sample, and release all fish caught in the 10 fathom gillnet. The current project design requires samplers to cease fishing the net when a Chinook Salmon is captured (to allow sampling), or the net is determined to be saturated with Sockeye or Pink Salmon, usually greater than 10 fish which may result in net avoidance by later arriving fish. Further, the catch composition of the ADF&G gillnet likely will significantly differ from a gillnet operated in the designated areas below Skilak Lake or in the Moose Range Meadows area.

There is a difference in species composition between the ADF&G river mile 9 gillnet site and the Federal subsistence fisheries sites located approximately 20 or 40 river miles upstream. Additionally, there is a general lack of freshwater resident species in the vicinity of the ADF&G river mile 9 gillnetting site, though single digit numbers of Dolly Varden, flounder, and hooligan are caught annually or biannually in the ADF&G gillnet (Begich 2016, pers. comm.). Resident species, including sea run Dolly Varden and Rainbow Trout, do transit the tidally influenced area where ADF&G conducts the referenced netting project but these species spawn and reside throughout the year further upstream in areas including the referenced Federal subsistence fisheries sites.



The Board inquired about measures used in the ADF&G gillnet fisheries to examine potential measures that may be carried over to the community gillnet to address conservation concerns. The Board also inquired about measures that may be occurring in the State commercial fisheries targeting Chinook meant for the Kenai River.

Prior to deliberating on the FP15-10, Board Member Christianson inquired:

I had a question for the State. There's a lot of talk that there's a huge commercial fishery on this same stock. Most of it must take place in the saltwater. Being a conservation concern for the Chinook, what measures do the commercial fisheries take to stop the interception of this conservation concern they have for the King Salmon fish? I mean it seems there should be some measures taken there as well if we're going to deny subsistence users a priority or even a crack at the fishery (FSB 2015).

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...my point is that there still is a large commercial fishery taking place at the mouth of the river with a concerned stock and we're talking about limiting the ability of subsistence users to fish, albeit it's in the river and they are fishing terminally, which means we [commercial users] usually have a bigger impact to subsistence users on the stock because we're right there in the river. Again, I was just wondering what measures are even taken in the saltwater. Like you said, you reduced the hours and stuff, but I was wondering if there's a mesh size difference or something that helps try to not catch those kings because we could probably use the same measures for the subsistence user in the river if we go ahead and support this proposal. I don't see why we wouldn't (FSB 2015).

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...looking at trying to find a way to support this activity because by any means necessary we should be helping the subsistence user meet their need. This is just again what we call another tool in the box that might help them meet that need. Seeing as there is such a large fishery of every type on that [Kenai River], I don't see why we should exclude another fishery type, especially if it's a singular net for the purpose of feeding people. Some measures can probably be put in place that would make that achievable (FSB 2015).

The Board examined a thorough staff analysis that included the best available data related to this issue. The information presented to the Board, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet on the Kenai river during the public meeting, provided the Board a sound basis and substantial evidence for deliberation and decision making.

*Conclusion:* There does not appear to be merit to this claim.

### Claim 3.27

The Board violated the Administrative Procedures Act (APA) and ANILCA.

Excerpt from Letter # 3 submitted by the State of Alaska (ADF&G), dated July 17, 2015:

The board violates the APA when it has “relied on factors which Congress has not intended to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. CO.*, 463 U.S. 29, 43 (1983). Essentially, the lawfulness of the board’s action depends on whether it “considered the relevant factors and articulated a rational connection between facts found and the choice made.” *Natural res. Def. Council v. Dep’t of the Interior*, 113 F.3d 1121, 1124 (9<sup>th</sup> Cir. 1997). This inquiry requires a “careful, searching review to ensure that the agency has made a rational analysis and decision on the record before it.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 927 (9<sup>th</sup> Cir. 2007); *Pac. Coast Fed’n of Fishermen’s Ass’ns v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1090-91 (9<sup>th</sup> Cir. 2005). Where no evidence supports the board’s decision, a court will be compelled to conclude that the board’s decision is arbitrary and capricious. See e.g., *Ninilchik Traditional Council vs. U.S.* F.3d 1186, 1192 (9<sup>th</sup> Cir. 2000).

#### *Preliminary assessment of Claim 3.27*

The Federal Subsistence Board was provided written and electronic copies of the staff analysis for FP15-10 prior to the January 22, 2015 regulatory meeting for review and consideration. Additionally, the record shows staff from OSM, the USFWS Kenai Fish and Wildlife Conservation Office, and ADF&G presented either analyses or background information for FP15-10 at the meeting. The Board members reviewed a thorough staff analysis, considered the Council’s recommendation, asked questions of the Federal and State subject matter experts, and heard public testimony related to the issue; thus, information was presented and evaluated prior to deliberation and decisions making for FP15-10.

The claimant states the Board violated the APA by “relied on factors which Congress has not intended to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” The Board examined a thorough staff analysis that presented the best available data related to FP15-10. In addition to the analysis, the information presented to the Board at the meeting, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, the public testimony provided, and the thorough discussion between the Board members, the Council Chairs, Federal and State subject matter experts, and the proponent that included extensive consideration of all possible conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

The Board provided extensive opportunity for public input and involvement in compliance with the APA, including publishing a proposed rule in the Federal Register, participation in Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation.

*Conclusion:* There appears to be no merit to this claim.

### Claim 3.28

The Board did not establish a sufficient record to support its decision.

Excerpts from Letter # 3 submitted by the State of Alaska (ADF&G), dated July 17, 2015:

In sum, the board heard no evidence to rebut the testimony from federal and state scientists that adopting this proposal would be inconsistent with sound management principles and conservation of healthy populations of Chinook salmon, rainbow trout, and other species. Nevertheless, the board adopted the proposal. Without any evidence in the record to support the board's decision, a court would be compelled to conclude that the board's decision was arbitrary and capricious. See, e.g. *Ninilchik Traditional Council*, 227F.3d at 1192 (court was "compelled to reject as arbitrary and capricious the [Federal Subsistence] Board's determination" because the record was "void of any evidence" supporting that determination)...

The board failed to articulate the reasons for its decision, relied on factors which Congress did not intend it to consider...

### *Preliminary assessment of Claim 3.28*

Claim 3.28 asserts that the Board did not establish a sufficient record to support their decision. Both Federal and State staff provided the Board with written and verbal presentations which inclusively described various aspects of the Kenai early- and late-run Chinook Salmon runs, the Sockeye and Coho Salmon runs, and information about the residents species present in the waters under Federal subsistence fisheries jurisdiction where the approved gillnet fishery is to take place. OSM's staff analysis for FP15-10 lists all the State Management Plans utilized to manage the Upper Cook Inlet commercial, sport, and personal use fisheries (**Appendix D**).

To further enhance the discussion, Federal and State staff presented current conservation concerns for Chinook Salmon and resident species. Information presented to the Board described the run timing and areas both Chinook Salmon runs are expected to utilize based on work completed by ADF&G (Reimer 2013). The Board was provided written and electronic copies of the staff analysis for FP15-10 prior to the regulatory meeting. The record shows staff from OSM, USFWS, and ADF&G presented information that comprehensively illustrated the potential for conservation concerns resulting from the proposed fishery if not conducted correctly.

Independent of discussions during Board deliberations on the proposal, the Board was presented with the above referenced materials, which each Board member evaluated during deliberation of FP15-10 resulting in approval of this proposal. One Board member built a record for why the individual and their agency adamantly opposed the proposal, one Board member stated they would support the proposal until they heard information which would change their vote, one Board member indicated support for the Council's unanimous approval of the proposal, and one member indicated conservation concerns should be shouldered by other fisheries and that the adopted proposal would allow for another tool to help a community meet its subsistence need and feed people. The remaining Board members did not provide

substantive input beyond casting a vote during final deliberations. However, collectively the Board heard and considered a variety of perspectives on this issue during the meeting, as is reflected in the January 2015 regulatory meeting transcripts. Adoption of FP15-10 was not unanimously supported by the Board, the final vote of 5 to 3 in support of the proposal further confirms that multiple perspectives were represented during deliberation.

The Board examined a thorough staff analysis that included the best available data related to this issue. The information presented to the Board, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, and the thorough discussion during the regulatory meeting with consideration of potential conservation concerns related to the use of a community gillnet on the Kenai River, provided the Board a sound basis and substantial evidence for deliberation and decision making.

*Conclusion:* There does not appear to be merit to this claim.

#### Claim 3.29

The Board should not defer to a Regional Advisory Council when the recommendation is not supported by substantial evidence or violates principals of conservation.

Excerpt from Letter # 3 submitted by the State of Alaska (ADF&G), dated July 17, 2015:

- arguing that the board was required to defer to the regional advisory council, even though under ANILCA the board should not defer to the advisory council if its recommendation “is not supported by substantial evidence [or] violates recognized principles of fish and wildlife conservation,”

#### *Preliminary assessment of Claim 3.29*

Title VIII of ANILCA, 16 U.S.C. §§3111-3126 was enacted so that rural Alaskans could continue a subsistence way of life by creating an administrative structure, “enabling rural residents who have personal knowledge of local conditions and requirement to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska (Section 801(5) of ANILCA).”

Through Title VIII of ANILCA Regional Advisory Councils were established for each subsistence region in Alaska and composed of residents of the region (Section 805(a)(3)). As stipulated in Section 805(c) of ANILCA,

The Secretary, ...in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses.

Section 805(c) of ANILCA further states,

The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs.

Through the Code of Federal Regulations (CFR), the Secretaries established the Board and delegated specific responsibilities, §\_\_.10 Federal Subsistence Board *(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign it responsibility for administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part.*

Claim 3.29 voices concerns regarding the Board deferring to the Regional Advisory Councils, stating that the Council's recommendation is not supported with substantial evidence and could result in violating principles of conservation.

The Board indicated during deliberations of FP15-11 (Kasilof River gillnet) that conservation concerns can be addressed through the required operational plan. Thus, the Board was aware of the potential for conservation concerns when they made the decision to authorize this fishery. The Board also was presented information that indicated an operational plan would be required and the plan would address conservation concerns, as expressed by the Council Chair, Mr. Ralph Lohse, during the January 2015 regulatory meeting regarding FP15-10:

The Southcentral Alaska Subsistence Regional Advisory Council supported this proposal unanimously. We stated that the proposal, if enacted into regulation, would provide for a meaningful subsistence preference. Chinook and rainbow trout harvest will be limited and conservation concerns can be – and I will say will be addressed through an operational plan. The operational plan, with review by the in-season manager, would require prior approval with the land managing agency prior to any fishing (FSB 2015, page 216, lines 41-50).

The proponent provided public comments and stated that the gillnet is a customary and traditional use method and that was shown to us not only by the people who live there, but if any of you followed any of the archeology that's been done on the Kenai River, you can see that that goes back a long way (FSB 2015, pages 217, lines 1-7).

Though discussion about the content of an operational plan was provided in much more detail during deliberations of FP15-11 immediately prior to deliberations of FP15-10, OSM staff informed the Board an operational plan for the Kenai River would be similar in nature to the one required for the Kasilof River fishery (FSB 2015). Authorizing a Federal subsistence fishery with the safeguard of requiring an operational plan containing restrictions and instructions to prevent, avoid, or address conservation concerns should help ensure that principles of conservation are not violated when deployed correctly.

The Board examined a thorough staff analysis that presented the best available data related to FP15-10. In addition to the analysis, the information presented to the Board at the meeting, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, the public testimony provided, and the thorough discussion between the Board members, the Council Chairs, Federal and State subject matter experts, and the proponent that included extensive consideration of all possible conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

Through its deliberation and illustrated by the adoption of FP15-10, the Board was not convinced that the implementation of the Kenai River subsistence community gillnet fishery would violate recognized principles of fish and wildlife conservation. Conversely, the Board in effect agreed with the Council's recommendation that this fishery would provide for a meaningful subsistence opportunity and address subsistence needs.

*Conclusion:* There does not appear to be merit to this claim.

### Claim 3.30

The Board is allowing nets that are far too big and far too lethal.

Excerpt from Letter # 225, dated January 26, 2015:

...Spreading a gillnet across this area frequented by trout and dollies will kill off substantial numbers of these prized fish- a result referred to as "bycatch." The board's proposal also allows gillnets that are far too big and far too lethal.

Excerpt from Letter # 263 from State Representative Max Gruenberg, Jr., dated January 30, 2015:

The Board's rulings allow gillnets to be stretched halfway across the Kenai River in areas where they are likely to incidentally kill large numbers of world class rainbow trout and dolly varden. The Board's rulings include an area below Skilak Lake referred to as "Rainbow Alley". These nets will destroy wild king salmon while we are trying to rebuild that decimated, once vibrant, run.

### *Preliminary assessment of Claim 3.30*

The Board authorized the use of a single net up to 10 fathom long (60 feet) for use as the community gillnet for Kenai River Federal subsistence fishery. Current Federal regulations governing subsistence gillnet fisheries authorize the use of gillnets of various lengths and depths. General statewide Federal subsistence fisheries regulations limit gillnet length to 50 meters, unless otherwise specified. The gillnet authorized by the Board for use in the Kenai River is the shortest net length authorized in Federal subsistence fishery regulations at 10 fathoms, and matches the regulations in place for the Kasilof River experimental community gillnet and the Tustumena Lake winter fishery in the Southcentral area, as well as the Togiak River salmon drift net fishery in the Bristol Bay area. The longest gillnets authorized in Federal subsistence regulations are in the Alaska Peninsula area at 100 fathoms.

The Board examined a thorough staff analysis that presented the best available data related to FP15-10. In addition to the analysis, the information presented to the Board at the meeting, the requirement of an approved operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, the public testimony provided, and the thorough discussion between the Board members, the Council Chairs, Federal and State subject matter experts, and the proponent that included extensive consideration of all possible conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

*Conclusion:* There does not appear to be merit to either portion of this claim.

### Claim 3.31

Regulations should not include the harvest of Kenai River Chinook Salmon.

Excerpt from Letter # 225 from State Representative Les Gara, dated January 26, 2015:

The board's proposal should not include King Salmon so long as we are working hard to reestablish what was once a run so ample that Alaskans flocked to the Kenai River to try to catch this uniquely large strain of King Salmon.

### *Preliminary assessment of Claim 3.31*

Federally qualified subsistence users who have a customary and traditional determination for Chinook Salmon in the Kenai River are authorized to harvest Chinook Salmon under Federal subsistence regulations. Daily and annual harvest limits were established by the Board when it originally enacted the Federal subsistence fisheries in Federal public waters of the Kenai River. The Board established a drainage-wide total seasonal harvest limit of 4,000 Sockeye, 1,000 late-run Chinook, 3,000 Coho, and 2,000 Pink Salmon. The annual total harvest limit of the combined gill net, dip net, and rod and reel late-run Chinook Salmon fisheries which take place in two of the three dip net/rod and reel Federal subsistence fisheries areas (retention of Chinook Salmon above Skilak Lake is prohibited) is 1,000 fish with a household limit of ten fish for the head of the household with an additional two fish for each additional household member. The harvest of early-run Chinook Salmon is prohibited in the dip net/rod and reel regulations. The Board did not specifically establish Chinook Salmon harvest limits for the gillnet fishery because annual and household limits were already established in regulation, and any additional concerns could be addressed through the mandatory operational plan.

