

FP09-04 Executive Summary	
General Description	Proposal FP09-04 requests that no Federal subsistence fishing permits be issued for streams crossed by or adjacent to the Juneau road system. <i>Submitted by Alaska Department of Fish and Game</i>
Proposed Regulation	<i>____.27(i)(13) (ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D. No subsistence fishing permits will be issued to take fish in any streams flowing across or adjacent to the road systems within the City and Borough boundary of Juneau.</i>
Southeast Regional Council Recommendation	Oppose
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.
ADF&G Comments	Support (if the Board does not adopt FP09-15)
Written Public Comments	None

**REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-04**

SOUTHEAST REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-04. Current regulations allow subsistence fishing on the Juneau Road system but gear is restricted by permit to rod and reel only. This management strategy provides for subsistence use of the area while providing adequate safeguards necessary for conservation of the local fisheries resources. Title VIII of ANILCA requires a subsistence priority and, if additional restrictions are determined to be necessary, the non-Federally qualified user should be restricted first.

The proponent did not adequately consider the historical use of the area adjacent to the current Juneau road system when making or supporting this proposal. The proposal would unnecessarily restrict access to local streams which have had a long history of subsistence use. Opposing this proposal would have no impact on non-Federally qualified subsistence users.

STAFF ANALYSIS FP09-04

ISSUES

Proposal FP09-04, was submitted by Alaska Department of Fish and Game (ADF&G) and requests that no Federal subsistence fishing permits be issued for streams crossed by or adjacent to the Juneau road system.

DISCUSSION

The proponent is concerned that the streams crossed by or adjacent to the Juneau road system support small populations of fish that can be easily overexploited.

This proposal is similar to proposal FP06-31 which was submitted to remove the Federal Subsistence Board's (Board) current area-wide Federal subsistence fishing regulations for steelhead, Dolly Varden and cutthroat trout in streams crossed by or adjacent to the Juneau road system and replace them with State of Alaska sport fishing regulations. At its January 2006 meeting, the Board rejected proposal FP06-31.

Existing Federal Regulation

____.27(i)(13) (ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D.

Proposed Federal Regulation

*____.27(i)(13) (ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D. **No subsistence fishing permits will be issued to take fish in any streams flowing across or adjacent to the road systems within the City and Borough boundary of Juneau.***

Extent of Federal Public Waters

All fresh waters on the Juneau road system are within the exterior boundaries of the Tongass National Forest and are considered Federal public waters for the purposes of Federal Subsistence Fisheries management. For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3.

Customary and Traditional Use Determinations

There are no rural communities on the Juneau road system. More than 30,000 people live along the Juneau road system. Juneau is a regional hub for business and personal travel, and residents are not Federally qualified subsistence users. Juneau area streams are within Fishing Districts 15 and 11. Streams in this area are open to subsistence take of salmon by all rural Alaskans, and subsistence take of Dolly Varden, trout (including steelhead), smelt and eulachon by any rural resident of the Southeastern Alaska and Yakutat Areas.

Regulatory History

In 2000, Proposal FP01-22 requested a customary and traditional use determination for cutthroat trout, rainbow trout, and Dolly Varden/char as well as changes to methods, seasons and harvest limits for these species for rural residents of the Southeastern Alaska Area. The proposal was divided into two parts, (a) for the customary and traditional use determination and (b) for more liberal, subsistence-appropriate methods, seasons and harvest limits.

The Board supported the establishment of a Federal subsistence fishery permit and to restrict the fishery to Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake. The conditions of the permits included:

- Retention of up to 10 Dolly Varden Char with no minimum size;
- Retention of 6 cutthroat trout or rainbow trout in combination, with a size slot limit of 11” to 22” using a rod and reel with no bait;
- No season restrictions.

The Council recommended expanding the requested determination to include trout, Dolly Varden, smelt and eulachon. The Council also recommended expanding the requested determination to include all of Southeast Alaska geographically (SERAC 2000:178)¹. The Board expanded the customary and traditional use determination to include trout, Dolly Varden, smelt, and eulachon, but only to the remainder area of the Southeastern Alaska Area (FSB 2000b:4–15). “Retention of the existing customary and traditional use determinations would maintain opportunity for eligible subsistence users while the addition of the remainder area would recognize the uses of other eligible subsistence users until a review of existing information could be conducted to further refine the relationships between communities or areas and their uses of fish” (FSB 2000a:7, cf. FSB 2000b:4–15).

