

FP25-09 Executive Summary

<p>General Description</p>	<p>Proposal FP25-09 requests to allow red-colored kegs or buoys to mark subsistence gear in the Bristol Bay Area. <i>Submitted by: submitted by the Bristol Bay Native Association.</i></p>
<p>Proposed Regulation</p>	<p>§ __.27 <i>Subsistence taking of fish.</i></p> <p>...</p> <p>(b) <i>Methods, means, and general restrictions.</i></p> <p>...</p> <p>(7) <i>You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:</i></p> <p style="padding-left: 40px;">(i) <i>Yukon-Northern Area; and</i></p> <p style="padding-left: 40px;">(ii) <i>Kuskokwim Area</i></p> <p style="padding-left: 40px;">(iii) <i>Bristol Bay Area</i></p>
<p>OSM Conclusion</p>	<p>Support Proposal FP25-09 with modification to allow red-colored kegs or buoys to mark subsistence gear in the Bristol Bay Area and in other areas of Alaska to align Federal with State regulations.</p> <p>The modified regulation should read:</p> <p>§ __.27 <i>Subsistence taking of fish.</i></p> <p>...</p> <p>(b) <i>Methods, means, and general restrictions.</i></p> <p>...</p> <p>(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:</p> <p style="padding-left: 40px;">(i) Yukon-Northern Area; and</p> <p style="padding-left: 40px;">(ii) <i>Kuskokwim Area</i></p>

	<p><i>(7) You may use kegs or buoys of any color but red on any permitted gear in the following areas:</i></p> <p><i>(i) Kotzebue Area; and</i></p> <p><i>(ii) Norton Sound-Port Clarence Area</i></p>
Bristol Bay Subsistence Regional Advisory Council Recommendation	Support as modified by OSM
Interagency Staff Committee Comments	The Interagency Staff Committee found the analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and the Federal Subsistence Board action on this proposal.
ADF&G Comments	None
Written Public Comments	None

**STAFF ANALYSIS
PROPOSAL FP25-09**

ISSUES

Proposal FP25-09, submitted by the Bristol Bay Native Association, requests to allow red-colored kegs or buoys to mark subsistence gear in the Bristol Bay Area.

DISCUSSION

This regulation allows law enforcement to tell the difference between commercial gear (keg or buoy always red) and subsistence gear (keg or buoy any color), for which different regulations apply.

The proponent is seeking to repeal the restriction on using a red-colored buoy or keg to mark permitted gear in the Bristol Bay Area. They said that this is a burden to subsistence users who should be unencumbered by the color of their buoy.

Existing Federal Regulation

§__.27 Subsistence taking of fish.

...

(b) Methods, means, and general restrictions.

...

(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:

(i) Yukon-Northern Area; and

(ii) Kuskokwim Area

Proposed Federal Regulation

§__.27 Subsistence taking of fish.

...

(b) Methods, means, and general restrictions.

...

(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:

(i) Yukon-Northern Area; and

(ii) Kuskokwim Area

(iii) **Bristol Bay Area**

Relevant Federal Regulations

§___.27(b)(5) Bristol Bay Area

...

(vii) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

Existing State Regulation

None

Relevant State Regulation

5 AAC 01.010 - Methods, means, and general provisions.

...

(h) A subsistence fisherman shall plainly and legibly inscribe that person's first initial, last name, and address on that person's fish wheel, or on a keg or buoy attached to a gillnet, and other unattended subsistence fishing gear.

5 AAC 01.120 - Lawful gear and gear specifications

...

(d) In the Kotzebue District, kegs or buoys attached to subsistence gillnets may be any color except red.

5 AAC 01.170 - Lawful gear and gear specifications

...

(d) In the Norton Sound District, kegs or buoys attached to subsistence gillnets may be any color except red.

Article 6 - Bristol Bays Area

5 AAC 01.320 - Lawful gear and gear specifications

...

(f) Each set gillnet must be staked and buoyed. Instead of complying with 5 AAC 01.010(h) [above], a subsistence fisherman may plainly and legibly inscribe that person's first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

Extent of Federal Public Lands/Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. Federal public waters of the Bristol Bay Area comprise fresh waters within and adjacent to the Togiak National Wildlife Refuge, Alaska Peninsula/Becharof National Wildlife Refuge, Alagnak Wild and Scenic River corridor, Katmai National Preserve, and Lake Clark National Park and Preserve. Katmai National Park is closed to subsistence uses. On general domain lands managed by the Bureau of Land Management in the Bristol Bay Area Federal subsistence regulations apply only to non-navigable waters (**Figure 1**). Bristol Bay commercial fishing districts are not within Federal subsistence fisheries management jurisdiction.