The Board examined a thorough staff analysis that presented the best available data related to FP15-10. In addition to the analysis, the information presented to the Board at the meeting, the requirement of an approved Operational Plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, the public testimony provided, and the thorough discussion between the Board members, the Council Chairs, Federal and State subject matter experts, and the proponent that included extensive consideration of all possible conservation concerns related to the use of a community gillnet during the public meeting, provided a sound basis and substantial evidence for Board decision making.

*Conclusion:* There does not appear to be merit to this claim.

### Claim 3.32

There is no adequate window of opportunity between the early- and late-run Chinook Salmon on the Kenai to allow for safe harvest.

Excerpt from Letter # 3 submitted by the State of Alaska (ADF&G), dated July 17, 2015:

OSM also explained that in the Kenai, "[b]ecause of overlapping migration timing for the early-run and late-run Chinook salmon and rainbow/steelhead trout, there is no time

window when gillnets could be deployed to miss both species.” In this way the Kenai River differs from the Kasilof River where there is a time window between the early and late runs of Chinook salmon.

It was argued that the board should allow Ninilchik residents to use a gillnet in the Kenai because the board had just approved their using a gillnet in the Kasilof: “we don’t see why it would be any different [in the Kenai] even though some have raised the same conservation concerns.” But federal and state scientists testified that the Kenai was different because in the Kenai there is no time window when a gillnet can be used to avoid harvesting Chinook salmon.

Excerpt from Letter # 360 submitted by the USFWS (page 23), dated July 15, 2015:

Federal subsistence regulations also require release of early-run Chinook Salmon for existing dip net fisheries.

### *Preliminary assessment of Claim 3.32*

Both Federal and State staff provided the Board with written and verbal presentations during the January 2015 meeting which described the run timing of the Kenai River early- and late-run Chinook Salmon. Information presented to the Board described the run timing and areas both Chinook Salmon runs are expected to utilize based on work completed by ADF&G (Bendock and Alexandersdottir 1992, Reimer 2013). The Board was provided written and electronic copies of the staff analysis for FP15-10 prior to the regulatory meeting. The record shows staff from OSM, USFWS, and ADF&G presented information which illustrates the lack of a time window in the discussed Federal public waters where the early and late runs do not overlap.

The comments synthesized by the Interagency Staff Committee for FP15-10 state “There are conservation concerns with Chinook Salmon in the Kenai River and early and late-run Chinook Salmon are in the Kenai River during the proposed season (OSM 2015).” Additionally, USFWS Board member and Regional Director, Geoff Haskett stated during deliberations of FP15-10 (FSB January 2015), “Unlike the situation in the Kasilof, there's no distinct time period when gillnets could be used to address our concerns of stocks for species that are spawning, those that are less abundant or prone to overharvest, or those of critical size.”

Federal subsistence regulations set (by species) annual total limits, household harvest limits, and seasonal dates for the Kenai River dip net/rod and reel fishery (§\_\_\_\_.27(i)(10)(iv)(D)), which also apply to the Kenai River community gillnet fishery (§\_\_\_\_.27(i)(10)(iv)(J)) that was adopted through FP15-10. These regulations allow for a late-run Chinook Salmon annual total harvest of 1,000 fish, a household limit of 10 per head of household and an additional 2 for each additional family member, and a season from July 16 to September 30. The July 16 date for the start of the fishery corresponds to the start of the late-run of Chinook Salmon in the Kenai River. There is no harvest allowed for early-run Chinook Salmon under these fisheries, and as such the allowable fishing dates for Kenai River community gillnet fishery (June 15 to August 15) have created a regulatory conflict.



*Conclusion:* There may be merit to this claim. Early-run Chinook Salmon are in the Kenai River prior to July 16, the allowable fishing season for Chinook Salmon under relevant Federal subsistence fishing regulations begins on July 16, and the Kenai River community gillnet fishery season extends from June 15 through August 15. While there is some degree of ability to target particular species by gear placement (e.g., Sockeye Salmon tend to be bank oriented), it is possible that Chinook Salmon may be captured in the gillnet during the closed period and that some mortality may occur. Additional Board action or changes to Federal regulations will need to occur to resolve this regulatory conflict.

#### Claims 3.33, 3.12, and 3.13

These claims principally express concerns based on the mortality of incidentally caught trout and char 18 inches or longer.

#### Claim 3.33

The new regulation conflicts with existing Federal regulations on harvest limits and size selectivity.

Excerpt from Letter # 360 submitted by the USFWS (page 23), dated July 15, 2015:

The Service believes the Board's adoption of FP 15-10 as written will inevitably result in violations of existing Federal subsistence regulations including size-selective and harvest limit regulations for Chinook Salmon, Rainbow Trout, and Dolly Varden. Existing Federal subsistence regulations for early-run Chinook Salmon require release of fish between 46 and 55 inches to conserve the unique large size early-run stock in the Kenai River as discussed above; regulations also identify a daily harvest and possession limit of 2 fish and a season harvest limit of 4 fish. ... Existing regulations for Rainbow Trout and Dolly Varden limit harvest to one fish per day less than 18" below Skilak Lake, either in rod and reel or dip net fisheries. Current selective harvest methods (dip net and rod and reel) in exiting Federal subsistence fisheries allow for the fine scale management necessary to conserve salmon and resident species in the Kenai River watershed, but a gillnet fishery will not.

The ANILCA provides a priority for non-wasteful subsistence uses of resources, but without question, a gillnet fishery on the Kenai River will kill some salmon and resident species that are not legal to harvest and will injure others leading to additional unintended mortality, regardless of how a gillnet fishery is prosecuted. Allowing subsistence users to keep any fish caught in the nets would address the issue of wonton waste; however, the size and harvest limits currently in regulations were promulgated to address conservation concerns. As discussed above in in Section 1, these mortality levels for Chinook Salmon may approach 30%, even with adoption of best management practices that include use of tangle nets, live recovery boxes, and careful handling procedures. A gillnet fishery targeting Sockeye, Chinook, Coho, and Pink Salmon will result in unintended harvest of Rainbow Trout, Dolly Varden, and Chinook salmon that violate existing regulations, either by harvesting fish larger than current regulations or exceeding daily harvest limits.

Claim 3.12

Gillnets are incompatible with the required release of any incidentally harvested 18 inch or larger trout/char.

Excerpt from Letter # 3 from the State of Alaska (ADF&G), dated July 17, 2015:

The scientists testifying were also unanimous in stating rainbow trout caught in a gillnet are not likely to survive; however, under both state and federal regulations rainbow trout caught in the Kenai River greater than 18 inches must be released alive immediately...

The undisputed evidence before the board showed that adopting this proposal would be inconsistent with sound management principles and the conservation of healthy Chinook salmon, rainbow trout, and other species.

...

OSM also explained that the Kenai has resident species – rainbow and steelhead trout, Dolly Varden, and Arctic char – that are conservatively managed. The size limit for these fish under federal and state regulations is less than eighteen inches in length, and the daily and possession limits are one. For these fish, any caught that are over eighteen inches or greater in length must be released alive immediately. OSM explained that the “nonselective nature of a gillnet fishery on the harvest of resident species [in the Kenai] would make imposing any size restrictions and conservative daily/possession limits difficult and could possibly result in an over harvest of resident species.”

...

OSM also explained that in the Kenai “[b]ecause of overlapping migration timing for the early-run and late-run Chinook salmon and rainbow/steelhead trout, there is no time window when gillnets could be deployed to miss both species.”

Claim 3.13

Incidental harvest of trout/char longer than 18 inches could lead to a high rate of mortality.

Excerpt from Letter # 24, dated July 6, 2015:

Our conservation concerns also extend to other resident species in the Kenai River. When the additional number of rainbow trout, Dolly Varden, and steelhead harvested with a community gillnet are combined with the harvest levels allowed in the sport fishery, the outcome could be an overharvest of these species, which would pose a threat to conserving healthy populations of resident fish. In addition, the by-catch of rainbow trout and Dolly Varden longer than 18 inches is of concern. Capture in a gillnet, even with the required release of these larger fish, ensure a high rate of mortality.

*Preliminary assessment of Claims 3.33, 3.12, and 3.13*

Claims 3.33, 3.12, and 3.13 imply that the Kenai River community gillnet regulation is in conflict with current Federal subsistence regulation in regards to harvest limits and size selectivity. Specifically,

concerns were raised about this gear type and the harvest of Rainbow Trout and Dolly Varden 18 inches or greater in length. Additionally, Claim 3.33 includes concerns regarding the release of early-run Chinook Salmon between 46 and 55 inches in length, and exceeding daily and seasonal harvest limits. The Board indicated that conservation concerns resulting from use of a gillnet in the Kenai River, could be addressed through the required operational plan.

The Interagency Staff Committee provided comments on FP15-10, both in writing and on the record at the public meeting that state:

If the Board rejects the Council recommendation, it could do so based on exceptions in Section 805 (c) of ANILCA. Allowing the use of gillnets in the Kenai River could be viewed as a violation of recognized principals of fish and wildlife conservation as gillnets do not allow for species, stock and size selective harvest. Unlike the situation in the Kasilof, there's no distinct time period when gillnets could be used to address concerns of stocks for species that are spawning, those that are less abundant or prone to overharvest or those of critical size. The proposed regulation states that rainbow trout and Dolly Varden 18 inches or greater must be released. However, any fish caught in a gillnet would likely result in mortality. There are conservation concerns with Chinook Salmon in the Kenai River and early and late run Chinook Salmon are in the Kenai River during the proposed season (FSB 2015).

Following the Interagency Staff Committee, the Board continued to discuss conservation concerns and the Council reaffirmed that concerns could be addressed in the operational plan. The Board then discussed mortality specifically with the State of Alaska Department of Fish & Game in regard to their educational gillnets located near the mouth of the Kenai River.

The Board received and reviewed the input from both Federal and State fisheries staff through verbal presentation (FSB 2015, pages 199 – 222) and reviewed the OSM staff analysis of FP15-10 (**Appendix D**) in preparation for the January 2015 meeting. Additionally, the Board had access to the Federal public records containing the Council's December 2014 meeting transcripts and meeting materials (OSM 2014, SCRAC 2014). The reference materials included relevant Federal subsistence regulations, which define daily, household, and annual harvest limits, as well as size retention limitations for Chinook Salmon, Rainbow Trout, and Dolly Varden.

Federal subsistence regulations set (by species) annual total limits, household harvest limits, and seasonal dates for the Kenai River dip net/rod and reel fishery (§\_\_\_\_.27(i)(10)(iv)(D)), which also apply to the Kenai River community gillnet fishery (§\_\_\_\_.27(i)(10)(iv)(J)) that was adopted through FP15-10. These regulations allow for a late-run Chinook Salmon annual total harvest of 1,000 fish, a household limit of 10 per head of household and an additional 2 for each additional family member, and a season from July 16 to September 30. They allow for the retention of incidentally caught fish for both Kenai River fishing sites below Skilak Lake except that all Rainbow Trout and Dolly Varden 18 inches or greater in length must be released.

There are also separate Kenai River Federal subsistence rod and reel fisheries with specific provisions for salmon (§\_\_\_\_.27(i)(10)(iv)(E)) and resident species (§\_\_\_\_.27(i)(10)(iv)(F)). In this fishery, 2 early-run Chinook Salmon may be harvested prior to July 16, and 4 Chinook Salmon may be taken over the course

of the whole season. These regulations limit retention of Rainbow Trout and Dolly Varden in the Kenai River below Skilak Lake to one of each species per day less than 18 inches in length. None of these regulations, however, are applicable to the Kenai River community gillnet fishery.

*Conclusion:* There may be merit to these claims. The requirement to release Rainbow Trout and Dolly Varden 18 inches in length or greater is listed in the two applicable sections of Federal subsistence regulations (§\_\_\_\_.27(i)(10)(iv)(D) and §\_\_\_\_.27(i)(10)(iv)(J)). While there is some degree of ability to target particular species by gear placement (e.g., Sockeye Salmon tend to be bank oriented), it is possible that Rainbow Trout and Dolly Varden 18 inches or greater in length may be captured in the gillnet during the fishing season and that some mortality may occur. Additional Board action or changes to Federal regulations will need to occur to resolve this regulatory conflict.

#### Claim 3.34

A subsistence gillnet may not be compatible with the primary purposes outlined in ANILCA for the Kenai National Wildlife Refuge (NWR).

Excerpts from Letter # 360 submitted by the USFWS, dated July 15, 2015:

#### Compatibility with Kenai National Wildlife Refuge Establishment Purposes

While it is clear that the intent of the ANILCA was to provide for continued subsistence use on federal public lands in Alaska, in pursuit of providing continued subsistence opportunity on refuges in Alaska, the Service must ensure that actions are taken in a manner compatible with the statutory purposes for which each national wildlife refuge in Alaska was established. Providing for subsistence (in reference to compatibility with refuge purposes) is first raised in Title 1, Sec. 101 (c) which states, “It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so:”. In addition, Title VIII, Sec. 802 (1) states. “[It is hereby declared to be the policy of Congress that] consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so. Additionally, Sec. 815 (4) states that “{Nothing in this title shall be construed as} modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge Administration Act of 1966.....”. Section 304 of the Act also adopts the compatibility standard of the National Wildlife Refuge

Administration Act of 1966, directing the Secretary to focus on the established purposes (in Section 303) when deciding which uses to permit on the refuges. So while Kenai NWR is subject to Title VIII of the ANILCA, in implementing its subsistence program, it must do so in compliance with other provisions of the Act.

Also from Letter# 360 submitted by the USFWS, dated July 15, 2015:

The purposes that the ANILCA established for the Kenai NWR were unique (compared to the other 15 refuges created or whose purposes were modified under the Act) in three ways. None of the other Alaska refuges were provided purposes for scientific research, interpretation, environmental education, and land management training. None of the other refuges were given a purpose to provide opportunities for fish and wildlife-oriented recreation. Additionally, Kenai NWR was the only refuge not given the purpose “to provide in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents.” This difference does not mean that subsistence cannot occur at Kenai NWR; in fact, the ANILCA also provides for a general subsistence preference for consumptive use of fish and wildlife on all Federal public lands within Alaska; however, because of the legal ramifications of the compatibility standard, and how it applies only to specific purposes, Kenai NWR is unique in how it must balance subsistence uses in meeting its specific mandated purposes.

#### *Preliminary assessment of Claim 3.34*

The primary refuge purposes outlined in Title III of ANILCA for the Kenai National Wildlife Refuge (NWR) do not include subsistence; however, in the legislative history and past congressional testimonies there is a common theme to protect and maintain the flora and fauna within each refuge while providing opportunities for subsistence under Title VIII of ANILCA.

In 2007, the Kenai NWR indicated in their compatibility determination for Subsistence:

The Kenai National Wildlife Refuge is unique in that it is the only Alaska National Wildlife Refuge that does not have an ANILCA purpose to continue to provide for subsistence opportunities. It is also unique in being the only Alaska Refuge with a specific purpose to provide opportunities for wildlife oriented recreation.

