

STAFF ANALYSIS
EMERGENCY SPECIAL ACTION REQUEST
FSA20-05

ISSUES

Emergency Fishery Special Action Request FSA20-05 was submitted by LaMont Albertson of Anchorage on June 10, 2020, and requests that the Federal in-season manager immediately close Federal public waters of the Kuskokwim River drainage, per his 2020 letter of delegation from the Federal Subsistence Board (Board), to the harvest of Chum and Sockeye Salmon except by Federally qualified subsistence users that are residents of the Kuskokwim River drainage and four coastal communities of Chefornek, Kipnuk, Kwigillingok and Kongiganek. This would be in addition to the current Federal special action adopted by the Board on May 1, 2020, which is a closure to the harvest of Chinook Salmon by non-Federally qualified users, effective June 1, 2020 through July 1, 2020.

DISCUSSION

The applicable Federal regulations are found in 50 CFR 100.19(a) and 36 CFR 242.19(a) (Emergency Special Actions) and state that:

. . . In an emergency situation, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish and wildlife, or restrict the requirements for take for nonsubsistence uses.

The proponent states that on June 9, 2020, the Alaska Department of Fish and Game (ADF&G) issued an Emergency Order (EO #3-S-WR-04-20) to open the Kuskokwim River to subsistence salmon fishing to all Alaska residents within the boundaries of the Yukon Delta National Wildlife Refuge on June 12, 2020, and June 15, 2020, mirroring the date, time, and gillnet specifications associated with Federal subsistence management of Chinook Salmon via Federal Emergency Fisheries Special Action (Federal ESA 3-KS-03-20). As justification, the proponent argues:

[ADF&G's] action is a blatant violation of ANILCA Title VIII and circumvents the May 1, 2020 actions and intent of the Board to protect Federal priority subsistence uses and address conservation concerns regarding Kuskokwim River Chinook Salmon. The use of non-selective 6-inch mesh gillnet gear to target Chum and Sockeye Salmon also will result in the harvest of Chinook Salmon, thereby jeopardizing and circumventing the actions of the Federal Subsistence Management Program and ANILCA Title VIII. This emergency order by ADF&G is a violation of Federal law due to the mixed stock nature of the Kuskokwim River subsistence salmon fishery implemented with non-selective gillnets. This Emergency Special Action Request serves to ensure that the original

intention of the Board is honored by Federal staff from the U.S. Fish and Wildlife Service.

The proponent also states that from 2014 to 2018, ADF&G has honored the Federal closure to all but Federally qualified rural residents as identified in the Section 804 Subsistence User Prioritization Analysis by keeping Federal lands and waters closed to subsistence gillnet fishing in State regulations for all species of salmon given the challenges of conserving one species of salmon in a mixed stock salmon fishery. He believes that the State emergency openings, ADF&G has chosen to no longer honor the dual management regime of subsistence management in Alaska and is violating Federal law. This action follows upon the 2019 action wherein the ADF&G opened a subsistence fishery for Chum and Sockeye Salmon by emergency order to all Alaska residents during the Chinook Salmon run on June 26, 2019 with non-selective gillnet gear, which also harvests Chinook Salmon, while the Federal waters of the Kuskokwim River drainage were still under Federal subsistence regulations that limited the harvest of Chinook Salmon to Federally qualified subsistence users until July 1, 2019. The Federal in-season manager and the Federal Subsistence Management Program took no action in response.

The proponent concludes that, as in previous years, the Federal Subsistence Board's letter of delegation does not limit Federal in-season manager to actions only pertaining to Chinook Salmon, but provides the authority to manage other salmon species as necessary to conserve and protect Kuskokwim River Chinook Salmon (see FSA 3-KS-02-11). He believes that the Federal Manager is unwilling to fulfill his Federal in-season fisheries management obligations under the law as directed by the Federal Subsistence Board.

Existing Federal Regulation

§ __.27(e)(4) Kuskokwim Area—Fish

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

Special Action 3-KS-01-20

Federal public waters in that portion of the Kuskokwim River drainage that are within and adjacent to the exterior boundaries of the Yukon Delta National Wildlife Refuge are closed to the harvest of Chinook Salmon, except by Federally qualified subsistence users that are residents of the Kuskokwim River drainage and the villages of Chefornak, Kipnuk, Kwigillingok and Kongiganek, effective on June 1, 2020 through July 1, 2020. Federal subsistence fishing schedules, openings, closures, and fishing methods will be determined by the Yukon Delta National Wildlife Refuge Manager. Additionally, a community-based allocation system will be implemented amongst the limited pool of Federally qualified subsistence users.

