

## FP25-15 Executive Summary

<b>General Description</b>	Proposal FP25-15 requests to reduce the required minimum distance between set gillnets from 150 feet to 75 feet in Kuskokwim River tributaries. <i>Submitted by: Yukon Delta National Wildlife Refuge.</i>
<b>Proposed Regulation</b>	<p><i>§___.27 (e)(4) Kuskokwim Area</i></p> <p>...</p> <p><i>(xii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 75 <del>150</del> feet of any part of another set gillnet.</i></p>
<b>OSM Conclusion</b>	<b>Support</b>
<b>Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Recommendation</b>	<b>Oppose</b>
<b>Western Interior Alaska Subsistence Regional Advisory Council Recommendation</b>	<b>Oppose</b>
<b>Interagency Staff Committee Comments</b>	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.
<b>ADF&amp;G Comments</b>	<b>None</b>
<b>Written Public Comments</b>	<b>None</b>

**STAFF ANALYSIS  
PROPOSAL FP25-15**

**ISSUES**

Proposal FP25-15, submitted by the Yukon Delta National Wildlife Refuge, requests to reduce the required minimum distance between set gillnets from 150 feet to 75 feet in Kuskokwim River tributaries.

**DISCUSSION**

The proponent states that the current Federal set gillnet regulation is more restrictive than the current State regulation that was adopted by the Alaska Board of Fisheries in 2019. Adoption of this proposal will reduce user confusion and enforcement concerns.

**Existing Federal Regulation**

*§\_\_\_.27 (e)(4) Kuskokwim Area*

...

*(xii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.*

**Proposed Federal Regulation**

*§\_\_\_.27 (e)(4) Kuskokwim Area*

...

*(xii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 75 ~~150~~ feet of any part of another set gillnet.*

**Existing State Regulation**

*5 AAC 01.270. Lawful gear and gear specifications and operation*

...

*(e) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, no part of a set gillnet located within a tributary to the Kuskokwim River may be set or operated within 75 feet of any part of another set gillnet.*

## **Extent of Federal Public Lands/Waters**

For purposes of this analysis, the phrase “Federal public waters” is defined as those waters described under 36 CFR §242.3 and 50 CFR §100.3. The affected area consists of those waters of the Kuskokwim River drainage that are within and adjacent to the exterior boundaries of the Yukon Delta National Wildlife Refuge. These waters are generally described as the lower Kuskokwim River drainage from the mouth upriver to and including about 30 miles of the Aniak River (**Figure 1**).

## **Customary and Traditional Use Determinations**

Residents of the Kuskokwim Area, except those persons residing on United States military installations located on Cape Newnham, Sparrevohn U.S. Airforce Base (USAFB), and Tatalina USAFB, have a customary and traditional use determination for all fish except rainbow trout in the Kuskokwim River drainage.