In 1996, contained in an order for *Ninilchik Traditional Council v. United States*, Judge Sedwick determined that there was “no significance” in the legislation establishing the Kenai NWR not listing subsistence as a primary purpose of the refuge. Even though the 1996 case is in reference to hunting moose in Unit 15, the significance of Judge Sedwick’s “no significance” determination has direct bearing on the issue at hand. The 1996 order states:

Defendants point out that GMU 15 lies within the Kenai National Wildlife Refuge. They observe that the statute creating the refuge requires that it be managed so as to provide an opportunity for wildlife-oriented recreation and does not mention any need to manage the refuge for subsistence hunting purposes. However, defendants point to nothing in the legislation creating the refuge which suggests that the ANILCA decreed priority afforded

subsistence taking of fish and game over other consumptive uses of such resources is inapplicable in the refuge. For purposes of the present controversy, the court finds no significance in the fact that the relevant public lands lie within the Kenai National Wildlife Refuge.

Kenai NWR completed a compatibility determination for subsistence in 2007 while revisiting the Refuge's Comprehensive Conservation Plan and Environmental Impact Statement. According to the 2007 compatibility determination for Kenai NWR:

Each subsistence proposal must be reviewed on a case-by-case basis. This compatibility determination complies with the legal requirements to review all uses of national wildlife refuges in order for them to be permitted, recognizing the unique requirements that ANILCA places on this particular use. The Refuge Manager must look at each proposed change to Kenai NWR subsistence regulations and determine whether the proposal is significant enough to warrant a re-evaluation of this determination. If so, consistent with National policy, a new compatibility determination must be prepared, with public involvement, before the modified use can be permitted.

At the time of Board deliberation on FP15-10 and at the time of this RFR, Kenai NWR has not made any indication that the proposal is significant enough to warrant a re-evaluation of the current compatibility determination. Without a new compatibility determination in place, it would be impossible for the Board to reconsider or predict a different outcome based on a hypothetical compatibility scenario. Additionally, in consultation with the Department of Interior's Solicitor's office, it has been clarified the compatibility standard is applied by refuges to assess whether a specific use is compatible with the purposes of the refuge. Accordingly, the compatibility standard is not intended to be used to assess a gear type.

USFWS further asserts in Letter # 360 that Section 802 of ANILCA applies in this situation.

Letter # 360 utilized the following from Section 802 (1) of ANILCA:

[It is hereby declared to be the policy of Congress that] consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible to rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.

The Senate Committee on Energy and Natural Resources clarifies in its report on H.R. 39 stated that "the phrase 'the conservation of healthy populations of fish and wildlife' is to mean the maintenance of fish and wildlife resources in their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem . . ." (S. Rep. No. 96-413 at 233, *reprinted in* 1980 U.S.C.C.A.N. 5177).

The Board examined a thorough staff analysis that presented available data for FP15-10. The information presented to the Board, the requirement for an operational plan with ongoing coordination between the proponent, the Federal in-season manager, and the Refuge Manager, and the discussion with consideration of potential conservation concerns related to the use of a community gillnet during the public meeting provided a sound basis and substantial evidence for the Board decision making.

*Conclusion:* There does not appear to be merit to this claim.

## **SUMMARY**

In response to the Federal Subsistence Board's adoption of FP15-10, the Board received 740 requests for reconsideration. A total of 40 substantive claims were identified and summarized in relation to the community gillnet fishery for the Kenai River (**Appendix C**). Claims 1.4, 3.12, 3.13, 3.32, and 3.33 appear to reach the threshold to warrant a reconsideration of FP15-10, as required by the Subsistence Management Regulations for Public Lands in Alaska (36 CFR 242.20(d) and 50 CFR 100.20(d)). Claim 1.4 presents new information that the Board did not consider regarding public safety and Claims 3.12, 3.13, 3.32 and 3.33 illustrate that adoption of FP15-10 is contrary to existing law and requires additional action by the Board.

## **OSM PRELIMINARY CONCLUSION**

**Support** request to reconsider FP15-10.

### **Justification**

Claims 1.4, 3.12, 3.13, 3.32, and 3.33 may have merit under Criterion 1(provides information not previously considered by the Board) and Criterion 3(demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law), which justifies the need for full analysis and possible reconsideration by the Board. All other claims presented in this threshold analysis do not appear to meet the established criteria. OSM recommends fully analyzing claims 1.4, 3.12, 3.13, 3.32, and 3.33.

Claim 1.4 presents new information the Board did not consider during their deliberation of FP15-10. While the Board may have assumed by inference that the operational plan would include conditions to reduce or eliminate potential public safety concerns as described above, the Federal Public Record does not contain reference to public safety. Discussion at the Board meeting did not reference public safety nor provide guidance to staff on how to address or prevent potential these concerns.

Claim 3.32 illustrates that adoption of FP15-10 is contrary to existing law. Early-run Chinook Salmon are in the Kenai River prior to July 16, the allowable fishing season for Chinook Salmon under relevant Federal subsistence fishing regulations begins on July 16, and the Kenai River community gillnet fishery season extends from June 15 through August 15. While there is some degree of ability to target particular species by gear placement (e.g., Sockeye Salmon tend to be bank oriented), it is possible that Chinook Salmon may be captured in the gillnet during the closed period and that some mortality may occur. Additional Board action or changes to Federal regulations will need to occur to resolve this conflict if the community gillnet fishery is to continue.

Claims 3.33, 3.12, and 3.13 illustrate that adoption of FP15-10 is contrary to existing law. The requirement to release Rainbow Trout and Dolly Varden 18 inches in length or greater is listed in the two applicable sections of Federal subsistence regulations (§\_\_\_\_.27(i)(10)(iv)(D) and §\_\_\_\_.27(i)(10)(iv)(J)). While there is some degree of ability to target particular species by gear placement (e.g., Sockeye Salmon tend to be bank oriented), it is possible that Rainbow Trout and Dolly Varden 18 inches or greater in length may be captured in the gillnet during the fishing season and that some mortality may occur. Additional Board action or changes to Federal regulations will need to occur to resolve this conflict if the community gillnet fishery is to continue.



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USFWS. 2007. Compatibility Determination. August 14, 2007. Kenai National Wildlife Refuge, USFWS. Soldotna, AK. 6 pages.

**APPENDIX A: List of Requests for Reconsideration RFR15-01**

<b>File #</b>	<b>Name</b>	<b>Date</b>	<b>Subject</b>	<b>Organization</b>
1	Abrams, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
2	Adams, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
3	Addendum RFR Kenai Gillnets - State of AK RFR	17-Jul-15	Kenai	State of AK
4	Adelmann, T	7-Jul-15	Kenai, Kasilof	
5	Allange, R	14-Jun-15	Kenai, Kasilof	
6	Alamandinger, R	5-May-15	Kenai, Kasilof	
7	Almanrode, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
8	Amos, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
9	Anderson, D	13-May-15	Kenai, Kasilof	
10	Anderson, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
11	Anderson, J	5-Jun-15	Kenai, Kasilof	
12	Anderson, J	11-Jul-15	Kenai, Kasilof	
13	Anderson, J	19-Jun-15	Kenai, Kasilof	
14	Appling, S	5-Jul-15	Kenai, Kasilof	
15	Ash, C	27-Jun-15	Kenai, Kasilof	
16	Askren, J	8-Jun-15	Kenai, Kasilof	
17	Atkmisa, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
18	Augustine, R	2-Jul-15	Kenai, Kasilof	
19	Baird, D	8-Jun-15	Kenai, Kasilof	
20	Baker, J	3-Jul-15	Kenai, Kasilof	
21	Baker, J	27-Jun-15	Kenai, Kasilof	
22	Bakic, M	10-Jun-15	Kenai, Kasilof	

23	Bakic, N	10-Jun-15	Kenai, Kasilof	
24	Barchers, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
25	Barrett, M	13-May-15	Kenai, Kasilof	
26	Barron, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
27	Barry, K	13-May-15	Kenai, Kasilof	
28	Barry, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
29	Bartholomew, C	20-May-15	Kenai, Kasilof	
30	Bartlett, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
31	Basinger, R	2-Jul-15	Kenai, Kasilof	
32	Bauer, B	12-Jun-15	Kenai, Kasilof	
33	Bauer, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
34	Bauer, T	13-Jul-15	Kenai, Kasilof	
35	Baur, S	8-Jun-15	Kenai, Kasilof	
36	Baxter, R	11-May-15	Kenai, Kasilof	
37	Bear, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
38	Bear, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
39	Becker, R	2-Jul-15	Kenai, Kasilof	
40	Bellanger, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
41	Bellinger, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
42	Bencik, R	3-Jul-15	Kenai, Kasilof	
43	Benkert, J	19-May-15	Kenai, Kasilof	
44	Benkert, J	13-May-15	Kenai, Kasilof	

45	Benson, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
46	Bentley, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
47	Binder, R	16-May-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
48	Binder, R	19-May-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
49	Birch, B	3-Jul-15	Kenai, Kasilof	
50	Bishop, J	2-Jul-15	Kenai, Kasilof	
51	Black, J	2-Jul-15	Kenai, Kasilof	
52	Blaine, J	26-Jan-15	Kenai	
53	Blevins, B	11-May-15	Kenai, Kasilof	
54	Blough, C	16-Jun-15	Kenai, Kasilof	
55	Blubaugh, J	14-May-15	Kenai, Kasilof	
56	Bond, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
57	Booton, E	29-Jan-15	Kenai	
58	Borchers, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
59	Boswell, D	2-Jul-15	Kenai, Kasilof	
60	Bowman, C	2-Jul-15	Kenai, Kasilof	
61	Bowman, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
62	Bowman, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
63	Boyer, R	13-May-15	Kenai, Kasilof	
64	Braden, A	18-Jun-15	Kenai, Kasilof	
65	Brantley, B	2-Jul-15	Kenai, Kasilof	
66	Bray, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

67	Brennan, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
68	Heim, G	21-May-15	Kenai, Kasilof	Cooper Landing Advisory Committee
69	Balfany, M	2-Jul-15	Kenai, Kasilof	
70	Brewer, R	5-Jun-15	Kenai, Kasilof	
71	Bromiley, P	11-Jul-15	Kenai, Kasilof	
72	Bronga, T	16-Jun-15	Kenai, Kasilof	
73	Brooks, J	2-Jul-15	Kenai, Kasilof	
74	Brooks, J	17-May-15	Kenai, Kasilof	
75	Broom, D	5-Jul-15	Kenai, Kasilof	
76	Brophy, J	16-May-15	Kenai, Kasilof	
77	Brophy, K	16-May-15	Kenai, Kasilof	
78	Brown, B	19-May-15	Kenai, Kasilof	
79	Brown, J	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
80	Brown, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
81	Bruce, D	6-Jul-15	Kenai, Kasilof	
82	Bryant, T	14-May-15	Kenai, Kasilof	
83	Bucy, D	22-May-15	Kenai, Kasilof	
84	Bucy, R	5-Jun-15	Kenai, Kasilof	
85	Bundalo, N	2-Jul-15	Kenai, Kasilof	
86	Bureau, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
87	Burgin, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
88	Burlingame, R	21-May-15	Kenai, Kasilof	
89	Burton, R	14-May-15	Kenai, Kasilof	
90	Bussen, A	14-May-15	Kenai, Kasilof	
91	Butler, D	7-Jun-15	Kenai, Kasilof	
92	Calip, L	13-Jun-15	Kenai, Kasilof	

93	Carlson, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
94	Carlson, D	10-Jun-15	Kenai, Kasilof	
95	Carlson, W.	13-May-15	Kenai, Kasilof	
96	Carroll, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
97	Carter, P.	21-May-15	Kenai	
98	Cavallo, A.	4-Jul-15	Kenai, Kasilof	
99	Chadwick, A	16-May-15	Kenai, Kasilof	
100	Chapman, P	17-May-15	Kenai, Kasilof	
101	Cho, J	21-May-15	Kenai, Kasilof	
102	Ciapponi, B	2-Jul-15	Kenai, Kasilof	
103	Coburn, J	7-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
104	Coburn, J	12-Jul-15	Kenai, Kasilof	
105	Coe, T.	13-May-15	Kenai, Kasilof	
106	Cooper Landing	30-May-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
107	Corbey, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
108	Corbey, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
109	Corbey, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
110	Corp, L	23-Jun-15	Kenai, Kasilof	
111	Cosgrove, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
112	Cosgrove, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
113	Cotton, S	20-Jul-15	Kenai	ADF&G
114	Cowan, T	12-Jul-15	Kenai, Kasilof	

115	Cox, S	21-May-15	Kenai, Kasilof	
116	Crim, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
117	Cross, P	2-Jul-15	Kenai, Kasilof	
118	Crowell, D	2-Jul-15	Kenai, Kasilof	
119	Crumrine, B	2-Jul-15	Kenai, Kasilof	
120	Cummingham, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
121	Cummins, B	2-Jul-15	Kenai, Kasilof	
122	Cunningham, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
123	Curry, J	17-May-15	Kenai, Kasilof, Makhnati	United Fishermen of Alaska
124	France, D	27-Jan-15	Kenai	
125	Daberkow, R	2-Jul-15	Kenai, Kasilof	
126	Dandrand, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
127	Dandrand, A	13-May-15	Kenai, Kasilof	
128	Davenport, M	2-Jul-15	Kenai, Kasilof	
129	Davidson, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
130	Davis, S	2-Feb-15	Kenai, Kasilof	
131	Davis, F	2-Jul-15	Kenai, Kasilof	
132	Davis, J	12-Jun-15	Kenai, Kasilof	
133	Dawson, D	10-Jul-15	Kenai, Kasilof	
134	Dawson, T	13-May-15	Kenai, Kasilof	
135	Defrance, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
136	Degernes, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
137	Delarm, T	5-Jun-15	Kenai, Kasilof	
138	Deliman, S	5-Jun-15	Kenai, Kasilof	

139	Demattia, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
140	Demattia, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
141	Dennis, J	19-May-15	Kenai, Kasilof	
142	Dicken, J	5-Jun-15	Kenai, Kasilof	
143	Dickinson, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
144	Dickinson, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
145	Dietzel, D	21-May-15	Kenai, Kasilof	
146	Dingle, J	5-Jun-15	Kenai, Kasilof	
147	Diument, J	14-Jun-15	Kenai, Kasilof	
148	Dixon, G	21-May-15	Kenai, Kasilof	
149	Donahue, C	5-Jun-15	Kenai, Kasilof	
150	Donahue, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
151	Donahue, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
152	Pitts, D	18-Jun-15	Kenai, Kasilof	
153	Ventrice, D	2-Jul-15	Kenai, Kasilof	
154	Donelson, P	5-May-15	Kenai, Kasilof	
155	Donnally, J	20-Jun-15	Kenai, Kasilof	
156	Doroff, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
157	Douglass, S	2-Jul-15	Kenai, Kasilof	
158	Dragseth, J	8-Jun-15	Kenai, Kasilof	
159	Drake, D	20-May-15	Kenai, Kasilof	
160	Drath, J	20-May-15	Kenai, Kasilof	
161	Drath, JJ	20-May-15	Kenai, Kasilof	
162	Dreifuerst, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community