Customary and Traditional Use Determinations

Residents of the Nushagak District and the freshwater drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in the Nushagak District, including drainages flowing into the district.

Residents of the Naknek and Kvichak river drainages have a customary and traditional use determination for salmon and freshwater fish in the Naknek River drainage.

Residents of the Kvichak/Iliamna-Lake Clark drainage have a customary and traditional use determination for salmon and freshwater fish in the Lake Clark drainage.

Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak, have a customary and traditional use determination for salmon and freshwater fish in Togiak District, including drainages flowing into the district.

Residents of South Naknek, the Egegik District, and freshwater drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in the Egegik District, including drainages flowing into the district.

Residents of the Ugashik District and freshwaters drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in the Ugashik District, including drainages flowing into the district.

Residents of the Togiak District and freshwater drainages flowing into the district have a customary and traditional use determination for Herring spawn on kelp in the Togiak District.

Residents of the Bristol Bay Area have a customary and traditional use determination for all fish in the remainder of the Bristol Bay Area.

Regulatory History

In 1992, the Federal Subsistence Management Program carried over the State regulations governing the harvest of fish for subsistence uses (57 Fed. Reg. 103, 22564 [May 28, 1992]). The Bristol Bay Area regulation under consideration in this analysis was incorporated into Federal regulations in this manner.

The purpose of this regulation was to help law enforcement tell the difference between permitted commercial gear (keg or buoy always red) and permitted subsistence gear (keg or buoy any color), for which different regulations apply. Between 1999 and the present, the Alaska Board of Fisheries has repealed its regulation restricting the use of a red-colored keg or buoy when it's attached to permitted subsistence gear in the Bristol Bay Area.

This State subsistence regulation has been repealed in Alaska except for in the Kotzebue and Norton Sound-Port Clarence areas.

Effects of the Proposal

If Proposal FP25-09 is adopted, federally qualified subsistence users may use a keg or buoy of any color when attached to gear under Federal subsistence fishery regulations, and Federal and State regulations will be aligned. There is no anticipated effect on nonsubsistence users or fish resources.

If proposal FP25-09 is not adopted, federally qualified subsistence users may not use a red-colored keg or buoy when attached to gear under Federal subsistence fishery regulations. Federal regulations will continue to be more restrictive than State regulations that allow the use of a red-colored keg or buoy attached to permitted gear.

OSM CONCLUSION

Support Proposal FP25-09 with **modification** to allow red-colored kegs or buoys to mark subsistence gear in the Bristol Bay Area and in other areas of Alaska to align Federal with State regulations.

The modified regulation should read:

§__.*27 Subsistence taking of fish.*

...

(b) Methods, means, and general restrictions.

...

~~(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:~~

~~(i) Yukon Northern Area; and~~

~~(ii) Kuskokwim Area~~

(7) You may use kegs or buoys of any color but red on any permitted gear in the following areas:

(i) Kotzebue Area; and

(ii) Norton Sound-Port Clarence Area

Justification

Currently federally qualified subsistence users must attach a buoy or a keg to gear. Additionally, in the Bristol Bay Area they are restricted from using a red-colored keg or buoy under Federal subsistence fishery regulations. The State has adopted regulations allowing the use of red-colored kegs or buoys in all parts of the state except in two locations (Kotzebue and Norton Sound-Port Clarence); therefore, the OSM modification aligns with the proponents wish to allow the use of a red buoy in the Bristol Bay Area, and it expands the use of a red buoy to all parts of the state where inconsistencies between State and Federal regulations exist and matches the State regulations where the use of a red buoy is not allowed. Adopting the recommended modification to this proposal will remove the restriction on red-colored kegs and buoys except in the Kotzebue and Norton Sound-Port Clarence areas, consistent with State regulations. No effects on nonsubsistence users or fish resources are anticipated.

LITERATURE CITED

None

SUBSISTENCE REGIONAL ADVISORY COUNCILS

Bristol Bay Subsistence Regional Advisory Council

Support FP25-09 as **modified by OSM**. The Council said the proposal liberalizes the use of buoys and aligns State and Federal regulations. The modification liberalizes the use of buoys in other fishery management areas in Alaska and aligns State and Federal regulations in those area.

The modified regulation should read:

§___.27 Subsistence taking of fish.

...

(b) Methods, means, and general restrictions.

...

~~*(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:*~~

~~*(i) Yukon Northern Area; and*~~

~~*(ii) Kuskokwim Area*~~

(7) You may use kegs or buoys of any color but red on any permitted gear in the following areas:

(i) Kotzebue Area; and

(ii) Norton Sound-Port Clarence Area

INTERAGENCY STAFF COMMITTEE COMMENTS

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

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

None