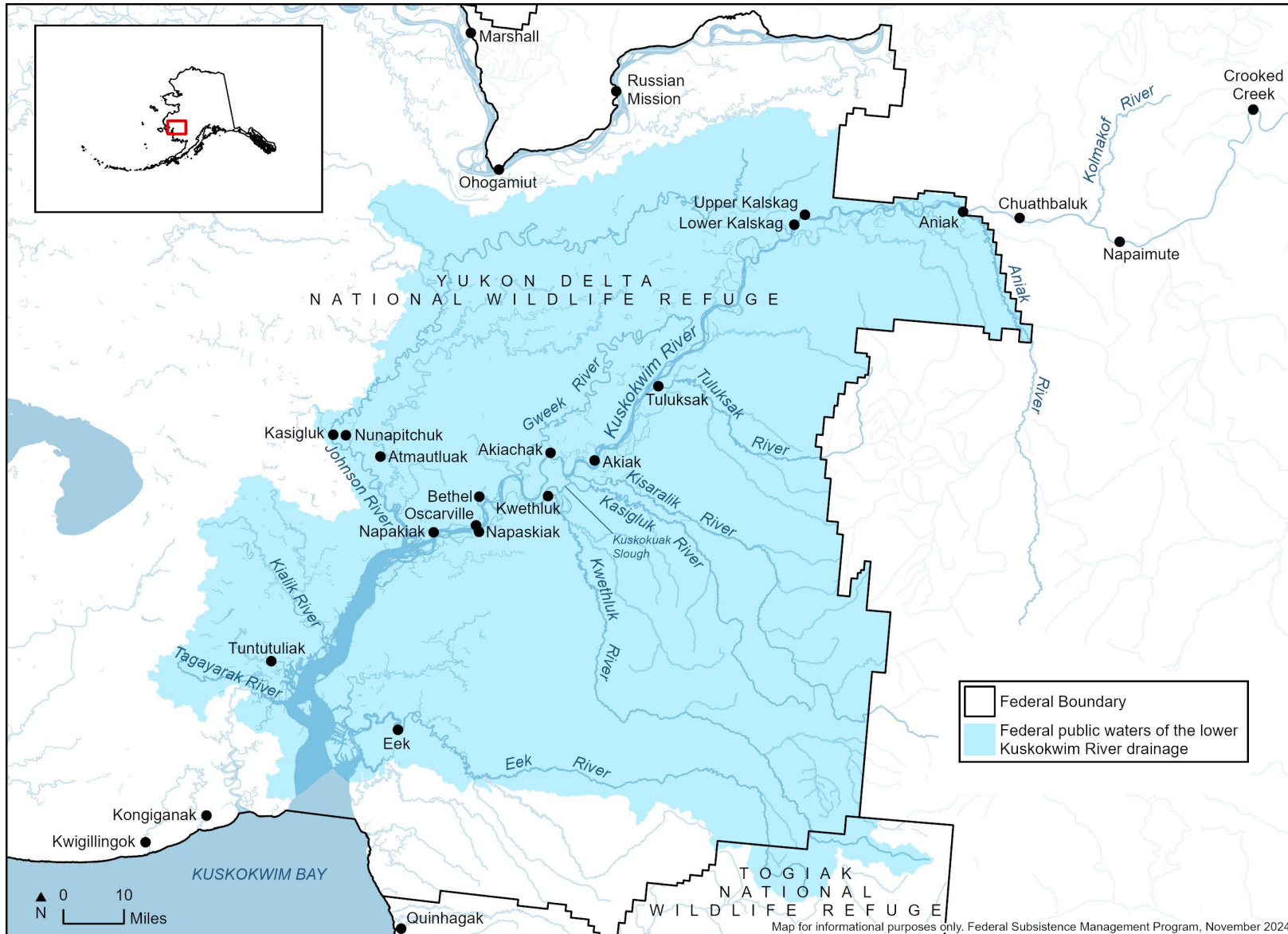
Residents of the communities of Akiachak, Akiak, Aniak, Atmautluak, Bethel, Chuathbaluk, Crooked Creek, Eek, Goodnews Bay, Kasigluk, Kwethluk, Lower Kalskag, Napakiak, Napaskiak, Nunapitchuk, Oscarville, Platinum, Quinhagak, Tuluksak, Tuntutuliak, and Upper Kalskag have a customary and traditional use determination for rainbow trout in the Kuskokwim River drainage.

## **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 regulation under consideration in this analysis was incorporated into the Federal regulations in this manner.

However, since 2014, the Kuskokwim River mainstem and its tributaries in which salmon are known to spawn have been closed to the use of gillnets in June and into July by Federal special actions. These tributaries are the following:

- The Eek River;
- The Kwethluk River drainage beginning at its confluence with Kuskokuak Slough;



**Figure 1.** Map of Federal public waters in the Kuskokwim River drainage.

- The Kasigluk and Kisaralik river drainages including Old Kuskokuak Slough to Alaska Department of Fish and Game (ADF&G) regulatory markers at the confluence of Old Kuskokuak Slough and Kuskokuak Slough
- The Tuluksak River drainage including its confluence with the Kuskokwim River and downstream approximately 1-mile to ADF&G regulatory markers;
- The Aniak River drainage to ADF&G regulatory markers at its confluence with the Kuskokwim River; and
- The Aniak box defined as: The waters of the Kuskokwim River main stem from the Yukon Delta NWR boundary at Aniak downstream to a line formed from the northwest corner of the runway (latitude 61° 35' 16" N, longitude 159° 33' 28" W), due north to a point on the southeast corner of the sandbar (latitude 61° 35' 37" N, longitude 159° 33' 16" W).

Additionally, since 2014, the Federal manager has closed by special action tributaries not listed above to fishing with gillnets within 100 yards upstream from the mouth of the tributary. This is to protect salmon that have temporarily wandered into the mouth of these tributaries while on their way to spawn further up the Kuskokwim River drainage.