163	Dreifuerst, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
164	Drummer, M	2-Jul-15	Kenai, Kasilof	
165	Duarte, A	2-Jul-15	Kenai, Kasilof	
166	Dugan, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
167	Ecklund, C	8-Jun-15	Kenai, Kasilof	
168	Eckroth, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
169	Eichelberger, D	11-Jun-15	Kenai, Kasilof	
170	Elicerio, A	16-Jun-15	Kenai, Kasilof	
171	Elie, K	6-Jul-15	Kenai	
172	Elkins, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
173	Ellison, Z	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
174	Engoars, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
175	Ennis, S	20-May-15	Kenai, Kasilof	
176	Erickson, J	13-May-15	Kenai, Kasilof	
177	Erickson, J	14-Jun-15	Kenai, Kasilof	
178	Erickson, M	13-May-15	Kenai, Kasilof	
179	Erkeneff, R	20-May-15	Kenai, Kasilof	
180	Erni, J	2-Jul-15	Kenai, Kasilof	
181	Everingham, C	5-Jun-15	Kenai, Kasilof	
182	Fagnani, M	9-Jun-15	Kenai, Kasilof	
183	Farrington, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
184	Farrington, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
185	Faust, M	17-May-15	Kenai, Kasilof	

186	Feichtiroger, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
187	Ferry, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
188	Ferguson, S	2-Jul-15	Kenai, Kasilof	
189	Fetko, M	14-Jun-15	Kenai, Kasilof	
190	Field-Sloan, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
191	Field-Sloan, S	10-Jun-15	Kenai, Kasilof	
192	Fischer, S	22-May-15	Kenai, Kasilof	
193	Fish, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
194	Fish, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
195	Fishbach, R	16-May-15	Kenai, Kasilof	
196	Fiske, R	2-Jul-15	Kenai, Kasilof	
197	Fitzgerald, G	21-May-15	Kenai, Kasilof	
198	Fiutem, C	2-Jul-15	Kenai, Kasilof	
199	Fleetwood, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
200	Flothe, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
201	Flothe, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
202	Fluke, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
203	Fontana, M	3-Jul-15	Kenai, Kasilof	
204	Forbush, C	11-Jun-15	Kenai, Kasilof	
205	Fortin, S	5-Jun-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

206	Foster, A	14-May-15	Kenai, Kasilof	
207	Foster, B	6-Jun-15	Kenai, Kasilof	
208	Fowler, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
209	Fowler, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
210	Fowler, J	5-Jul-15	Kenai, Kasilof	
211	Francisco, D	6-Jun-15	Kenai	
212	Frawner, E	8-Jun-15	Kenai, Kasilof	
213	Fritts, J	10-Jul-15	Kenai, Kasilof	
214	Frygier, E	3-Jul-15	Kenai, Kasilof	
215	Fugere, J	13-Jul-15	Kenai, Kasilof	
216	Furtin, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
217	Galbozaith, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
218	Galbraith, Y	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
219	Gales, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
220	Gales, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
221	Gall, L	6-Jun-15	Kenai, Kasilof	
222	Gall, T	5-Jun-15	Kenai, Kasilof	
223	Gambini, Y	26-Jun-15	Kenai, Kasilof	
224	Gonzales, O	22-Jun-15	Kenai, Kasilof	
225	Gara, L	26-Jan-15	Kenai	Alaska State Legislature
226	Gaskins, M	2-Jul-15	Kenai, Kasilof	
227	Gaston, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
228	Gease, R	5-May-15	Kenai, Kasilof	
229	Geeson, R	11-Jun-15	Kenai, Kasilof	

230	Geppert, D	9-May-15	Kenai, Kasilof	
231	Gerace, C	17-May-15	Kenai, Kasilof	
232	Gillam, G	20-May-15	Kenai, Kasilof	
233	Gleadon, J	19-Jun-15	Kenai, Kasilof	
234	Glenboski, D	2-Jul-15	Kenai, Kasilof	
235	Glover, S	5-Jun-15	Kenai, Kasilof	
236	Glover, S	7-Jun-15	Kenai, Kasilof	
237	Gonzales, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
238	Good, K	11-Jul-15	Kenai, Kasilof	
239	Gordon, W	6-Jul-15	Kenai, Kasilof	
240	Gottfredson, T	21-May-15	Kenai, Kasilof	
241	Gottfredson, T	21-May-15	Kenai, Kasilof	
242	Graham, B	17-May-15	Kenai, Kasilof	
243	Graham, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
244	Graham, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
245	Graham, T	17-May-15	Kenai, Kasilof	
246	Gravenhorst, M	6-Jul-15	Kenai	
247	Gravenhorst, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
248	Graves, W	3-Jul-15	Kenai, Kasilof	
249	Gravenhorst, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
250	Green, J	2-Jul-15	Kenai, Kasilof	
251	Green, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
252	Green, P	8-Jun-15	Kenai, Kasilof	
253	Green, Rebecca	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

254	Green, Rudy	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
255	Greenman, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
256	Griesbaum, M	8-Jun-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
257	Griess, B	22-May-15	Kenai, Kasilof	
258	Grimes, J	2-Jul-15	Kenai, Kasilof	
259	Grimmond, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
260	Groeneweg, B	5-Jun-15	Kenai, Kasilof	
261	Groeneweg, G	21-May-15	Kenai, Kasilof	
262	Groves, C	14-Jun-15	Kenai, Kasilof	
263	Gruenberg, M	2-Feb-15	Kenai, Kasilof	Alaska State Legislature
264	Gullicks, G	13-May-15	Kenai, Kasilof	
265	Gvant, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
266	Haesche, D	9-Jun-15	Kenai, Kasilof	
267	Hall, D	12-Jun-15	Kenai, Kasilof	
268	Hall, K	21-May-15	Kenai, Kasilof	
269	Hankle, K	21-May-15	Kenai, Kasilof	
270	Hanson, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
271	Hanson, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
272	Hanson, L	2-Jul-15	Kenai, Kasilof	
273	Harpe, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
274	Harpe, J	13-May-15	Kenai, Kasilof	
275	Harpe, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

276	Harris, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
277	Harrison, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
278	Hart, T	5-Jun-15	Kenai, Kasilof	
279	Hartig, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
280	Hartig, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
281	Hastings, J	16-May-15	Kenai, Kasilof	
282	Hawley, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
283	Heinen, Z	13-May-15	Kenai, Kasilof	
284	Heiskell, J	13-May-15	Kenai, Kasilof	
285	Hellingson, C	2-Jul-15	Kenai, Kasilof	
286	Helm, J	2-Jul-15	Kenai, Kasilof	
287	Helms, S	20-May-15	Kenai, Kasilof	
288	Helyn, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
289	Henley, C	22-May-15	Kenai, Kasilof	
290	Henley, C	22-May-15	Kenai, Kasilof	
291	Herbert, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
292	Herrod, J	13-May-15	Kenai, Kasilof	
293	Hidalgo, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
294	Higginbotham, B	2-Jul-15	Kenai, Kasilof	
295	Hilbrunel, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
296	Hillyer, J	18-May-15	Kenai, Kasilof	
297	Hilty, T	12-Jul-15	Kenai, Kasilof	

298	Hiner, T	21-May-15	Kenai, Kasilof	
299	Hippert, D	13-May-15	Kenai, Kasilof	
300	Hite, P	22-May-15	Kenai, Kasilof	
301	Hodges, D	7-Jun-15	Kenai, Kasilof	
302	Hogate, A	2-Jul-15	Kenai, Kasilof	
303	Holbrook, W	6-Jun-15	Kenai, Kasilof	
304	Holladay, J	6-Jun-15	Kenai, Kasilof	
305	Holland, D	16-Jun-15	Kenai, Kasilof	
306	Holley, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
307	Hollstein, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
308	Holsten, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
309	Holsten, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
310	Hood, S	2-Jul-15	Kenai, Kasilof	
311	Hopley, M	5-Jun-15	Kenai, Kasilof	
312	Homer, B	7-Jun-15	Kenai, Kasilof	
313	Hoy, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
314	Hudson, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
315	Hugunin, G	19-May-15	Kenai, Kasilof	
316	Hull, D	6-Jun-15	Kenai, Kasilof	
317	Humphreys, T	7-Jun-15	Kenai, Kasilof	
318	Huston, M	20-May-15	Kenai, Kasilof	
319	Inman, R	21-Jun-15	Kenai, Kasilof	
320	Ismael, D	22-May-15	Kenai, Kasilof	
321	Ivy, E	18-Jun-15	Kenai, Kasilof	
322	Iwinski, T	18-Jun-15	Kenai, Kasilof	
323	Jackson, M	13-May-15	Kenai, Kasilof	
324	Jackson, M	13-May-15	Kenai, Kasilof	

325	James, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
326	James, K	7-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
327	James, O	8-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
328	James, W	2-Jul-15	Kenai, Kasilof	
329	Janes, R	8-May-15	Kenai, Kasilof	
330	Jeffords, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
331	Jenkins, M	10-Jun-15	Kenai, Kasilof	
332	Jensen, A	14-May-15	Kenai, Kasilof	
333	Jensen, J	13-May-15	Kenai, Kasilof	
334	Jensen, J	18-May-15	Kenai, Kasilof	
335	Joe, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
336	Johnson, B	9-Jun-15	Kenai, Kasilof	
337	Johnson, Donald	21-May-15	Kenai, Kasilof	
338	Johnson, Dennis	5-Jun-15	Kenai, Kasilof	
339	Johnson, Donald	5-Jun-15	Kenai, Kasilof	
340	Johnson, J	9-Jun-15	Kenai, Kasilof	
341	Johnson, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
342	Johnston, R	22-Jun-15	Kenai, Kasilof	
343	Jones, D	2-Jul-15	Kenai, Kasilof	
344	Jordan, T	4-Jul-15	Kenai, Kasilof	
345	Joyce, C	5-Jun-15	Kenai, Kasilof	
346	Junker, J	25-May-15	Kenai, Kasilof	
347	Kamp, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
348	Karpik, D	30-Jan-15	Kenai, Kasilof	



349	Kaup, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
350	Kenworthy, J	1-Jun-15	Kenai, Kasilof	
351	Kerr, G	12-Jul-15	Kenai, Kasilof	
352	Kiffmeyer, R	2-Jul-15	Kenai, Kasilof	
353	Kiball, K	13-May-15	Kenai, Kasilof	
354	King, J	22-May-15	Kenai, Kasilof	
355	King, W	17-May-15	Kenai, Kasilof	
356	Kirr, B	13-May-15	Kenai, Kasilof	
357	Kirr, V	13-May-15	Kenai, Kasilof	
358	Kiser, K	10-Jul-15	Kenai, Kasilof	
359	Kittle, C	10-Jun-15	Kenai, Kasilof	
360	Klosiewski-Ellis	15-Jul-15	Kenai	US Fish and Wildlife Service
361	Knlock, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
362	Knustson, A	2-Jul-15	Kenai, Kasilof	
363	Koecher, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
364	Kogstad, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
365	Komperda, M	11-Jul-15	Kenai, Kasilof	
366	Kondra, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
367	Konopasek, D	13-May-15	Kenai, Kasilof	
368	Koppert, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
369	Koskovich, R	6-Jun-15	Kenai, Kasilof	
370	Kramer, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
371	Kramer, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

372	Kramer, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
373	Krammen, M	4-Jul-15	Kenai, Kasilof	
374	Kreitel, C	20-May-15	Kenai, Kasilof	
375	Kroll, H	5-May-15	Kenai, Kasilof	
376	Krumm, G	9-Jun-15	Kenai, Kasilof	
377	Labrec, G	20-May-15	Kenai, Kasilof	
378	Lamberson, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
379	Lannet, S	16-May-15	Kenai, Kasilof	
380	LaRock, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
381	LaRock, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
382	Larsen, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
383	Larson, F	18-May-15	Kenai, Kasilof	
384	Latschaw, C	6-Jun-15	Kenai, Kasilof	
385	LaVon, G	5-Jun-15	Kenai, Kasilof	
386	Leaders, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
387	Leaders, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
388	Lee, R	6-Jun-15	Kenai, Kasilof	
389	LeMieux, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
390	LeMieux, N	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
391	LeMieux, V	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

392	Leonard, R	11-Jun-15	Kenai, Kasilof	
393	Lesmeister, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
394	Lessard, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
395	Lewallen, M	9-Jun-15	Kenai, Kasilof	
396	Lewis, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
397	Libbey, R	1-Feb-15	Kenai	
398	Liepitz, G	22-Jun-15	Kenai, Kasilof	
399	Ling, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
400	Linn, M	7-Jun-15	Kenai, Kasilof	
401	Lisonbee, D	11-Jul-15	Kenai, Kasilof	
402	Little, J	22-May-15	Kenai, Kasilof	
403	Locker, P	7-Jun-15	Kenai, Kasilof	
404	Long, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
405	Longley, G	2-Jul-15	Kenai, Kasilof	
406	Longworth, J	13-May-15	Kenai, Kasilof	
407	Lorantas, R	6-Jun-15	Kenai, Kasilof	
408	Lowe, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
409	Lowe, D	19-May-15	Kenai, Kasilof	
410	Lowery, G	20-May-15	Kenai, Kasilof	
411	Lujan, J	7-Jun-15	Kenai, Kasilof	
412	Lund, M	13-May-15	Kenai, Kasilof	
413	Lupo, M	2-Jul-15	Kenai, Kasilof	
414	Mackie, V	25-May-15	Kenai, Kasilof	
415	Mader, T	26-Jan-15	Kenai, Kasilof	
416	Malindzak, S	2-Jul-15	Kenai, Kasilof	
417	Malone, P	5-Jun-15	Kenai, Kasilof	
418	Malone, P	16-May-15	Kenai, Kasilof	

419	Mangum, R	14-May-15	Kenai, Kasilof	
420	Manning, K	29-Jan-15	Kenai, Kasilof	
421	Manning, K	20-May-15	Kenai, Kasilof	
422	Montey, K	21-May-15	Kenai, Kasilof	
423	Marinucci, C	11-Jun-15	Kenai, Kasilof	
424	Markkey, J	2-Jul-15	Kenai, Kasilof	
425	Masneri, S	8-Jun-15	Kenai, Kasilof	
426	Mazzolini, D	8-Jun-15	Kenai, Kasilof	
427	Mazzolini, N	18-Jun-15	Kenai, Kasilof	
428	McCabe, G	10-Jul-15	Kenai, Kasilof	
429	McCall, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
430	McCartney, A	10-Jun-15	Kenai, Kasilof	
431	McCormick, P	11-Jun-15	Kenai, Kasilof	
432	McCormick, P	5-Jun-15	Kenai, Kasilof	
433	McDaniel, M	12-Jul-15	Kenai, Kasilof	
434	McDaniel, T	10-Jul-15	Kenai, Kasilof	
435	McDonald, v	28-Jan-15	Kenai, Kasilof	
436	McDonald, C	11-Jun-15	Kenai, Kasilof	
437	McDonald, F	2-Jul-15	Kenai, Kasilof	
438	McFarlin, K	3-Jul-15	Kenai, Kasilof	
439	Mcglohn, T	5-Jun-15	Kenai, Kasilof	
440	McMaster, J	15-Jun-15	Kenai, Kasilof	
441	McNeal, J	22-May-15	Kenai, Kasilof	
442	McReynolds, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
443	Medrma, T	15-May-15	Kenai, Kasilof	
444	Mei, S	5-May-15	Kenai, Kasilof	
445	Meinkoth, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
446	Mendieta, v	2-Jul-15	Kenai, Kasilof	
447	Meredith, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