Salmon-bearing tributaries within the Refuge boundaries are closed to the harvest of Chinook Salmon with all means and methods by Federally qualified subsistence users beginning 12:01 a.m., June 1, 2020. Salmon-bearing tributaries are the Eek, Kwethluk, Kasigluk, Kisaralik, Tuluksak, and Aniak within the boundaries of the Refuge.

Other means and methods (rod and reel, dipnets, fish wheels, and beach seines) remain open to harvest of Chinook Salmon in the mainstem Kuskokwim River.

Special Action 3-KS-03-20

There will be three 12-hour harvest opportunities for Federally qualified subsistence users identified in the Section 804 subsistence user prioritization analysis, which includes residents of the Kuskokwim River drainage and the villages of Chefornek, Kipnuk, Kwigillingok, and Kongiganak, to the use of gillnets for the harvest of Chinook Salmon on Federal public waters of the Kuskokwim River main stem, except for the section referred to as the Aniak Box (see 3-KS-01-20 or regulatory language below for description), on June 12, June 15, and June 18, 2020. The start time and end time for each of these three opportunities are from 6:00 AM to 6:00 PM.

When using set or drift gillnets, the following restrictions apply: 6-inch or less mesh; may not exceed 45 meshes in depth; may not exceed 25 fathoms (150 feet) in length above the Johnson River to the boundary of the Yukon Delta National Wildlife Refuge at Aniak; may not exceed 50 fathoms (300 feet) in length below the Johnson River to the mouth of the Kuskokwim River.

Proposed Federal Regulation

§ __.27(e)(4) Kuskokwim Area—Fish

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

Special Action 3-KS-01-20

*Federal public waters in that portion of the Kuskokwim River drainage that are within and adjacent to the exterior boundaries of the Yukon Delta National Wildlife Refuge are closed to the harvest of Chinook, **Chum, and Sockeye** salmon, except by Federally qualified subsistence users that are residents of the Kuskokwim River drainage and the villages of Chefornek, Kipnuk, Kwigillingok and Kongiganek, effective on June 1, 2020 through July 1, 2020. Federal subsistence fishing schedules, openings, closures, and fishing methods will be determined by the Yukon Delta National Wildlife Refuge Manager. Additionally, a community-based allocation system will be implemented amongst the limited pool of Federally qualified subsistence users.*

*Salmon-bearing tributaries within the Refuge boundaries are closed to the harvest of Chinook, **Chum, and Sockeye** salmon with all means and methods by Federally qualified subsistence users beginning 12:01 a.m., June 1, 2020. Salmon-bearing tributaries are the Eek, Kwethluk, Kasigluk, Kisaralik, Tuluksak, and Aniak within the boundaries of the Refuge.*

*Other means and methods (rod and reel, dipnets, fish wheels, and beach seines) remain open to harvest of Chinook, **Chum, and Sockeye** salmon in the mainstem Kuskokwim River.*

Special Action 3-KS-03-20

*There will be three 12-hour harvest opportunities for Federally qualified subsistence users identified in the Section 804 subsistence user prioritization analysis, which includes residents of the Kuskokwim River drainage and the villages of Chefornak, Kipnuk, Kwigillingok, and Kongiganak, to the use of gillnets for the harvest of Chinook, **Chum, and Sockeye** salmon on Federal public waters of the Kuskokwim River main stem, except for the section referred to as the Aniak Box (see 3-KS-01-20 or regulatory language below for description), on June 12, June 15, and June 18, 2020. The start time and end time for each of these three opportunities are from 6:00 AM to 6:00 PM.*

When using set or drift gillnets, the following restrictions apply: 6-inch or less mesh; may not exceed 45 meshes in depth; may not exceed 25 fathoms (150 feet) in length above the Johnson River to the boundary of the Yukon Delta National Wildlife Refuge at Aniak; may not exceed 50 fathoms (300 feet) in length below the Johnson River to the mouth of the Kuskokwim River.