In January 2019, the Alaska Board of Fisheries acted on Proposal 106, submitted by the Organized Village of Kwethluk, which requested modifying the State regulation at *5 AAC 01.270 Lawful gear and gear specifications and operation* to allow gillnets to be set 50 feet apart. The Alaska Board of Fisheries amended the proposal to allow gillnets to be set 75 feet apart with the following justification:

All throughout the Kuskokwim River drainage there are a few eddies to set gillnets during spring to fall and under ice setnets during winter months where we see nets set less than the current regulation. People along the Kuskokwim River drainages have set gillnets in eddies in spring to fall and under ice gear in winter which are usually less than 150 feet in length. In order to correct this, the department must adopt a revised regulation that meets the needs of setnetters throughout the year (ADF&G 2019a).

Alaska Board of Fisheries members were concerned that nets might get tangled with one another and user conflict might ensue, so they shortened the distance requirement to 75 feet rather than to 50 feet requested by the Organized Village of Kwethluk (ADF&G 2019b).

In January 2021, the Federal Subsistence Board rejected Proposal FP21-02, a request to shorten the distance requirement from 150 feet to 75 feet, submitted by the Organized Village of Kwethluk. The Board said,

Councils have clearly indicated that they are concerned that reducing the spacing of setnets to 75 feet in tributaries will increase potential conflicts due to crowding of nets. During times of State management of the Kuskokwim drainage, subsistence users will still have the option to setnet in tributaries under less restrictive State regulation. When

Federal public waters in the Kuskokwim drainage are closed to nonsubsistence users, the more restrictive Federal regulation may help to reduce conflict and crowding of nets in tributaries especially when good setnet sites are limited, as we have heard from the two Regional Advisory Councils (FSB 2021: 369).

## Cultural Knowledge and Traditional Practices

### Background

The 17 villages situated in the area that is the focus of this proposal (Eek Island upstream to the mouth of the Kolmakoff River, near Chuathbaluk) are shown in **Table 1**. The majority belong to the *Kusquqvagmiut* confederation of villages and Yup'ik cultural tradition. Most non-Natives living in the area reside in Bethel and Aniak, the regional hubs of Federal and State governments, transportation, trade, and services (Oswalt 1980, Fienup-Riordan 1984). The population of the area has grown steadily since 1960, particularly in the lower Kuskokwim River drainage. In 2020, about 13,000 people lived in these villages (ADCCED 2024).

**Table 1.** The number of people living in the lower and middle Kuskokwim River drainage, from the village of Tuntutuliak near the mouth upstream to Chuathbaluk (ADCCED 2024).

Community	1960	1970	1980	1990	2000	2010	2020
Tuntutuliak	144	158	216	300	370	408	485
Eek	200	186	228	254	280	296	404
Napakiak	190		262	318	353	354	358
Napaskiak	154	259	244	328	390	405	509
Oscarville	51	41	56	57	61	70	70
Kasigluk	244		342	425	543	569	623
Nunapitchuk	327	526	299	378	466	496	594
Atmautluak			219	258	294	277	386
Bethel	1,258	2,416	3,576	4,674	5,471	6,080	6,325
Kwethluk	325	408	454	558	713	721	812
Akiachak	229	312	438	481	585	627	677
Akiak	187	171	198	285	309	346	462
Tuluksak	37	195	236	358	428	373	444
Lower Kalskag	122	183	246	291	267	282	278
Kalskag	147	122	129	172	230	210	212
Aniak	308	205	341	540	572	501	507
Chuathbaluk		94	105	97	119	118	104
Total	3,923	5,276	7,589	9,774	11,451	12,133	13,250

People harvesting fish with set gillnets in the lower and middle Kuskokwim River drainage is well-documented (Oswalt 1959; Andrews and Peterson 1983; Coffing 1991; Coffing et al. 2001; Krauthoefer et al. 2007; Ray et al. 2010; Brown et al. 2012, 2013; Ikuta et al. 2013, 2014, 2016). Salmon are harvested

with gillnets in both commercial and subsistence fisheries, although a commercial fishery has not opened in over a decade.

In many villages, people stay for much of the salmon season at their fish camps where they have drying racks, smokehouses, and sometimes cabins and other structures. Some families have moved to the same fish camp locations for over 50 years. Fish camps are spread out along the mainstem and salmon-bearing tributaries usually within a radius of about 30 miles of a village. They are established at locations that have the characteristics necessary for successfully preserving fish. A fish camp is typically located in a dry area with a soft breeze where fish are hung to dry. Most are situated near a river bank for ease of access, especially when carrying fish from boats to processing areas. Some families set up their fish processing stations in or nearby the village in which they live. In some villages, this is the usual practice. People do not always harvest their fish at their fish camp sites but bring fish harvested from other places to their fish camps where optimum drying conditions are preferred. The site of a successful set gillnet is often near the confluence of two or more streams, sometimes near the mouth of a tributary stream to the Kuskokwim River.