448	Merritt, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
449	Metz, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
450	Micciche Dunleavy	6-Feb-15	Kenai	Alaska State Legislature
451	Michels, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
452	Middleton, S	9-Jun-15	Kenai, Kasilof	
453	Mikoleit, J	14-May-15	Kenai, Kasilof	
454	Miller, M	29-Jan-15	Kenai, Kasilof	Department of Fish and Game
455	Miller, K	5-Jul-15	Kenai, Kasilof	
456	Miller,, M	8-Jun-15	Kenai, Kasilof	
457	Millikin, C	2-Jul-15	Kenai, Kasilof	
458	Milliron, J	13-May-15	Kenai, Kasilof	
459	Milne, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
460	Milne, R	2-Jul-15	Kenai, Kasilof	
461	Mincher, B	21-May-15	Kenai, Kasilof	
462	Miner, S	13-May-15	Kenai, Kasilof	
463	Mitcher, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
464	Mitchell, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
465	Mitchell, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
466	Mitchell, W	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
467	Montana, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
468	Montoya, D	2-Jul-15	Kenai, Kasilof	

469	Moore, M	21-May-15	Kenai, Kasilof	
470	Morales, S	14-May-15	Kenai, Kasilof	
471	Morgan, B	5-May-15	Kenai, Kasilof	
472	Morgan, C	14-May-15	Kenai, Kasilof	
473	Morris, C	13-May-15	Kenai, Kasilof	
474	Morrissey, S	13-May-15	Kenai, Kasilof	
475	Moseley, E	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
476	Moubray, M	2-Jul-15	Kenai, Kasilof	
477	Moyer, N	13-May-15	Kenai, Kasilof	
478	Mundy, T	24-Jun-15	Kenai, Kasilof	
479	Murdoch, T	18-May-15	Kenai, Kasilof	
480	Myhell, L	8-Jun-15	Kenai, Kasilof	
481	Navarre, M	17-Jul-15	Kenai, Kasilof	Kenai Peninsula Borough
482	Neal, M	8-Jun-15	Kenai, Kasilof	
483	Neal, M	8-Jun-15	Kenai, Kasilof	
484	Neeno, B	14-Jun-15	Kenai, Kasilof	
485	Neeser, K	18-Jun-15	Kenai, Kasilof	
486	Neis, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
487	Nelson, C	21-May-15	Kenai, Kasilof	
488	Nelson, D	7-May-15	Kenai, Kasilof	
489	Nelson, M	6-Jun-15	Kenai, Kasilof	
490	Neuberger, P	21-Jun-15	Kenai, Kasilof	
491	Newhouse, J	10-Jul-15	Kenai, Kasilof	
492	Newman, D	12-Jul-15	Kenai, Kasilof	
493	Newman, M	5-Jul-15	Kenai, Kasilof	
494	Nguyen, C	13-Jun-15	Kenai, Kasilof	
495	Nichols, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
496	Nichols, N	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
497	Niederhauser, W	21-May-15	Kenai, Kasilof	
498	Niederhauser, J	13-May-15	Kenai, Kasilof	

499	Nierenberg, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
500	Nievenberg, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
501	Nobles, W	2-Jul-15	Kenai, Kasilof	
502	Noethlick, D	5-Jun-15	Kenai, Kasilof	
503	Norberg, R	26-Jun-15	Kenai, Kasilof	
504	Norman, S	6-Jun-15	Kenai, Kasilof	
505	Norris, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
506	Norris, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
507	Norris, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
508	Norhtrop, J	18-Jun-15	Kenai, Kasilof	
509	Nuttall, C	14-Jul-15	Kenai, Kasilof	
510	Nyman, J	5-Jun-15	Kenai, Kasilof	
511	Oakes, A	2-Jul-15	Kenai, Kasilof	
512	Odgers, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
513	Ogan, W	19-Jun-15	Kenai, Kasilof	
514	Ogilvie, E	2-Jul-15	Kenai, Kasilof	
515	O'Hara, S	20-May-15	Kenai, Kasilof	
516	Ohnemus, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
517	Oiye, T	22-Jun-15	Kenai, Kasilof	
518	Okamoto, C	31-May-15	Kenai, Kasilof	
519	Olmstead, D	12-Jul-15	Kenai, Kasilof	
520	Olmstead, D	18-May-15	Kenai, Kasilof	
521	Olness, P	9-May-15	Kenai, Kasilof	
522	Olthois, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

523	Opalenik, C	2-Jul-15	Kenai, Kasilof	
524	Orr, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
525	Osborn, D	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
526	O'shea, V	2-Jul-15	Kenai, Kasilof	
527	Osowiecki, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
528	Osterman, D	12-Jun-15	Kenai, Kasilof	
529	Ott, E	9-Jun-15	Kenai, Kasilof	
530	Otto, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
531	Owens C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
532	Paddock, R	22-May-15	Kenai, Kasilof	
533	Painter, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
534	Panetta, J	2-Jul-15	Kenai, Kasilof	
535	Parnakian, T	2-Jul-15	Kenai, Kasilof	
536	Parsons, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
537	Parsons, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
538	Parsons, W	3-Jul-15	Kenai, Kasilof	
539	Patrick, J	2-Jul-15	Kenai, Kasilof	
540	Pearce, D	21-May-15	Kenai, Kasilof	
541	Pearcy, C	21-Jun-15	Kenai, Kasilof	
542	Pearson, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
543	Pederson, T	2-Jul-15	Kenai, Kasilof	
544	Pennell, J	13-May-15	Kenai, Kasilof	



545	Perkerson, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
546	Peterson, A	8-Jun-15	Kenai, Kasilof	
547	Peterson, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
548	Peterson, G	7-Jun-15	Kenai, Kasilof	
549	Peterson, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
550	Phelps, D	12-Jun-15	Kenai, Kasilof	
551	Phoenix, J	20-Jun-15	Kenai, Kasilof	
552	Pierce, E	5-Jun-15	Kenai, Kasilof	
553	Plummer, C	2-Jul-15	Kenai, Kasilof	
554	Podgorski, M	2-Jul-15	Kenai, Kasilof	
555	Polonowski, J	18-Jun-15	Kenai, Kasilof	
556	Prause, B	2-Jul-15	Kenai, Kasilof	
557	Pride, J	8-Jun-15	Kenai, Kasilof	
558	Prophet, J	14-May-15	Kenai, Kasilof	
559	Quinn, D	14-May-15	Kenai, Kasilof	
560	Rainey, E	21-May-15	Kenai, Kasilof	
561	Raiskums, P	21-May-15	Kenai, Kasilof	
562	Rand, D	21-May-15	Kenai, Kasilof	
563	Randall, S	13-Jul-15	Kenai, Kasilof	
564	Rankins, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
565	Rash, J	19-Jun-15	Kenai, Kasilof	
566	Rasmussen, M	2-Jul-15	Kenai, Kasilof	
567	Rauchenstein, D	14-May-15	Kenai, Kasilof	
568	Recken, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
569	Reger, L	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
570	Reid, P	21-Jun-15	Kenai, Kasilof	
571	Reins, D	4-Jul-15	Kenai, Kasilof	

572	Sackett, I	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
573	Reischach, S	18-May-15	Kenai, Kasilof	
574	Renck, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
575	Repasky, D	27-Jan-15	Kenai, Kasilof	
576	Reynoldson, P	9-Jun-15	Kenai, Kasilof	
577	Rice, J	14-May-15	Kenai, Kasilof	
578	Richardson, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
579	Richardson, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
580	Ridderman, E	23-Jun-15	Kenai, Kasilof	
581	Robinson, R	15-Jun-15	Kenai, Kasilof	
582	Robinson, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
583	Roebuck, A	2-Jul-15	Kenai, Kasilof	
584	Rogers, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
585	Rogers, Julie	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
586	Rogers, M	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
587	Roggenbuck, R	26-Jan-15	Kenai, Kasilof	
588	Romig, H	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
589	Rounsaville, L	2-Jul-15	Kenai, Kasilof	
590	Rouise, J	13-May-15	Kenai, Kasilof	
591	Route, C	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

592	Route, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
593	Ruggio, C	5-Jun-15	Kenai, Kasilof	
594	Rumph, J	5-Jun-15	Kenai, Kasilof	
595	Russ, A	5-May-15	Kenai, Kasilof	
596	Ryan, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
597	Salazar, A	21-Jun-15	Kenai, Kasilof	
598	Saniat, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
599	Saniat, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
600	Scarborough, D	16-Jun-15	Kenai, Kasilof	
601	Schelske, D	2-Jul-15	Kenai, Kasilof	
602	Schelske, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
603	Schilling, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
604	Schlieve, B	7-Jun-15	Kenai, Kasilof	
605	Schneider, J	2-Jul-15	Kenai, Kasilof	
606	Schofield, R	5-Jun-15	Kenai, Kasilof	
607	Scott, B	2-Jul-15	Kenai, Kasilof	
608	Scott, P	23-Apr-15	Kenai, Kasilof	
609	Sears, G	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
610	Sellers, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
611	Service, B	28-Jun-15	Kenai, Kasilof	
612	Sether, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

613	Sevamar, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
614	Shontz, D	20-May-15	Kenai, Kasilof	
615	Short, M	2-Jul-15	Kenai, Kasilof	
616	Shower, M	5-Jun-15	Kenai, Kasilof	
617	Simpson, S	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
618	Sims, N	6-Jun-15	Kenai, Kasilof	
619	Simsek, D	3-Jul-15	Kenai, Kasilof	
620	Singer, E	22-Jun-15	Kenai, Kasilof	
621	Sjogren, J	13-May-15	Kenai, Kasilof	
622	Skaaren, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
623	Skagstad, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
624	Skye, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
625	Sloan, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
626	Smart, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
627	Smith, J	8-Jun-15	Kenai, Kasilof	
628	Smith, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
629	Smith, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
630	Smith, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
631	Sparrow, N	7-Jun-15	Kenai, Kasilof	
632	Stabile, P	12-Jul-15	Kenai, Kasilof	

633	Stancil, D	20-May-15	Kenai, Kasilof	
634	Stanton, T	14-May-15	Kenai, Kasilof	
635	Stearing, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
636	Stehn, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
637	Stevens, g	2-Jul-15	Kenai, Kasilof	
638	Stevens, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
639	Stevens, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
640	Stewart, J	9-Jun-15	Kenai, Kasilof	
641	Stoney, M	13-May-15	Kenai, Kasilof	
642	Story, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
643	Story, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
644	Strawn, T	5-Jun-15	Kenai, Kasilof	
645	Strobbe, L	8-May-15	Kenai, Kasilof	
646	Stroh, T	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
647	Stroll, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
648	Stromstad, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
649	Stubbs, J	5-May-15	Kenai, Kasilof	
650	Sturm, M	17-Jun-15	Kenai, Kasilof	
651	Stutzenburg, D	5-Jul-15	Kenai, Kasilof	
652	Sullivan, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

653	Sullivan, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
654	Sutherlin, J	14-May-15	Kenai, Kasilof	
655	Sweeney, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
656	Tappan, A	20-May-15	Kenai, Kasilof	
657	Tappan, B	20-May-15	Kenai, Kasilof	
658	Taylor, J	5-Jun-15	Kenai, Kasilof	
659	Terlingo, J	2-Jul-15	Kenai, Kasilof	
660	Terry, L	16-Jun-15	Kenai, Kasilof	
661	Tewle, L	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
662	Thomas, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
663	thomas, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
664	Thomas, K	5-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
665	Thomas-Wolf, M	24-Jun-15	Kenai, Kasilof	
666	Thompson, M	19-May-15	Kenai, Kasilof	
667	Thompson, R	8-Jun-15	Kenai, Kasilof	
668	Thompson, S	19-May-15	Kenai, Kasilof	
669	Toms, K	5-Jun-15	Kenai, Kasilof	
670	Tonione, J	6-Jun-15	Kenai, Kasilof	
671	Torchick, J	2-Jul-15	Kenai, Kasilof	
672	Trafican, J	2-Jul-15	Kenai, Kasilof	
673	Travers-Smyre, N	13-May-15	Kenai, Kasilof	
674	Troy	21-Jun-15	Kenai, Kasilof	
675	Trueblood, C	12-May-15	Kenai, Kasilof	
676	Trueblood, S	13-May-15	Kenai, Kasilof	
677	Trupiano, J	2-Jul-15	Kenai, Kasilof	
678	VanderHoff, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community

679	Vandusen, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
680	Vandusen, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
681	VanKooten, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
682	Venot, C	16-Jun-15	Kenai, Kasilof	
683	Verman, B	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
684	Vermillion, D	18-May-15	Kenai, Kasilof	
685	Vilwock, A	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
686	Vohs, R	18-Jun-15	Kenai, Kasilof	
687	Vos, J	14-May-15	Kenai, Kasilof	
688	Waack, L	13-May-15	Kenai, Kasilof	
689	Wait, E	13-May-15	Kenai, Kasilof	
690	Walker, M	2-Jul-15	Kenai, Kasilof	
691	Wallick, R	5-Jun-15	Kenai, Kasilof	
692	Wallin, G	6-Jun-15	Kenai, Kasilof	
693	Wallin, G	10-Jul-15	Kenai, Kasilof	
694	Walters, Z	15-May-15	Kenai, Kasilof	
695	Ward, A	9-Jun-15	Kenai, Kasilof	
696	Waters, D	13-May-15	Kenai, Kasilof	
697	Waters, D	14-May-15	Kenai, Kasilof	
698	Watt, J	21-May-15	Kenai, Kasilof	
699	Weber, M	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
700	Weber, P	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
701	Weis, S	29-Jan-15	Kenai, Kasilof	
702	Weisberg, R	2-Jul-15	Kenai, Kasilof	

703	Weldin, L	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
704	Wellman, T	20-May-15	Kenai, Kasilof	
705	Wellman, T	26-Feb-15	Kenai, Kasilof	
706	Wells, R	13-May-15	Kenai, Kasilof	
707	Wells, R	14-May-15	Kenai, Kasilof	
708	Wereda, B	8-Jun-15	Kenai, Kasilof	
709	Ereda, B	8-Jun-15	Kenai, Kasilof	
710	Gles, S	2-Jul-15	Kenai, Kasilof	
711	Tern, D	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
712	Wheat, A	10-Jul-15	Kenai, Kasilof	
713	White, C	20-Jun-15	Kenai, Kasilof	
714	White, J	4-Jul-15	Kenai, Kasilof	
715	White, M	8-Jun-15	Kenai, Kasilof	
716	White, W	8-Jun-15	Kenai, Kasilof	
717	Wielechowski, B	10-Mar-15	Kenai	Alaska State Legislature
718	Wight, J	2-Jul-15	Kenai, Kasilof	
719	Wilkes, R	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
720	Willems, D	2-Jul-15	Kenai, Kasilof	
721	Williams, J	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
722	Williams, R	2-Jul-15	Kenai, Kasilof	
723	Willumsen, S	17-May-15	Kenai, Kasilof	
724	Wilmoth, S	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
725	Wilson, D	26-Jun-15	Kenai, Kasilof	
726	Wilson, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
727	Winkle, K	13-May-15	Kenai, Kasilof	
728	Wisdorf, g	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community



729	Witman, M	12-Jul-15	Kenai, Kasilof	
730	Woods, R	5-Jun-15	Kenai, Kasilof	
731	Yates, K	6-Jul-15	Kenai	Cooper Landing and Hope Federal Subsistence Community
732	Young, C	27-Jun-15	Kenai, Kasilof	
733	Young, G	2-Jul-15	Kenai, Kasilof	
734	Young, P	5-Jun-15	Kenai, Kasilof	
735	Zervas, G	2-Jul-15	Kenai, Kasilof	
736	Zimmerman, J	16-May-15	Kenai, Kasilof	
737	Zirkle, J	13-May-15	Kenai, Kasilof	
738	Ziv, J	22-May-15	Kenai, Kasilof	
739	ZumBrunnen, S	12-Jul-15	Kenai, Kasilof	
740	Zurba, N	24-Jun-15	Kenai, Kasilof	

**APPENDIX B. Federal Subsistence Management Program regulatory language regarding Requests for Reconsideration.**

Subsistence management regulations at 36 CFR Part 242 and 50 CFR Part 100, dated May 7, 2002, state the following regarding requests for reconsideration.