In 2001, proposal FP02-36 requested all Federal waters in the Southeastern Alaska Area be closed to the taking of Dolly Varden, cutthroat and rainbow trout except by Federally qualified subsistence users, with the exception of Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake and Wilson Lake. The proponent requested that this closure remain in effect until it could be proven that sport harvest would not create a biological crisis in the fish populations when coupled with the Federal subsistence fishery approved the previous year (FSB 2001:176). The proponent claimed that the restriction of Federal subsistence users to six specific lakes does not provide a rural subsistence priority. The proponent stated that the six lakes, mentioned above, are difficult to access and that this approach is not in line with subsistence harvest practices that include the opportunistic harvest of fish and wildlife species. The proponent noted,

When I’m deer hunting, I might be on an island and there’s a beaver pond and I’ll take my trout. I just felt that last year when we were allowed an increase in subsistence— and then to deny it in the vast majority of Southeast Alaska, but to still allow a two-fish sport limit showed there was fish available. And if there wasn’t an increased limit for me then the sport fishery should be curtailed (SERAC 2001:90).

At its 2001 meeting, the Board rejected the proposal and instead adopted regulatory language that allowed harvest of trout in Southeast Alaska waters under Federal jurisdiction under the terms of a Federal subsistence fishing permit. This wording did not include steelhead as “trout.” It was noted that the

¹The Board meeting book was in error regarding the Council’s recommendation (FSB 2000a:5-6).

requirement of a Federal subsistence fishing permit would provide a means to obtain information on the subsistence fishing of the named species (FSB 2001:175).

Salmon/trout permits have been in place since 2002 and steelhead permits were established in 2005. Permit conditions address conservation concerns and provide for a subsistence priority for Federally qualified subsistence users. The fishery is monitored and management issues have been addressed by permit conditions such as increased minimum size limits and restricted methods and means. The conditions of permits in systems to receive special protection are determined by the local Federal fisheries manager in consultation with ADF&G (§____.27(i)(13)(xx)(A)) (SERAC 2005:290). To date, no fish have been reported harvested from the Juneau road system in the Federal subsistence harvest database (Larson 2008, pers. comm.).

In 2005, FP06-31 was submitted to remove the Board's current area-wide Federal subsistence fishing regulations for steelhead, Dolly Varden and cutthroat trout in streams on or adjacent to the Juneau road system and replace them with State of Alaska sport fishing regulations. The impetus for the proposal was conservation concerns (SEARAC 2005:304). The Board rejected the proposal and noted that:

Streams on or adjacent to the Juneau road system are Federal public waters to which our regulations do apply and . . . should continue to apply. There isn't any substantial evidence of a need to change the regulation in that area and there's the potential that it could be detrimental to the satisfaction of subsistence users' needs who do want to fish in [those] Federal public waters (FSB 2006:580).

Part of the testimony included comments from Council Chair Littlefield:

If you look back at history, we've done these things in the past . . . and we continue to do them now. I don't know whether they did them under the table. This gentleman said he stopped when the State instituted those measures. He said he stopped when he lived in Juneau but before that he was able to participate. . . . Without an opportunity you can't have a meaningful priority (FSB 2006:578).

In 2007, Proposal FP08-04 was submitted by ADF&G requesting that a "no Federal subsistence priority" determination be made for customary and traditional use of fish for the Juneau road system area. This is the same request as being analyzed in FP09-15. The proponent is concerned that fish stocks in Juneau area streams could be impacted if even a few Federally qualified rural residents choose to travel to Juneau and subsistence fish on the Juneau road system (FSB 2007a:175). The Council stated that there was "no information presented that indicated that subsistence fishing in the Juneau area waters was inappropriate. . . . No need was seen to make a location-specific customary and traditional use determination for the Juneau road system" (FSB 2007a:174). At its December 2007 meeting, the Board agreed with the Council and rejected the proposal.