It is common for people to begin salmon fishing with set gillnets until salmon are running in abundance. Then it may make more sense to use drift gillnets to harvest larger quantities of fish at known good harvesting sites. Sometimes boats are lined up, waiting to access these preferred open-water fishing locations. Others only use set gillnets. Set gillnets are attached to the bank.

Other species of fish are taken with set gillnets too, especially whitefishes, Sheefish, and Northern Pike. More whitefishes are harvested during open water periods than are harvested by jigging through the ice or with a net set under the ice when rivers are frozen. However, some villages near the wide mouth of the Kuskokwim River tend to harvest most of these other species of fish by jigging through the ice. Nonsalmon fish are also harvested incidentally to salmon. These fish are cut and hung to dry next to salmon or eaten fresh.

Many of the villages along the Kuskokwim River are situated in areas where people traditionally moved in the spring from camps they stayed at seasonally on the tundra where muskrats, birds, and freshwater fish are abundant. Today, people are very familiar with all of these harvesting areas, which have been used in a shifting landscape for thousands of years.

#### Effects of Special Actions on Gillnet Use

Until recently, people fished with few regulatory restrictions on gear type or timing. Over the past 20 years, more and more regulatory restrictions have been necessary to allow Chinook Salmon to move to and spawn in upriver areas through “windowed” closures and since 2014 to conserve Chinook Salmon. One regulatory restriction that has affected people is the closure to the harvest of salmon and use of gillnets from June 1 through June 12 each year during the drying season by State emergency orders and Federal special actions. Additionally, gillnets cannot be used throughout the rest of June and into July except during opportunities announced by the Federal manager by special actions. The Federal manager strives to provide notice before these fishing opportunities.

One effect of these restrictions has been the increasing use of set gillnets, which are cheaper to operate than drift gillnets. For people making fishing decisions during these low-run years, not enough salmon may be available to warrant the use of drift gillnets, which can be taken long distances and moved from fishing site to fishing site. Sometimes there is not enough time when a fishing opportunity is announced for them to prepare boats for fishing. Drift gillnets are often more expensive to operate, depending on the distance between a family's harvest location and their fish camp where they dry and smoke salmon. The cost of gasoline is frequently noted by local fishermen as the reason why they are not using their boats to drift gillnet in the open waters of the Kuskokwim River drainage. Instead, many families are relying on their set gillnets to harvest fish.

These factors seem to be contributing to the number of families placing set gillnets at convenient fishing sites often nearer to a village than other fishing sites. This has been described by people living in Kwethluk, for example. Some traditional set gillnet fishing areas are now crowded at sites in the lower Kwethluk River that are closer to the village and also in other traditional set gillnet areas such as the lower Gweek River (YKDSRAC 2020).

In these areas, families might not want the distance between set gillnets to be shortened during salmon fishing season when gillnet fishing is closed except during short opportunities. They report set gillnets are already too close together, and people are not adhering to regulations, making it difficult for those using these sites traditionally over many years to catch fish. This happening is described as combat or derby fishing, when everyone is in a rush to harvest fish before a fishing opportunity ends (YKDSRAC 2020).

At the Alaska Board of Fisheries meeting in January 2019 when acting on a proposal to drop the distance between set gillnets from 150 feet to 50 feet, several residents of Kwethluk provided oral testimony on how this regulation might affect subsistence users. One said, "We recognize very few good areas from the mouth [of the Kuskokwim River] up to Kolmakoff, set gillnet sites that are productive. The Kuskokwim is a changing river every year. We don't have any issues or problems with 50 feet [separation of nets]. There are very few eddy areas, good set gillnet areas for subsistence users" (ADF&G 2019c). Another testifier recounted being ticketed along with four elders for having their nets too close together in the Kwethluk River. They said it is not unusual to see people staking their set gillnets closer than 150 feet from one another with no conflict (ADF&G 2019c).