§ \_\_\_\_\_.20 *Request for reconsideration.*

- (a) Regulations in subparts C and D of this part published in the Federal Register are subject to requests for reconsideration.*
- (b) Any aggrieved person may file a request for reconsideration with the Board.*
- (c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.*
- (d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:*
  - (1) Your name, and mailing address;*
  - (2) The action which you request be reconsidered and the date of Federal Register publication of that action;*
  - (3) A detailed statement of how you are adversely affected by the action;*
  - (4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;*
  - (5) A statement of how you would like the action changed.*
- (e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.*
- (f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).*
- (g) If the request is denied, the decision of the Board represents the final administrative action.*

**APPENDIX C: List of Summarized Claims relevant to the Kenai River**

<b>Analysis Claim Number</b>	<b>Claim Description</b>	<b>Criterion 1</b>	<b>Criterion 2</b>	<b>Criterion 3</b>
1.1	The Board was not informed that the Federally qualified subsistence users of Hope and Cooper Landing did not support FP15-10. This information may have changed the Boards' determination had it been available during deliberations.	X		
1.2	Combining State and Federal fishery data indicates that the annual harvest limit of 4,000 sockeye for Hope, Cooper Landing, and Ninilchik is being exceeded.	X		
1.3	Staff did not provide the Board with enough information on fisheries management and conservation issues on the Kenai River to make an informed decision.	X		
1.4	Gillnetting will pose a serious safety hazard for boat traffic.	X		
2.1	The Board utilized incorrect information provided by public testimony.		X	
3.1	The comment period on FP15-10 was not adequate.			X
3.2	The Board failed to cooperate with or provide adequate notice to the public.			X
3.3	The Board ignored staff and agency (ADF&G, USFWS) recommendations presented at the Federal Subsistence Board meeting.			X
3.4	Long time professional and local consensus is that gillnets should not be used on Kenai/Kasilof Rivers because they are non-selective.			X
3.5	Non-selective nature of gillnet harvest is wasteful.			X
3.6	The gillnetting regulation increases the conservation concern for Chinook on the Kenai River.			X
3.7	Incidental harvest of Chinook could lead to high rate of mortality.			X
3.8	Gillnetting of Chinook will harvest larger and more fecund breeders.			X

3.9	Gillnetting will be detrimental to salmon spawning beds & habitat.			X
3.10	The gillnetting regulation increases the conservation concern for trout and char on the Kenai River.			X
3.11	Gillnets are incompatible with the required release of any incidentally harvested 18 inch or larger trout/char.			X
3.12	Incidental harvest of trout/char longer than 18 inches could lead to a high rate of mortality.			X
3.13	A gillnet in the Kenai River in combination with sport fishery harvest levels will result in the over-harvest of trout/char			X
3.14	Gillnetting will be detrimental to long-term subsistence and non-subsistence uses.			X
3.15	There already exists sufficient opportunity for subsistence harvest of salmon that is selective including dipnet on the Kenai River and dipnet and fishwheel on the Kasilof River.			X
3.16	Gillnetting is not traditional and customary or a “long-time continuous use” on the Kenai and Kasilof Rivers – the Board has no authority to create a “new” method.			X
3.17	There is no shortage of red salmon – ANILCA 804(a) does not apply.			X
3.18	FP 15-10 adversely affects the subsistence priority of, and does not extend the same subsistence opportunity to, the subsistence users from the communities of Cooper Landing and Hope.			X
3.19	The Board did not comply with ANILCA Section 804 because it failed to apply appropriate limitations on Chinook Salmon caught in this fishery.			X
3.20	The Board passed proposals without an EIS, in violation of CFR 100.18.			X
3.21	The proposed regulation did not have required NEPA and Clean Water Act reviews.			X
3.22	Section 802 – decisions be consistent with sound management principals and the conservation of healthy populations of fish and wildlife.			X

3.23	Section 815 – The Board permitted a level of subsistence uses within a conservation unit inconsistent with the conservation of healthy fish and wildlife populations.			X
3.24	Other communities with Customary and Traditional use determinations for subsistence salmon, Hope and Cooper Landing, did not receive adequate notice to provide meaningful input.			X
3.25	The Board based support for the proposal only on proponent testimony.			X
3.26	Comparisons between the subsistence gillnet and ADF&G gillnet are invalid given that both are employed for different purposes (harvest vs capture & release).			X
3.27	The Board violated the APA and ANILCA.			X
3.28	The Board did not establish a sufficient record to support its decision.			X
3.29	The Board should not defer to a Regional Advisory Council when the recommendation is not supported by substantial evidence or violates principals of conservation.			X
3.30	The Board is allowing nets that are far too big and far too lethal.			X
3.31	Regulations should not include the harvest of Kenai Chinook Salmon.			X
3.32	There is no adequate window of opportunity between early and late run Chinook on the Kenai to allow for safe harvest.			X
3.33	The new regulation conflicts with existing Federal regulations on harvest limits and size selectivity.			X
3.34	Subsistence is not compatible with the primary purposes outlined in ANILCA for the Kenai National Wildlife Refuge.			X

## APPENDIX D: Staff Analysis of Proposal FP15-10

## FP15-10 Executive Summary

<b>General Description</b>	<p>Proposal FP15-10, submitted by Ninilchik Traditional Council requests a community set gillnet fishery be established within the Kenai River for salmon. Currently, Federal subsistence users may harvest late-run Chinook, sockeye, coho and pink salmon with dip nets in the Kenai River at Moose Range meadows (approximate River Mile 26.5 to River Mile 29). They may also harvest salmon with dip net in the Kenai River at approximate River mile 45.5 to 48. Early- run and late-run Chinook, sockeye, coho and pink salmon may be harvested in all Federal public waters in the Kenai River drainage with rod and reel.</p>
<b>Proposed Regulation</b>	<p>§____.27 <i>Subsistence taking of fish</i></p> <p><i>(i)(10)(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:</i></p> <p><i>(A) *****</i></p> <p><i>(I) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released.</i></p> <p><i>(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.</i></p> <p><i>(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its, use, and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:</i></p> <p><i>(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;</i></p>

**FP15-10 Executive Summary (continued)**

<b>Proposed Regulation (continued)</b>	<p><i>(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.</i></p> <p><i>(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:</i></p> <p><i>(i) Identifies a person who will be responsible for fishing the gillnet;</i></p> <p><i>(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.</i></p> <p><i>(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.</i></p> <p><i>(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.</i></p> <p><i>(6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.</i></p>
<b>OSM Conclusion</b>	<b>Oppose FP15-10</b>
<b>Southcentral Alaska Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b>
<b>Interagency Staff Committee Comments</b>	See comments following the analysis.
<b>ADF&amp;G Comments</b>	Official State comments on select proposals will be provided as a supplement at the meeting.
<b>Written Public Comments</b>	<b>None</b>

## STAFF ANALYSIS FP15-10

### ISSUES

Proposal FP15-10, submitted by Ninilchik Traditional Council requests a community set gillnet fishery be established within the Kenai River for salmon. Currently, Federal subsistence users may harvest late-run Chinook, sockeye, coho and pink salmon with dip nets in the Kenai River at Moose Range meadows (approximate River Mile 26.5 to River Mile 29). They may also harvest salmon with dip net in the Kenai River at approximate River mile 45.5 to 48. Early-run and late-run Chinook, sockeye, coho and pink salmon may be harvested in all Federal public waters in the Kenai River drainage with rod and reel.

### DISCUSSION

The proponent requests establishment of a community set gillnet fishery in the Kenai River to add additional subsistence harvest opportunities for residents of Ninilchik. The proponent requests only one community gillnet would be utilized in the Kenai River. The community gillnet would be limited to 10 fathoms in length or less. An operational plan would be developed and approved by the Federal inseason fishery managers. This operational plan would include deployment location, fishing times and a methodology for distributing the harvest. All salmon taken in the Kenai River gillnet fishery would be included as part of the annual households' limit for Ninilchik. Currently, the household limit for Chinook salmon is 10 for the permit holder and each additional household member is allowed two additional fish. The total annual harvest limit is 500 Chinook salmon with a fishing season from June 16<sup>th</sup> through August 15<sup>th</sup>. The household limit for sockeye salmon is 25 for the permit holder and each additional household member is allowed five additional fish. The total annual harvest limit for sockeye salmon is 4,000. The season runs from June 16<sup>th</sup> through August 15<sup>th</sup>.

The proponent asserts that current Federal subsistence fisheries do not allow sufficient subsistence fishing opportunities for Ninilchik residents. Currently, Federal subsistence users may harvest salmon in the Russian River Falls, Kenai River below mile 48, and in Moose Range meadows with dip nets and rod and reel. They may also harvest salmon in the Kenai River watershed with a rod and reel in all Federal public waters open to sport fishing.

The proponent indicates efforts to establish a meaningful Federal subsistence fishery on the Kenai River have not been successful. The proponent originally asked for a subsistence gillnet fishery (FP 07-27) based on the local knowledge of the area and experience of the users. An interim measure was provided through (FP 08-09 and FP11-15) for a community fish wheel. While the Ninilchik Traditional Council has made a good faith effort to operate the fish wheel under the current Federal subsistence regulations, they have not been successful in harvesting any salmon to date.

### Existing Federal Regulation

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

\*\*\*\*\*



## Proposed Federal Regulation

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

(A) \*\*\*\*\*

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident species.

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

(ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).

(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(2) Fishing seasons are as follows:

(i) For sockeye salmon at all fishery sites: June 15-August 15;

(ii) *For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16-September 30; and*

(iii) *Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

*(3) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net, rod and reel and gillnet fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.*

*(i) For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;*

*(ii) For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;*

*(iii) For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and*

*(iv) For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.*

\*\*\*\*\*

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

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

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

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

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

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

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

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

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

*(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.*

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

### **Existing State Regulations**

No existing State regulations apply.

### **Extent of Federal Public Water**

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR 100.3. For the Kenai River, Federal public waters under consideration include all waters of the Kenai River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Cook Inlet Area Map**). This includes Kenai Lake and its tributaries and all water downstream to the confluence of the upper branch of the Killey River (approximately RM 45.5) and approximately 2 miles of the mainstem Kenai River between RM 26.5 and RM 29 (known locally as Moose Range Meadows), and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey and Funny Rivers.

### **Customary and Traditional Use Determinations**

Residents of the communities of Cooper Landing, Hope and Ninilchik have a positive customary and traditional use determination for all fish in the Kenai River except burbot and grayling.

### **Regulatory History**

#### Pre- and Early Statehood Fisheries

Until 1952 freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly managed commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for "personal use" (Fall et al. 2004).

#### Contemporary State Fisheries

A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides the Alaska Board of Fisheries guiding principles and provisions to use when adopting management plans for specific stocks. The State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area in 1992 (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, Kyuktolik, and Port Graham subdistricts,

as well as portions of Seldovia Bay and the Yentna River drainage.

Commercial and sport fisheries are complex and intensively managed by the State of Alaska. There are six management plans that apply to Kenai and Kasilof river salmon stocks: *Upper Cook Inlet Salmon Management Plan* (5 AAC 21.363), *Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan* (5 AAC 57.160), *Kenai River Late-Run King Salmon Management Plan* (5 AAC 21.359), *Kenai River Late-Run Sockeye Salmon Management Plan* (5 AAC 21.360), *Kasilof River Salmon Management Plan* (5 AAC 21.365) and *Kenai River Coho Salmon Management Plan* (5 AAC 57.170). These plans provide State of Alaska management goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

The State also has a regulatory management plan for *Upper Cook Inlet personal use salmon fisheries* (5 AAC 77.540). This plan established four personal use fisheries in Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a household permit, and occur in marine and intertidal waters outside of Federal public lands. These fisheries target sockeye salmon, the species of greatest abundance and for which the best stock assessment information is available. Annual harvest limits are 25 salmon for the head of each household and 10 salmon for each additional household member. The limit is combined for all four fisheries.

Incidentally caught coho, pink, and chum salmon may be retained as part of the annual limit. Each household is limited to one Chinook salmon in the Kenai River dip net fishery. No retention of Chinook salmon is allowed in the Kasilof River or the Fish Creek dip net fishery, but any Chinook salmon caught in the Kasilof River set gillnet fishery may be retained as part of the annual limit.

Commercial and sport fisheries are complex and intensively managed by the State of Alaska. There are six management plans that apply to Kenai and Kasilof river salmon stocks: *Upper Cook Inlet Salmon Management Plan* (5 AAC 21.363), *Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan* (5 AAC 57.160), *Kenai River Late-Run King Salmon Management Plan* (5 AAC 21.359), *Kenai River Late-Run Sockeye Salmon Management Plan* (5 AAC 21.360), *Kasilof River Salmon Management Plan* (5 AAC 21.365) and *Kenai River Coho Salmon Management Plan* (5 AAC 57.170). These plans provide State of Alaska management goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

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Incidentally caught coho, pink, and chum salmon may be retained as part of the annual limit. Each household is limited to one Chinook salmon in the Kenai River dip net fishery. No retention of Chinook salmon is allowed in the Kasilof River or the Fish Creek dip net fishery, but any Chinook salmon caught in the Kasilof River set gillnet fishery may be retained as part of the annual limit.

Finally, the State administers several educational fisheries in Cook Inlet under the provisions of 5 AAC 93.200 - 93.235 (Nelson et al. 1999 and Fall et al. 2004). The purpose of educational fisheries is to allow groups to practice traditional harvest and use methods so that these practices and knowledge are not lost. Educational fisheries, unlike subsistence fisheries, do not have priority over other fisheries. Therefore, during times of resource shortages, educational fisheries could be restricted before or at the same time as commercial, sport and personal use fisheries are restricted. For the Kasilof River, the Kenaitze Tribe, Kasilof Regional Historical Association, and

Ninilchik Traditional Council have each been issued educational permits to fish one set gillnet in marine waters near the mouth of the river. The Kenaitze Tribe has participated in an educational fishery since 1989, and for the Kasilof River is allowed to harvest 25 Chinook salmon.