Existing State Regulations

5 AAC 07.365. Kuskokwim River Salmon Management Plan

Emergency Order #3-S-WR-04-20

Subsistence fishing with gillnets in the Kuskokwim River mainstem will be open during the following times:

Subsistence Sections 1-3 (Yukon Delta Refuge boundary at mouth of the Kuskokwim River to Yukon Delta Refuge boundary near Aniak):

Subsistence fishing will open from 6:00 a.m. until 6:00 p.m. on June 12. Below the Johnson River, gillnets are restricted to 6-inch or less mesh, 45 meshes in depth, and 50 fathoms in length. Above the Johnson River, gillnets are restricted to 6-inch or less mesh, 45 meshes in depth, and 25 fathoms in length.

Subsistence fishing will open from 6:00 a.m. until 6:00 p.m. on June 15. Below the Johnson River, gillnets are restricted to 6-inch or less mesh, 45 meshes in depth, and 50 fathoms in length. Above the Johnson River, gillnets are restricted to 6-inch or less mesh, 45 meshes in depth, and 25 fathoms in length.

Subsistence fishing in Subsistence Sections 4 & 5 (Yukon Delta NWR boundary to the headwaters of the Kuskokwim River) will open at 12:01 a.m. on June 12, 2020 to the use of 6-inch or less mesh and 45 meshes in depth gillnets not to exceed 25 fathoms in length until further notice.

The waters of the Kuskokwim River near Aniak (known as the “Aniak Box”), from a line formed between two points lat 61° 35.264' N, long 159° 33.459' W and lat 61° 35.611' N, long 159° 33.260' W upstream to a line formed between two points lat 61° 35.308' N, long 159° 29.167' W and lat 61° 34.731' N, long 159° 28.939' W will close at 12:01 a.m. on June 12, 2020 to subsistence fishing with gillnets until further notice (Figure 1). Subsistence fishing with hook and line, fish wheels equipped with a live box or chute, beach seines and dip nets will be allowed, but all Chinook salmon caught must be returned to the water alive.

Subsistence fishing with gillnets will continue to be closed on these portions of the Kuskokwim River and the following tributaries until further notice:

The Kwethluk River drainage to ADF&G regulatory markers located at its confluence with Kuskokuak Slough.

The Kasigluk and Kisaralik river drainages including Old Kuskokuak Slough to ADF&G regulatory markers at the confluence of Old Kuskokuak Slough with 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.

Advisory Announcement

Sport fishing for Chinook Salmon for the entire Kuskokwim River drainage (including all tributaries) is closed through July 25, 2020.

Extent of Federal Public 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 (Refuge), including District 1 and portions of District 2 of the Kuskokwim Fishery Management Area. The waters are generally described as the lower Kuskokwim River drainage from the mouth upriver to and including about 30 miles of the Aniak River. These waters are hereafter referred to as Refuge waters.

Customary and Traditional Use Determinations

Residents of the Kuskokwim Area, except those persons residing on United States military installations located on Cape Newnham, Sparrevohn USAFB, and Tatalina USAFB, have a customary and traditional use determination for salmon (36 CFR 242.24 and 50 CFR 100.24).

Regulatory History

The Board met by teleconference on May 1, 2020, and approved Temporary Special Action Requests FSA20-01, FSA20-02, and FSA20-03. As a result, Federal public waters of the Kuskokwim River drainage closed to the harvest of Chinook Salmon except by Federally qualified subsistence users beginning June 1 through July 1, 2020. Eligible Federally qualified subsistence users include residents of the Kuskokwim River drainage and the villages of Chefornek, Kipnuk, Kwigillingok, and Kongiganek. The Federal in-season manager will provide harvest opportunities for Chinook Salmon subsistence fisheries using openings, closures, and gear restrictions developed in consultation with partners (FSA 3-KS-01-20).

On June 5, the Federal in-season manager issued an emergency special action announcing opportunity to use up to 6-inch mesh gillnets in the Kuskokwim River mainstem on June 12, 15, and 18 from 6:00 am to 6:00 pm. (FSA 3-KS-03-20).