However, at the Yukon-Kuskokwim Delta Council meeting in 2020 when considering an identical proposal (FP21-02), Council members described their thoughts on why the distance allowed between set gillnets (at least 150 feet) should not be shortened. They said that if set gillnets are 75 feet apart, upstream set gillnets fishing for salmon in tributaries are corked by nets set below them; upstream nets catch fewer fish as harvest is reallocated in favor of downstream nets. There are set gillnet sites that are traditionally used by certain families year after year. Around these traditional sites, people try to set as close as they can to the mouth of tributaries. They said that if the distance between nets is shortened from 150 feet to 75 feet, there may be even more crowding at the mouths of tributaries. Council members said that this situation can be dangerous to the safety of people in boats trying to go up tributaries. Some tributaries get so clustered with nets that people traveling at night run over nets that harms nets and motors (YKDSRAC 2020).



## **Effects of the Proposal**

If Proposal FP25-15 is adopted, there will be no effect on federally qualified subsistence users during normal fishing seasons because fishermen currently may fish under less restrictive State fishing regulations. State fishing regulations allow set gillnets in tributaries of the Kuskokwim River within the Yukon Delta Refuge to be up to 75 feet apart instead of the 150 feet separation required in Federal regulations.

However, there have been no normal fishing seasons for salmon since 2014; the harvest of salmon by nonsubsistence users and the use of gillnets have been closed during the Chinook Salmon run in June and into July by Federal special actions. During these closures, fishermen must fish under the current, more restrictive Federal regulation.

If Proposal FP25-15 is adopted, during these closures, mentioned above, fishermen may legally set gillnets up to 75 feet apart instead of the 150 feet separation required in current Federal regulations. Additionally, State and Federal regulations will be aligned, reducing regulatory complexity. No effects on nonsubsistence uses are anticipated. Little to no effect on fish harvest is anticipated because gillnets will continue to be set in tributaries but closer together, and harvest will likely be re-allocated to nets closer to the mouth of tributaries away from gillnets set further upstream. However, the effect of adopting the proposal will be to potentially allow more set gillnets in tributaries encompassed by the Yukon Delta Refuge.

If Proposal FP25-15 is not adopted, potentially fewer federally qualified subsistence users will be able to legally set gillnets in the tributaries. However, State and Federal regulations will not be aligned.

## **OSM CONCLUSION**

**Support** Proposal FP25-15.

### **Justification**

Since 2014, Yukon Delta Refuge waters of the Kuskokwim River drainage have been closed to taking of Chinook Salmon by nonsubsistence users and closed to the use of gillnets in the mainstem and salmon bearing tributaries in June and into July by Federal special actions, and subsistence users have had to abide by the more restrictive Federal regulation by setting gillnets up to 150 feet apart in tributaries during these closures. Some Council members have in the past said this larger separation is preferred because of the already crowded conditions near the mouths of tributaries as people vie to harvest salmon during short fishing opportunities announced by the Federal manager through special actions. Short fishing opportunities favor gillnets set closer to the mouth where salmon enter tributaries and disadvantages people setting gillnets at traditional sites further upstream.

However, there are a limited number of productive set gillnet sites along tributaries of the Kuskokwim River drainage within the Yukon Delta Refuge. Because of this, the Alaska Board of Fisheries has already reduced required separation of set gillnets in these tributaries from 150 feet to 75 feet, which has the

effect of allowing federally qualified subsistence users to potentially set more gillnets in these tributaries. While the required separation in Federal regulations remains at least 150 feet, during normal fishing years without closures, federally qualified subsistence users may fish with the lower required separation distance of 75 feet in State regulations. Adopting this proposal will align State and Federal subsistence regulations and therefore reduce regulatory complexity. Adopting this proposal and allowing the closer 75 feet separation is unlikely to have significant effects on harvests as harvests become concentrated in more downstream nets and allocated away from upstream nets.

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## **SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS**

### **Yukon-Kuskokwim Delta Subsistence Regional Advisory Council**

**Oppose** Proposal FP25-15. The Council said that when nets are set too close to one another, the nets closest to the mouth of the river catch most of the salmon entering the river, and the nets set further up the river have a difficult time harvesting salmon. The Council does not support aligning Federal and State regulations because they feel the greater distance between nets required in Federal regulation creates more equitable fishing opportunities between subsistence users.

### **Western Interior Alaska Subsistence Regional Advisory Council**

**Oppose** Proposal FP25-15. The Council felt that the proposed distance between set nets is very close, and that while this distance would work in some limited instances and topographies, it is not a regulation that the Council feels should be drainage wide. The Council noted that as this fishery is typically conducted under Federal management, that having this regulation in place in areas that have a higher population would be detrimental to subsistence.

## **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