Three educational fisheries have been issued to three Ninilchik area groups, Ninilchik Traditional Council (NTC), Ninilchik Native Decedents (NND) and Ninilchik Emergency Services (NES). The Ninilchik Traditional Council has participated in an educational fishery since 1993 for the Ninilchik area fisheries and since 2007 for the Kasilof area fisheries. In 1998, a group of NTC members formed a new organization called Ninilchik Native Decedents and the allocation was divided evenly between the two groups. In 2003, Ninilchik Emergency Services received the third permit for the area. Below lists the current stipulations of the permits:

- Area and gear stipulations:
  - NTC is permitted to harvest salmon using one or two set gillnets in marine waters near the Ninilchik River mouth and other traditional methods in freshwaters of the Ninilchik River below the Sterling Highway Bridge. In addition they are also permitted to use one gillnet in marine waters near the Kasilof River.
  - NND, is permitted to use one set gillnets in marine waters near the Ninilchik River mouth and other traditional methods in freshwater of the Ninilchik River below the Sterling Highway Bridge.
  - NES is permitted to use one set gillnets in marine waters near the Ninilchik River mouth.
- Quotas:
  - NTC is permitted a combined harvest quota up to 2,800 salmon for the Ninilchik and Kasilof area, of which there is also an individual coho and king salmon harvest quota: the quota for coho salmon is 500 (200 for the Ninilchik area and 300 for the Kasilof area); the quota for king salmon is 200 (100 for the Ninilchik area and 100 for the Kasilof area).
  - NND is permitted a combined harvest quota up to 2,800 salmon from the Ninilchik area, of which there is a coho and king salmon harvest quota: the quota for coho salmon is 150 and the quota for king salmon is 150.
  - NES is permitted a combined harvest quota up to 250 salmon from the Ninilchik area, of which there is a coho and king salmon harvest quota: the quota for coho salmon is 50 and the quota for king salmon is 25.

#### Federal Subsistence Fisheries in the Cook Inlet Area

In 2002, Federal subsistence regulations for harvest in the Cook Inlet Area were established for salmon, trout, and Dolly Varden and other char. A Federal subsistence permit was required and seasons, harvest and possession limits, and methods and means for take were the same as those in Alaska sport fishing regulations. This fishery was established as an interim measure to provide some subsistence opportunity in the Cook Inlet Area for Federally qualified rural residents. Initially, there were no customary and traditional use determinations for salmon, trout, Dolly Varden, and char in Cook Inlet; so all rural residents of Alaska could harvest under Federal regulations.

In January 2006, the Federal Subsistence Board made positive customary and traditional use determinations for Hope and Cooper Landing residents for all fish in the Kenai River Area, and for Ninilchik residents for all fish within the Kasilof River drainage within the Kenai National Wildlife Refuge. In November 2010, the Board made a positive customary and traditional use determination for Ninilchik residents for all fish in the Kenai River Area.

During their May 2007 meeting, the Federal Subsistence Board adopted proposals that established dip net/rod and reel salmon fisheries on the Kasilof and Kenai Rivers; increased previously established harvest, possession, and annual limits for salmon and selected resident species for existing rod and reel fisheries on the Kasilof and Kenai River drainages; and allowed use of up to two single or treble hooks and bait for rod and reel fishing during specified dates for both systems. Also during the May 2007 meeting, the Federal Subsistence Board adopted a



proposal to establish a winter season subsistence fishery at Tustumena Lake with jigging through the ice and gillnets fished under the ice for lake trout, rainbow trout and Dolly Varden/Arctic char.

In 2007, the Southcentral Alaska Subsistence Regional Advisory Council submitted Proposal FP08-09 to establish a temporary community fish wheel on both the Kenai and Kasilof Rivers. The Council contended that the fish wheels would provide a more effective means for Federally qualified subsistence users to harvest salmon. They requested the establishment of fish wheel as a gear type be temporary to evaluate the feasibility of operating this type of gear. The Federal Subsistence Board, at its January 2008 meeting, adopted the proposal with modification to allow fish wheels to be classified as a gear type, but only in the Kasilof River. The Federal Subsistence Board specified that only one fish wheel with a live box would be allowed in the upper mainstem of the Kasilof River.

A permit would be required to use the fish wheel and that an operation plan must be submitted to and approved by the Federal inseason manager, before the permit would be awarded. Individuals operating the fish wheel would need to have a Federal subsistence fishing permit and all harvest limits on the permit would apply to the fish wheel. Salmon harvested by the fish wheel will be included as part of each household's annual limit and all fish harvested must be reported to the in-season manager with 72 hours of leaving the fishing location. The Federal Subsistence Board at its January 2012 meeting supported FP13-15 to remove the expiration date for the community fish wheel salmon fishery on the Kasilof River allowing continued operation of the fish wheel.

Alaska Department of Fish and Game, Subsistence Division completed a study (OSM study 03-045) documenting past, present and potential noncommercial harvests and uses of fish in waters of the Cook Inlet Management Area. One of the project objectives was to identify potential areas and gear types for Federal subsistence fishing opportunities. Subsistence Division personnel completed key respondent interviews and held focus group meetings to gather public input. Community fish wheels were among the ideas suggested for potential Federal subsistence fisheries in the Cook Inlet Management Area. According to interviews conducted in the study most of the households agreed that current seasonal limits in the State personal use fisheries were adequate and most respondents supported basing any future Federal subsistence fishing regulations on State sport fishing rules. Many supported the status quo, were only interested in opportunities in State waters (especially marine waters) or expressed concerns about the consequences of net fisheries in fresh water (Fall et al. 2004).

### **Current Events Involving Species**

Anticipated poor early-run Chinook salmon returns to the Kenai River resulted in restrictions to the Chinook salmon sport fishery by Alaska Department of Fish and Game (ADF&G). Beginning May 1, 2014 sport fishing for early-run Chinook salmon in the Kenai River was closed (Begich 2014<sup>a</sup>). No Chinook salmon could be targeted and any Chinook salmon caught incidentally while fishing for other species could not be removed from the water and had to be released immediately. Projected low returns of late-run Chinook salmon on the Kenai River resulted in ADF&G imposing area and bait restriction on the harvest of late-run Chinook salmon beginning July 1 (Begich 2014<sup>b</sup>). On July 24, 2014 ADF&G closed the late-run Chinook salmon sport fishery in the Kenai River and the salt waters of Cook Inlet to ensure the sustainable escapement goal of 15,000-30,000 fish was achieved (Begich 2014<sup>c</sup>). Efforts to conserve Chinook salmon extended to the personal use dipnet fishery. Chinook salmon retention was prohibited in the Kenai River personal use dipnet fishery when it opened July 10, 2014 (Begich 2014<sup>d</sup>). Through these restrictions late-run Chinook salmon escapement goal was achieved with the DIDSON sonar estimating an escapement of 16, 671 fish (ADF&G 2014).

### **Biological Background and Harvest History**

All Pacific salmon species spawn within the Kenai River drainage, and the runs are harvested in State commercial, sport, personal use, subsistence and educational fisheries and Federal subsistence fisheries (Begich 2013). The State's *Upper Cook Inlet Salmon Management Plan* (5 AAC 21.363) establishes long-term direction for the management of Upper Cook Inlet salmon stocks. It provides mandatory criteria that the Alaska Board of Fisheries must consider when adopting management plans for specific fish stocks, and establishes a set of guiding principles for the adoption of regulations governing salmon fisheries. The plan focuses the commercial fisheries

take on late-run sockeye salmon, while early-run sockeye, early- and late-run Chinook, and coho salmon runs are primarily managed for sport fisheries. Considerable information has been compiled on abundance and distribution of sockeye, Chinook, and coho salmon runs, but little information is available on either pink or chum salmon runs. Spawning escapement goals have been set for sockeye and Chinook salmon runs, and sustainable harvest levels have been estimated for sockeye, Chinook, and coho salmon.

### Early-Run Sockeye Salmon

Most early-run sockeye salmon spawn within the Russian River; the State's *Russian River Sockeye Salmon Management Plan* (5 AAC 57.150) establishes escapement objectives and provides guidelines for the State of Alaska management of fisheries harvesting this run. The primary harvest of this run occurs within the sport fishery, and the State manages other fisheries to minimize the harvest of early run sockeye. The biological escapement goal range set by this plan is 22,000 to 42,000 early-run sockeye salmon, which are counted through a weir.

Sport fishing for early-run sockeye salmon primarily occurs within the Russian River. This fishery includes the lower Russian River up to a marker 600 yards below Russian River Falls, and the mainstem Kenai River from the confluence down to the powerline crossing. The allowable gear in this fishery is restricted to fly fishing only, and the fishery opens June 11 at the conclusion of the spawning season closure for rainbow trout. Bag and possession limits for sockeye salmon throughout the Kenai River drainage are 3 per day and 6 in possession. Sport fishery harvests of early-run Russian River sockeye salmon during 2003–2012, the most recent 10 year period for which data are available, have ranged from 15,231 to 59,097 with an average harvest of 34,375 (Begich 2013). On average, the sport fishery harvested about 46% of the early-run that enters the Russian River area during this period.

The Kenaitze Tribe educational fishery currently consists of one set gillnet that is fished May 1 - June 30 in marine waters just south of the Kenai River mouth and two set gillnets that are fished July 1-November 30 in marine waters just south of Kenai River mouth. The net can be fished from 1 May through 30 November, and there is an annual harvest limit of 8,000 salmon, as well as species and stock restrictions. Annual harvests of early-run Russian River sockeye salmon during 2004–2013, the most recent 10 year period, have ranged from 275 to 2,374 sockeye salmon, with an average of 1,405.

Escapement into the Russian River system is estimated using a weir below the outlet of Upper Russian Lake. Early-run sockeye salmon enter the Kenai River from about mid-May through mid-July. During 2004–2013, spawning escapements have ranged from 24,115 to 80,524 sockeye salmon, with an average escapement of 41,656 (Begich 2013).

### Late-Run Sockeye Salmon

Late-run sockeye salmon is the most intensively managed and utilized Kenai River salmon resource; these fish spawn throughout the drainage. The State's *Kenai River Late-run Sockeye Salmon Management Plan* (5 AAC 21.360) and *Russian River Sockeye Salmon Management Plan* (5 AAC 57.150) establish escapement objectives and provides guidelines for the management of all fisheries harvesting the late run. The optimum escapement goal range for the total drainage, including the Russian River system, is set at 700,000 to 1,400,000 late-run sockeye salmon, which is estimated with sonar equipment installed in the lower Kenai River. The sustainable escapement goal range for the Russian River is set at 30,000–110,000 late-run sockeye salmon, which is monitored with a weir. While primary harvest of the late-run occurs within the commercial fishery, the State manages the commercial fishery to provide for harvests within other fisheries as well as to achieve spawning goals.

The harvest of late-run sockeye salmon is monitored in all existing commercial, personal use, sport, and educational fisheries (Begich 2013). Commercial fisheries are conducted in the marine waters of Cook Inlet using both drift and set gillnets. During 2003–2012, the commercial harvest has ranged from 204,579 to 5,277,995 late-

run sockeye salmon, with an average of 3,445,684. About half of the commercial harvest is generally taken within a few days centered on 20 July. A personal use dip net fishery occurs at the mouth of the Kenai River and extends upstream as far as the Warren Ames Bridge. Dip nets can be fished from boats in the section of river from the City Dock upstream to the Warren Ames Bridge. To target effort on late-run sockeye salmon, and reduce harvests of late-run Chinook salmon and coho salmon, this dip net fishery is only open 10-31 July. All Alaska residents may participate, permits are required, and the annual household

limit is 25 salmon for the permit holder and 10 additional salmon for each household member. About 25,000 to 30,000 households days for all fisheries each year. Annual sockeye salmon harvests have ranged from 127,630 to 537,765 late-run sockeye salmon during 2004-2012, with an average of 333,960. The Kenaitze educational fishery annual harvests have ranged from 2,246 to 5,278 late-run sockeye salmon during 2004– 2013, with an average of 3,505. Sport fishery bag and possession limits for late-run sockeye salmon throughout the Kenai River drainage are 3 per day and 6 in possession. Total sport fish harvests have ranged from 203,602 to 470,547 late-run sockeye salmon during 2003–2012, with an average of 320,122. For the Russian River component, sport harvests have ranged from 9,331 to 33,935 late-run sockeye salmon during this time period, with a mean of 21,200.

The late-run sockeye enter the Kenai River from about early July through mid-August. The total drainage spawning escapement has ranged from 703,979 to 1,876,180 late-run sockeye salmon during 2003–2012, with an average of 1,258,861 (Begich 2013). While many of these sockeye salmon spawn within Skilak, Kenai, and Hidden lakes and their tributaries, large numbers also spawn in the Russian River system. The Russian River spawning escapement has ranged from 31,364 to 110,244 late-run sockeye salmon during 2004–2013, with an average of 60,520.

#### Early-Run Chinook Salmon

Most early-run Chinook salmon spawn in Kenai River tributaries, and the State's *Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan* (5 AAC 57.160) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. This plan also tries to ensure that the age and size composition of the harvest closely approximates that of the run. The primary harvest of this run occurs within the sport fishery. Most of the sport harvest is taken within the Kenai River, although the Deep Creek marine sport fishery takes an undetermined, but likely small number, of Kenai River early-run Chinook salmon based on tag recoveries (King and Breakfield, 2002). The State manages other fisheries to minimize the harvest of this run. The commercial and personal use fisheries open after most early-run Chinook salmon have entered the Kenai River, and the personal use fishery has a seasonal limit of 1 Chinook salmon per household. The Kenaitze Tribe's educational fishery has historically had a seasonal limit of 300 Chinook salmon, but in 2014 the limit was decrease to 50 Chinook salmon to conserve returning fish. The optimal escapement goal range set by this plan is 5,300 to 9,000 early-run Chinook salmon, which is estimated with sonar equipment installed in the lower Kenai River. To achieve the escapement goal, daily sonar estimates of Chinook salmon passing the sonar site and estimates of the sport harvest from creel surveys are used in a run timing model to project total inriver return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the goal's range, the fishery is restricted by steps to catch-and-release only and ultimately to closure. Bait cannot be used until escapement is projected to fall within the OEG range. To help prevent the harvest of 5-ocean fish, there is a slot limit that specifies the size of Chinook salmon that may be retained. The slot limit is in effect from 1 January to 30 June from the Kenai River mouth upstream to the outlet of Skilak Lake, and from 1 to 14 July from the Slikok Creek upstream to the outlet of Skilak Lake.

All sport fishing for early-run Chinook salmon in the Kenai River occurs below Skilak Lake. The bag and possession limit is 1 Chinook salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook salmon from the Kenai River. Only Chinook salmon less than 42 inches or greater than 55 inches can be retained. Sport fishery harvests of early-run Kenai River Chinook salmon during 2004-2013 have ranged from 0 to 4,693, with an average of 2,334 (Begich 2013). These harvests do not include the estimated hook-and-release mortality that ranges from 0 to 257 fish. The Kenaitze Tribe's educational fishery harvest has ranged from 11 to 76 early-run



Chinook salmon during 2004–2013, with an average of 42. No estimates of the number of early-run Kenai River Chinook salmon harvested in commercial or personal use fisheries are available, but due to the timing of these fisheries these harvests are assumed to be negligible.