On June 9, the State issued an advisory announcement for fishing opportunity in the Kuskokwim River mainstem to use up to 6-inch mesh size gillnets, 45 meshes in depth, and 50 fathoms in length below the Johnson River and 25 fathoms in length above the Johnson River on June 12 and 15 from 6:00 am to 6:00 pm (Emergency Order #3-S-WR-04-20). The announcement stated:

Management of the King Salmon subsistence fishery from the mouth of the Kuskokwim River upstream to the Yukon Delta NWR boundary at Aniak (defined as the Federal Conservation Unit) is under the authority of the U.S. Fish and Wildlife Service (USFWS) Federal In-season Manager. For information regarding King Salmon subsistence fishing within the Yukon Delta NWR, please contact USFWS at 907-543-3151 or 907-543-1003.

The State emergency order allows the harvest of fish with a non-selective gear type that kills Chinook Salmon and is therefore contrary to the Federal special action regulations currently in effect.

Biological Background

For a more thorough biological background please see the analysis for Special Action Requests FSA20-01, 02, 03.

Chinook Salmon

The Catch per Unit of Effort (CPUE) of Chinook Salmon at the Bethel Test Fishery (BTF) on June 11, 2020 was 7, with a cumulative CPUE of 64. The current cumulative CPUE is higher than 58% of the years between 2008 and 2019. The average cumulative CPUE for all years at this date is 74; the current 5-

year average is 94. Based on historical average run timing, approximately 10% of the run has passed the BTF site by June 11, and an estimated range of 5%-16% of the run is complete based on the central 50% of the historical run timing. An estimated 11%-18% of the run will pass Bethel in the next five days (ADF&G 2020).

Currently, ADF&G is operating a sonar above Bethel. The sonar is still in its testing phase and is not used for in-season management at this time. Nevertheless, the sonar estimate for Chinook Salmon on June 13, 2020 was 6,400 (95% CI: 3,200-9,600).

Chum Salmon

The Catch per Unit of Effort (CPUE) of Chum Salmon at the Bethel Test Fishery (BTF) on June 11, 2020 was 0, with a cumulative CPUE of 6. The current cumulative CPUE is higher than 8% of the years between 2008 and 2019. The average cumulative CPUE for all years at this date is 21; the current 5-year average is 22. Based on historical average run timing, <1% of the run has passed the BTF site by June 11, and an estimated range of <1%-1% of the run is complete based on the central 50% of the historical run timing. An estimated 0%-3% of the run will pass Bethel in the next five days (ADF&G 2020).

The sonar estimate for Chum Salmon for June 13, 2020 was 0 (95% CI: 0-0).

Sockeye Salmon

The Catch per Unit of Effort (CPUE) of Sockeye Salmon at the Bethel Test Fishery (BTF) on June 11, 2020 was 1, with a cumulative CPUE of 1. The current cumulative CPUE is higher than 42% of the years between 2008 and 2019. The average cumulative CPUE for all years at this date is 4; the current 5-year average is 3. Based on historical average run timing, <1% of the run has passed the BTF site by June 11, and an estimated range of <1%-1% of the run is complete based on the central 50% of historical run timing. An estimated 1%-6% of the run will pass Bethel in the next five days (ADF&G 2020).

The sonar estimate for Sockeye Salmon for June 13, 2020 was 1,000 (95% CI: 0-2,200).

Chum/Sockeye to Chinook Ratio

The current Chum/Sockeye to Chinook ratios (**Table 1**) have been below the BTF median (2008-2019) during first portion of the 2020 season, indicating the Chum and Sockeye runs are coming in late or at lower numbers than on average (ADF&G 2020).

Table 1 Chum/Sockeye to Chinook ratio, including the ratios from the Aniak Test Fishery (data from ADFG Kuskokwim River Daily Assessment June 12, 2020).

Date	2020 BTF	BTF Median	BTF Lower 10%	BTF Upper 10%	2020 ATF
6/8	0.14	0.2	0	1.57	—
6/9	0	0.53	0	3.51	—
6/10	0.12	0.77	0	3.25	—
6/11	0.14	0.67	0	4.88	—
6/12		1.02	0.18	5.74	
6/13		1.78	0.26	6.52	
6/14		1.48	0.55	7.93	

Harvest

Three 24-hour Federal and State set net fishing opportunities have occurred during June already. The opportunities occurred on June 3, 6 and 9. The Yukon Delta National Wildlife Refuge, in cooperation with the Orutsararmiut Native Council (ONC) and the Bering Sea Fisherman’s Association sampled subsistence fisher catches. An estimate 1,400 Chinook Salmon, 140 Chum Salmon, and 50 Sockeye Salmon were harvested during the three fishing opportunities. **Table 2**, **Table 3**, and **Table 4**, provide a summary of the harvests for Chinook, Chum, and Sockeye salmon for the three fishing opportunities. Estimates do not include fish harvested from Akiak upstream to the Refuge boundary.

