



IN REPLY REFER TO:

## United States Department of the Interior

Office of Subsistence Management  
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OSM 17012.GP

Mr. John Jensen, Chair  
Alaska Board of Fisheries  
Alaska Department of Fish and Game  
P.O. Box 115526  
Juneau, Alaska 99811-5526

MAR 10 2017

Dear Chairman Jensen:

The Alaska Board of Fisheries (Board) will consider 35 proposals at its Statewide King and Tanner Crab and Supplemental Issues meeting in Anchorage, March 20-24, 2017. We have reviewed the proposals, the Board will be considering at this meeting.

The Office of Subsistence Management, working with other Federal agencies, has developed the enclosed preliminary recommendations on proposals that have potential impacts on Federally qualified subsistence users and fisheries resources in this area.

We appreciate the opportunity to comment on these important regulatory matters and look forward to working with the Board and the Alaska Department of Fish and Game on these issues. Please contact George Pappas, State Subsistence Liaison, 907-786-3822, with any questions you may have concerning this material.

Sincerely,

Eugene R. Peltola, Jr.  
Assistant Regional Director

Enclosure

cc: Sam Cotten, ADF&G, Juneau  
Anthony Christianson, Chair FSB  
Lisa Olson, ADF&G, Anchorage  
Hazel Nelson, ADF&G, Anchorage  
Thomas Brookover, ADF&G, Anchorage  
Administrative Record

Glenn Haight, ADF&G, Juneau  
Jill Klein, ADF&G, Anchorage  
Stewart Cogswell, OSM, Anchorage  
Scott Kelley, ADF&G Juneau  
Interagency Staff Committee

**Office of Subsistence Management Comments**

The following comments address these proposals only as they affect Federally qualified subsistence users and resource conservation.

**Proposal 244 – 5 AAC 69.110. Seasons and bag, possession, and size limits for the North Slope Area; 5 AAC 69.135. Methods, means, and general provisions – Shellfish; 5 AAC 71.010. Seasons and bag, possession, annual, and size limits for the Kuskokwim – Goodnews Area; 5 AAC 71.035. Methods, means, and general provisions – Shellfish; and 5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for the Yukon River Area.** Align sport crab fishery regulations and repeal methods and means and general provisions for shellfish for the North Slope, Kuskokwim–Goodnews, and Yukon areas, as follows:

**Current Federal Regulations:**

*§ 100.27(h)(6) Bering Sea Area. (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.*

*(iii) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Dungeness crabs per person.*

*(iv) In the subsistence taking of king crab:*

*(A) In waters south of 60° North latitude, the daily harvest and possession limit is six male crabs per person.*

*(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open.*

*(C) In waters south of 60° North latitude, you may take crab only from June 1 through January 31.*

*(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.*

*(v) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Tanner crabs.*

**Is a similar issue being addressed by the Federal Subsistence Board? No.**

**Impact to Federal Subsistence users/fisheries:** Adoption of this proposal will not impact Federally qualified subsistence users. As written, the adoption of this proposal may inadvertently make the sport fishery regulations for king and Tanner Crabs more liberal than State and Federal regulations for subsistence fisheries in the marine waters within three miles

of Nunivak Island. The marine waters within three miles of Nunivak Island are under Federal subsistence fisheries jurisdiction.

**Federal Position/Recommended Action:** The Office of Subsistence Management (OSM) recommendation is focused upon the waters within three miles of Nunivak Island and the position to **support** the proposal.

**Rationale:** Adoption of the portion of the proposal that governs marine waters in both north and south of the 60° latitude line of Nunivak Island (5 AAC 71.035 (a-f)) may result in some complications of the State's sport, personal use, and subsistence shellfish regulations within marine waters under Federal subsistence fisheries jurisdiction. Adoption of this proposal as written may result in removing the sport crab size, harvest, and possession limits for both king and Tanner crabs in the referenced fisheries. Currently, a conservation concern for the King and Tanner crab stocks in this area has not been identified and liberalizing the sport fisheries in the area of concern to OSM may be warranted.

Although adoption of this proposal will unlikely impact current participation or harvests in the State managed sport fishery, adopting this proposal will result in a sport fishery which is more liberal than both the State and Federally managed subsistence shellfish fisheries. If a Federally qualified subsistence user or member of the public seeks similar liberalizations to the Federal subsistence fisheries, they can submit a proposal to the Federal Subsistence Board to request desired long term changes during the fisheries proposal 2019/2020 cycle.

**Proposal 275 (formerly 95)** seeks to establish the Kuskokwim River Chinook Salmon subsistence fishery as a Tier II fishery. The proposal seeks to implement an alternate management system, which will effectively ensure an equitable distribution of any harvestable surplus throughout the Kuskokwim River drainage during times when Amounts Necessary for Subsistence cannot be met.

### **Current Federal Regulations**

Tier II and Amounts Necessary for Subsistence do not exist in Federal Subsistence Regulations.