Estimated early-run Chinook salmon escapement into the Kenai River system is estimated using sonar equipment. Early-run Chinook salmon enter the Kenai River from about late-May through late-June. Most early-run Chinook salmon spawn in Kenai River tributaries below the outlet of Skilak Lake, and most of these spawners are bound for the Killey and Funny rivers. On average, only about 7% of all early-run Chinook salmon spawn in tributaries within and above Skilak Lake (Bendock and Alexandersdottir 1992 and Burger et al. 1983). Spawning escapements from 2004-2013 have ranged from 2,033 to 19,817 early-run Chinook salmon, with an average of 9,449 (Begich 2013).

### Late-Run Chinook Salmon

Most late-run Chinook salmon spawn in the mainstem Kenai River, and the State's *Kenai River Late-Run King Salmon Management Plan* (5 AAC 21.359) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. While this run is primarily managed for use by the sport fishery, the incidental harvest in commercial fisheries is substantial. Most of the sport harvest is taken below the Soldotna Bridge within the Kenai River, although some are taken in marine waters in the Deep Creek sport fishery. The bag and possession limit is 1 Chinook salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook salmon from the Kenai River. Most of the commercial harvest is taken in the East Side set gillnet fishery. The personal use fishery has a seasonal limit of 1 Chinook salmon per household, and the Kenaitze Tribe's educational fishery had a seasonal limit of 50 Chinook salmon in 2014. The sustainable escapement goal range set by this plan is 15,000 to 30,000 late-run Chinook salmon, which is estimated with sonar equipment installed in the lower Kenai River. To achieve the escapement goal, daily sonar estimates of Chinook salmon passing the sonar site and estimates of the sport harvest from creel surveys are used in a run timing model to project total inriver return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the goal's range, the fishery is restricted by several steps, including prohibiting use of bait, to catch-and-release only and ultimately to closure.

The harvest of late-run Chinook salmon is monitored in all existing commercial, personal use, sport, and educational fisheries (Begich 2013). Commercial fishery harvests during 2004-2013 have ranged from 640 to 16,925 Kenai River late-run Chinook salmon, with an average of 7,380. Harvests in the Deep Creek marine sport fishery have ranged from 30 to 996 Kenai River late-run Chinook salmon during 2003-2012, with an average of 446. Sport fishery harvests in the Kenai River have ranged from 103 to 18,214 late-run Chinook salmon during 2003-2012, with an average of 9,926. These in-river harvests do not include the estimated hook-and-release mortality that ranges from 79 to 1,267 fish.

Personal use dip net fishery harvests have ranged from 11 to 1,509 late-run Chinook salmon during 2004-2013, with an average of 904. Kenaitze Tribe's educational fishery harvests have ranged from 0 to 21 late-run Chinook salmon during 2004–2013, with an average of 9.

The late-run Chinook salmon escapement estimate into the Kenai River system is estimated using sonar equipment. Late-run Chinook salmon enter the Kenai River from about late-June through late-July. Most late-run Chinook salmon spawn in the mainstem Kenai River between the Soldotna Bridge and the outlet of Skilak Lake, and about 8.6% of the total late run spawns within or above Skilak Lake (Bendock and Alexandersdottir 1992, Hammarstrom et al. 1985, Burger et al. 1983).

### Coho Salmon

The State manages Kenai River coho salmon primarily for take in sport fisheries, and the *Kenai River Coho Salmon*

*Management Plan* (5 AAC 57.170) establishes management actions and guidelines for sport harvest of Kenai River coho salmon. There are no escapement goals for Kenai river coho salmon. Although genetics studies have shown differences between and within early and late returning spawning components (Olsen et al. 2003 and Crane et al. 2007), the entire run is currently managed as a unit by the State.

The harvest of coho salmon is monitored in all existing commercial, personal use, sport, and educational fisheries, but stock specific information for commercial fisheries, based on coded-wire tag returns, is only available through 2003 (Lafferty et al. 2005). While total harvests of coho salmon in Upper Cook Inlet commercial fisheries are generally several hundreds of thousands each year, harvests of Kenai River coho salmon are only a small component of the total. Commercial fishery harvests have ranged from 95,215 to 311,058 coho salmon during 2004-2013, with an average of 172,716. Total sport fishery harvests have ranged from 36,407 to 65,952 coho salmon during 2003–2012, with an average of 47,371.

#### Federal Subsistence Harvest

Rural residents of Ninilchik, Hope and Cooper Landing have been allowed to harvest fish under Federal subsistence regulations since 2007. From the inception of the Kenai River Federal Subsistence Fishery sockeye salmon composed over 99% of the total harvest. For the period of 2007 through 2013 the total harvest of sockeye salmon has ranged from 712 to 1,608 fish with the majority of the sockeye salmon being harvested by residents of Cooper Landing (**Table 1**).

**Table 1.** Total and Percent Harvest of Sockeye Salmon by Community, Kenai River Federal Subsistence Fishery.

<b>2007-2013 Kenai Federal Subsistence Sockeye Salmon Harvest</b>							
<u>Total Number of Sockeye Salmon Harvested</u>							
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Cooper Landing Residents	606	1068	752	679	840	1052	1057
Hope Residents	85	286	121	172	159	287	271
Ninilchik Residents	21	254	224	52	84	51	80
<b>Total</b>	<b>712</b>	<b>1608</b>	<b>1097</b>	<b>903</b>	<b>1083</b>	<b>1390</b>	<b>1408</b>
<u>Percent Sockeye Salmon Harvested</u>							
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Cooper Landing Residents	85%	66%	69%	75%	78%	76%	75%
Hope Residents	12%	18%	11%	19%	15%	21%	19%
Ninilchik Residents	3%	16%	20%	6%	8%	4%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Harvest estimates for 2014 Federal Subsistence fishery will not be available until early 2015.

## **Effects of the Proposal**

Adopting this proposal as submitted does not provide subsistence harvest opportunities for residents of Cooper Landing and Hope. Limiting the fishing opportunity to residents of Ninilchik is problematic because Cooper Landing and Hope have customary and traditional use determination for all fish within the Kenai National Wildlife Refuge and the Chugach National Forest, including the Kenai River. All three communities have shown a history of participating in the Federal subsistence fishery. Currently, Federal subsistence regulations must provide opportunity for all eligible rural residents; therefore, if this proposal was adopted Hope and Cooper Landing could participate with community gillnets.

Both early and late-run Chinook salmon have been experiencing a period of low productivity and below average run strength. Low returns have resulted in closures of both the sport and personal use fisheries to the taking of Chinook salmon in the Kenai River. Allowing the proposed gillnet fishery could result in a harvest of Chinook salmon that would be above sustainable harvest levels. In addition, there are currently size limits imposed on rainbow/steelhead trout and Dolly Varden/Arctic char harvested in the Kenai River rod and reel and dipnet fisheries. In addition, daily /possession limits are one to two fish. The nonselective nature of a gillnet fishery on the harvest of resident species would make imposing any size restrictions and conservative daily/possession limits difficult and could possibly result in an over harvest of resident species. Because of overlapping migration timing for the early-run and late-run Chinook salmon and rainbow/steelhead trout, there is no time window when gillnets could be deployed to miss both species.

Finally, allocating sockeye salmon harvest, the most commonly harvested species, between the dipnet, rod and reel and proposed community gillnets could pose challenging. Currently, the number of sockeye salmon harvested is less than half of the annual total harvest limit of 4000, with Cooper Landing harvesting the majority of those fish. It would be difficult to determine total gillnet annual harvest limits by community while still ensuring maximum opportunity for both the dipnet and rod and reel fisheries.

## **OSM CONCLUSION**

**Oppose** Proposal FP15-10.

## **Justification**

Gillnets do not allow for species, stock and size selective management or control of harvest. Introduction of gillnets as a gear type in the Kenai River could exacerbate an existing Chinook salmon population concern, and could result in an over-harvest of resident species. Currently, residents of Ninilchik, Cooper Landing and Hope have a positive customary and traditional use determination for all fish in the Kenai River. Without a Section 804 analysis justifying a preference for the community of Ninilchik, there is no reason to exclude the other communities. If this proposal were to be adopted, multiple community gillnets would be allowed in Kenai River. Since both early and late-run Chinook salmon are experiencing a period of low productivity and below average run strength, allowing an inriver gillnet harvest opportunity would be inconsistent with conserving healthy fish populations. Of particular concern is the Chinook salmon which are experiencing below average returns and the potential incidental harvest of stocks or species that are spawning, less abundant and prone to over harvest.

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**SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS****Southcentral Alaska Subsistence Regional Advisory Council**

**Support** Proposal FP15-10. The Council stated that the proposal, if enacted into regulation, would provide for a meaningful subsistence preference. Chinook and rainbow trout harvest will be limited and conservation concerns can be addressed through an operational plan. The operational plan, with review by the in-season manager, would require prior approval with the land managing agency prior to any fishing. The proponent provided public comments and stated that gillnet is a customary and traditional use method.

**INTERAGENCY STAFF COMMITTEE COMMENTS FP15-10**

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.

If the Board rejects the Council's recommendation, it could do so based on exceptions in Section 805(c) of ANILCA. Allowing the use of gillnets in the Kenai River could be viewed as a violation of recognized principles of fish and wildlife conservation, as gillnets do not allow for species, stock, and size selective harvest. Unlike the situation on the Kasilof River (FP15-11), there is no distinct time period when gillnets could be used to address concerns with stocks or species that are spawning, less abundant or prone to overharvest, or of critical size. The proposed regulation states that rainbow trout and Dolly Varden 18 inches or greater must be released; however, any fish caught in a gillnet would likely result in a mortality. There are conservation concerns with Chinook salmon in the Kenai River and early and late-run Chinook salmon are in the Kenai River during the proposed season.

*FP15-10 Interagency Staff Committee Comments***INTERAGENCY STAFF COMMITTEE COMMENTS FP15-10**

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## FP15-10

## 2015–2017 Federal Subsistence Fish and Shellfish Proposal

(Attach additional pages as needed).

Name: Ninilchik Traditional Council  
 Organization: Tribe  
 Address: Po Box 39070  
Ninilchik Alaska 99639  
 Phone: 907-567-3313 Fax: 907-567-3308  
 E-mail: Ivan@ninilchiktribe-nns.gov

Submit proposals by  
 March 28, 2014

## Questions?

Call: (800) 478-1456 or (907) 786-3888

E-mail: [subsistence@fws.gov](mailto:subsistence@fws.gov)

Information on submitting proposals is  
 also available on the Office of Subsistence  
 Management website: [http://www.doi.gov/  
 subsistence/index.cfm](http://www.doi.gov/subsistence/index.cfm)

This proposal suggests a change to (check all that apply):

- ☐ Harvest season      ☒ Method and means of harvest  
☐ Harvest limit      ☐ Customary and traditional use  
    determination

1. What regulation do you wish to change? Include management unit number and species. Quote the current regulation if known. If you are proposing a new regulation, please state "new regulation."

New Regulation:

Cook Inlet Area

".....Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.

All Fish- Federal subsistence fishing permit required for salmon, trout, and Dolly Varden/char.

*Residents of the communities of Cooper Landing, Hope and Ninilchik*

Seasons, harvest and possession limits, and methods and means are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) in effect at the time you are fishing, unless otherwise modified in this section. ....

**Kenai River Salmon- Dip Net....."**

2. How should the new regulation read? Write the regulation the way you would like to see it written.

Cook Inlet Area (Additions indicated by underlining)



“.... Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.

All Fish- Federal subsistence fishing permit required for salmon, trout, and Dolly Varden/char.

*Residents of the communities of Cooper Landing, Hope and Ninilchik*

Seasons, harvest and possession limits, and methods and means are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) in effect at the time you are fishing, unless otherwise modified in this section. ....

- ◆ No Federal open season for grayling and burbot.

#### **Kenai River Salmon- Gillnet**

**Location:** All open Federal public waters in the Kenai River drainage

- ◆ Only residents of Ninilchik may harvest Salmon from the Kenai River under Federal subsistence fishing regulations using a gillnet.
- ◆ Only residents of Ninilchik may retain resident species including lake trout, rainbow trout, and Dolly Varden/Arctic char harvested incidentally from the Kenai River while salmon fishing under Federal subsistence regulations. Rainbow trout and Dolly Varden 18 inches or longer taken in the Kenai River gillnet fishery must be released if it has a reasonable chance of survival.
- ◆ Fishing for sockeye, Chinook, coho, or pink salmon will close by Special Action prior to regulatory end dates if the annual total harvest limit for that species is reached or for other reasons as required.
- ◆ Only one gillnet for the community of Ninilchik will be allowed in the open Federal public waters in the Kenai River drainage. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear. An operating plan must be submitted by an organization regarding who is responsible for the implementation, operation and use of the community gillnet. The plan must be approved by the in-season fishery manager, in consultation with the Kenai NWR manager, and must also include how fishing time and fish will be offered and distributed among households and residents of Ninilchik. For more information on submitting a plan for gillnet use contact the Federal in-season manager, at 907-262-9863 or toll-free at 800-822-6550.
- ◆ Salmon taken in the Kenai River gillnet fishery by Ninilchik households will be included as part of those households' annual limits for the Kaslof River.



- ◆ All fish harvested as part of the household limit in the gillnet fisheries in the Kenai River must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location, and permits must be returned to the manager by the due date listed in the permit. Call (907) 262-9863 or (800) 822-6550 to report your harvest.
- ◆ Failure to respond to reporting requirements or return this completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.

**Kenai River Salmon- Dip Net....."**

**3. Why should this regulation change be made?**

Previous efforts to establish a meaningful subsistence fishery on the Kenai River have not been successful. The original proposals for a meaningful fishery, as requested by the subsistence users, was to use nets as the primary gear type to harvest fish in the specified federal areas based on the local knowledge of the area and experience of the users. Interim measures were provided through the federal subsistence process on the Kasilof river, which were not customary or traditional for the lower Cook Inlet because they simply never worked well enough to be used as a traditional gear type. As an effort of good faith, the users have attempted to prepare and launch a fish wheel, requested special permits, prepared work plans, provided insurance, and prepared and submitted final reports as part of the requirements to operate a fish wheel in order to establish a meaningful subsistence fishery and test the interim gear type declared by the federal subsistence process. The administrative tasks for subsistence users have proven to be unusually scrutinizing while other state fisheries, federal fisheries, and recreational groups do not have to meet these requirements. The annual operation of the fish wheel on the Kasilof river has harvested zero (0) fish. A meaningful harvest method is necessary on the Kenai river.

Allowing a single community gillnet will have a remarkable positive impact on the subsistence user's ability to harvest fish. In addition, conservation concerns are addressed in the fact that only one (1) community gillnet will be utilized in the Kenai River. The precedence has been set for a community approach to allowing an operational plan for the fish wheel and the same concept would be utilized in order to reduce the possibility of everyone using gillnets, therefore the proliferation of nets is not an issue.

In addition, the State of Alaska utilizes a gillnet in the Kenai River almost every day in order to coincide with sonar data collection in order to verify salmon escapement. It seems highly hypocritical that the State of Alaska can use a gillnet every day while the federally qualified subsistence user who has absolute preference under the law is derided for wanting to use the same method.

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