Table 2. Estimated harvest of Chinook Salmon from the Kuskokwim River downstream of Akiak during the three set net fishing opportunities in June, 2020. Data from ADFG Kuskokwim River Daily Assessment June 12, 2020.

Date	Daily Harvest	Cumulative Harvest	Daily CV	Cumulative CV
6/3	180	180	54.02	54.02
6/6	570	730	20.48	12.49
6/9	670	1,400	14.74	8.15

Table 3. Estimated total harvest of Chum Salmon from the Kuskokwim River downstream of Akiak during the three set net fishing opportunities in June, 2020. Data from ADFG Kuskokwim River Daily Assessment June 12, 2020.

Date	Daily Harvest	Cumulative Harvest	Daily CV	Cumulative CV
6/3	0	0	0	0
6/6	90	90	26.16	16.89
6/9	60	140	40.55	12.45

Table 4. Estimated total harvest of Sockeye Salmon from the Kuskokwim River downstream of Akiak during the three set net fishing opportunities in June, 2020. Data from ADFG Kuskokwim River Daily Assessment June 12, 2020.

Date	Daily Harvest	Cumulative Harvest	Daily CV	Cumulative CV
6/3	0	0	0	0
6/6	20	20	52.22	14.3
6/9	30	50	61.24	19.3

Effects of the Request

If Emergency Special Action Request FSA20-05 is approved, then harvest of Chum and Sockeye Salmon, in addition to Chinook Salmon, by uses other than Federal subsistence uses will not be legal through July 1, 2020. The State could not allow drift gillnet fishing for the purpose of targeting Chum and Sockeye Salmon in the mainstem Kuskokwim River or its salmon bearing tributaries through July 1, 2020. The current State emergency order allows the harvest of Chum and Sockeye Salmon with a non-selective gear type, drift gillnets, that kill Chinook Salmon, which is contrary to Chinook Salmon conservation. Drift gillnets have the potential to harvest large numbers of Chinook Salmon.

If Emergency Special Action FSA20-05 is not approved, State gillnet fisheries are likely to continue in the mainstem Kuskokwim River. State regulations will allow the harvest of Chinook Salmon by all State residents of Alaska while the Federal closure to non-subsistence uses is in effect, contrary to Title VIII of ANILCA.

OSM Conclusion

Support FSA20-05

Justification

On May 1, 2020 the Board adopted Federal special actions FSA20-01, 02, and 03 to limit the harvest of Kuskokwim River Chinook Salmon to Federally qualified subsistence users that are residents of the Kuskokwim River drainage and the four coastal communities of Chefornek, Kipnuk, Kwigillingok and Kongiganek. Under ANILCA Title VIII, the harvest of Chinook Salmon by non-Federally qualified users is currently illegal. In order to provide a Federal priority for continued subsistence uses of Chinook Salmon, and to lessen confusion among users, the harvest of Chum and Sockeye Salmon must be limited to Federally qualified subsistence users. Currently, the Chum/Sockeye to Chinook Salmon ratio is very low, indicating that the majority of the harvest would likely be Chinook Salmon. Gillnets are a non-selective gear type that prevents the live release of fish that have been trapped in a net for any length of time. Limiting the harvest of Chum and Sockeye Salmon to Federally qualified subsistence users will avoid putting non-Federally qualified users in potential legal jeopardy for inadvertently taking Chinook Salmon in violation of the current Federal special action regulation while the ratio of Chum and Sockeye to Chinook Salmon is extremely low. It would also, uphold the intent of the Board by limiting the harvest of Chinook Salmon to Federally qualified subsistence users and uses.

LITERATURE CITED

ADF&G. 2020. Kuskokwim River salmon assessment update, June 11, 2020. Unpublished Report. Alaska Department of Fish and Game. Anchorage, AK. 11 pp.