**Is a similar issue being addressed by the Federal Subsistence Board? Yes.** In 2014, 2015, and 2016 the Federal Subsistence Board supported special action requests and adopted ANILCA Section 804 determinations for Kuskokwim River drainage Chinook Salmon stocks. Section 804 requires that whenever it is necessary to restrict the taking of populations of fish and wildlife for subsistence uses in order to protect the continued viability of such populations or to continue subsistence uses, such a priority shall be implemented through appropriate limitations based on the application of three criteria in Section 804. The criteria are the following: (1) customary and direct dependence upon the populations as the mainstay of livelihood, (2) local residency, and (3) the availability of alternative resources.

As a result of adopting the special action requests, Federal public lands and waters in the Kuskokwim River drainage were closed to the harvest of Chinook Salmon except by residents

of the drainage and the four coastal communities of Kwigillingok, Kongiganek, Kipnuk, and Chefnak from late May to early July 2014 - 2016.

**Impacts to Federal subsistence users/fisheries:** Adoption of this proposal could reduce participation in the State managed subsistence fisheries; thus, reducing the overall take of Chinook Salmon in waters under State subsistence fisheries jurisdiction. If this proposal is adopted and the abundance of the Chinook Salmon return to the Kuskokwim does not provide enough harvestable surplus for a subsistence fishery without restrictions, waters under Federal subsistence fisheries jurisdiction may be restricted to fishing for Chinook Salmon by Federally qualified users only. If this is the case, a Tier II fishery could not take place on Federal public waters as the State of Alaska's selection criteria for a Tier II fishery would not meet the requirements set out in ANILCA.

**Federal Position/Recommended Action:** The Office of Subsistence Management's position is to **oppose** this proposal for waters under Federal subsistence fisheries jurisdiction.

**Rationale:** Adoption of this proposal could potentially assist the management of the State managed subsistence fisheries outside of Federal public waters of the Kuskokwim River; however, current Tier II regulations are not compatible with Federal subsistence regulations. This incompatibility would likely prohibit application of a Tier II fishery in Federal public waters. This provision is based upon the need to restrict subsistence fisheries in Federal public waters to Federally qualified users only during times when conservation concerns exist for the resource, for continuance of subsistence uses, or for public safety purpose as outlined in ANILCA.

Enacting a Tier II fishery under State fisheries regulations would not automatically impact the Federal subsistence fisheries. The conservation concerns likely identified by the State of Alaska to justify adjusting fisheries management into a Tier II status would also be identified by Federal managers potentially triggering restrictions in the Federal subsistence fisheries.

Though Tier II qualification criteria would likely limit some participation in the State-managed subsistence fishery, it is likely most eligible users would be residents of the Kuskokwim River drainage. If the Chinook Salmon returns are low enough to trigger a Tier II scenario and Chinook Salmon fishing in Federal public waters are restricted to Federally qualified users only, differing regulations and eligibility requirements could result in confusion and enforcement concerns.

**Proposal 276 (formally 222) – 5 AAC 01.280. Subsistence fishing permit.** Establish a permit system for regulating the king salmon subsistence fishery during times of low king salmon runs.

#### **Current Federal Regulations**

*§ 100.27 (e)(4)(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.*

*§ 100.27(b)(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.*

**Is a similar issue being addressed by the Federal Subsistence Board? Yes.** A Fisheries Special Action request has been submitted for management of the Kuskokwim River fisheries for the 2017 season. The USFWS has signed a memorandum of understanding (MOU) with the Kuskokwim River Intertribal Fisheries Commission (KITFC). The recommendations for in-season management are through government to government consultations between USFWS and the KITFC. This MOU pertains to direct in-season management/take regulations between the KITFC and the Federal In-Season Manager on the Kuskokwim River within the jurisdictional boundaries of the conservation unit. Once the KITFC and Federal In-Season Manager have agreed to harvest means and methods this would subsequently be negotiated with the Alaska Department of Fish and Game.

If the Kuskokwim River Chinook Salmon continues in a low abundance trend, the Federal Subsistence Board may continue to receive fisheries special action requests from the public to restrict the fisheries on Federal public lands similarly undertaken in 2014 - 2016.

**Impacts to Federal subsistence users/fisheries: Yes.** Adoption of Proposal 276 could benefit Federally qualified subsistence users fishing in waters outside of waters under Federal subsistence fisheries jurisdiction while participating in the State managed fisheries as Federal public waters would likely be closed to non-Federally qualified subsistence users during times of conservation concerns for Chinook Salmon as identified in the recommended regulatory language.

**Federal Position/Recommended Action:** The OSM position is to oppose this proposal for waters under State and Federal subsistence fisheries jurisdictions during times of Chinook Salmon conservation concerns.

**Rationale:** Adopting some form of proposal 276 could potentially assist the management of the State managed subsistence fisheries upstream of Federal public waters of the Kuskokwim River by providing more defined subsistence harvest information than currently provided by post-season survey efforts. Adoption of Federal regulations would likely prohibit application of a State subsistence permit system in waters under Federal subsistence fisheries regulations. This provision is based upon the need to restrict subsistence fisheries in Federal public waters during times when conservation concerns exist for the resource, for continuance of subsistence uses, or for public safety purposes as outlined in ANILCA.