Current Events Involving Species

State sport fish regulations for steelhead are intended to be conservative due to the high actual and potential fishing effort and limited stock assessment information on local populations. Sport anglers have been actively fishing for steelhead in the Juneau area systems, but few have been harvested since the 36-inch minimum size limit was put in the sport regulations in 1994. Steelhead longer than 36 inches were rare in Peterson Creek in years 1989 to 1991 (Harding and Jones 1991 and 1992). As a result, mortality of steelhead has mostly been limited to the hook and release mortality associated with sport fishing in freshwater. The State does not require sport fishers to report their steelhead harvests nor

do they have an in-season harvest monitoring program for freshwater fisheries. Sport Fish Division's, annual, post-season, statewide harvest mail survey results for years 1994 to 1999 estimated the annual harvests of steelhead in the Juneau area at 0 to 38 fish in freshwater and 0 to 36 fish in saltwater. From 1994 to 1999, 8 steelhead were estimated to have been harvested from Peterson Creek (all in 1997) and the number of anglers fishing Peterson Creek averaged 422 anglers per year with a range of 336 to 482. It is likely that the spring run steelhead originating from Juneau area streams are harvested incidentally in the commercial gillnet and seine fisheries targeting summer runs of sockeye, pink, chum, and coho salmon in northern inside waters of Southeastern Alaska. For instance, during the years 2002 to 2004, commercial drift gillnet fisheries in Taku Inlet and Lynn Canal has reported a harvest of 27, 0, and 0 steelhead, respectively for the three years. Harvests of steelhead have not been reported in seine fisheries. Restrictive sport regulations implemented by the State in 1994 has not resulted in an obvious increase in run sizes. However, the existing sport fishery is not raising conservation concerns for steelhead in Juneau roadside systems.

The special conditions on the Federal steelhead permit of a 32" minimum size limit, and rod and reel without bait gear restriction, has likely discouraged participation by Federally qualified subsistence users. The local Federal fisheries manager took direct and effective steps to protect salmon, steelhead, char, and trout populations and provide for a meaningful subsistence priority as mandated by ANILCA. Special conditions on the Federal permits say that fishing regulations are the same as State sport fishing regulations with the exception of a 32" minimum size limit for steelhead (the State has a 36" minimum size limit) and 11" size limit for trout (the State has a 14" minimum size limit). It appears that size limits and distance traveled from rural areas may dissuade subsistence fishing on the Juneau road system.

The 32-inch minimum size limit protects stocks from over-fishing yet provides a subsistence opportunity since sport fishers have a 36-inch minimum size limit. Again, the steelhead stocks on the Juneau road system appear healthy, the habitat is relatively intact, and exploitation rate appears to be relatively low. The 32-inch minimum size limit is a conservative step to limit exploitation in the unlikely case that Federal subsistence users actively start fishing Juneau area streams.

Over 60% of the adult steelhead returning to Peterson Creek would be too small to harvest under a 32-inch minimum size limit based on data collected by ADF&G's weir project in 1989, 1990, and 1991 (Harding and Jones 1990, 1991, and 1992). Based on the length and age data provided in Harding and Jones (1991, 1992), a 32-inch minimum size limit would protect about 80% of the first time spawners from being harvested, plus 60% of the second time spawners and almost 30% of the third time spawners (**Figure 1**). Note that the actual percent harvested by Federal subsistence permit holders depends on whether any subsistence fishing occurs and if any fish are taken.

Regarding trout and Dolly Varden char, there is little specific information on harvests, abundance, or harvestable surplus of these species in the lakes or streams on or adjacent to the Juneau road system. The State of Alaska has used a conservative management approach to maintain healthy populations in these small road accessible systems: the small urban streams are closed to fishing (Auke, Bear, Duck, Jordan, Steep, Switzer, and Vanderbilt Creeks); fishing is closed for Dolly Varden in Mendenhall and Auke Lakes; cutthroat and rainbow trout must be between 14 inches and 22 inches long to be harvested; and daily and possession limits are 2 cutthroat and rainbow trout (in combination) and 2 Dolly Varden.

There has been no reported harvest of fish on the Juneau road system from Federal permits. Permit restrictions include a prohibition on the use of nets on the Juneau road system.

There is little use by Federally qualified subsistence users in the Juneau area. However, because of the road access to these relatively small drainages, they warrant special protection. The Federal subsistence

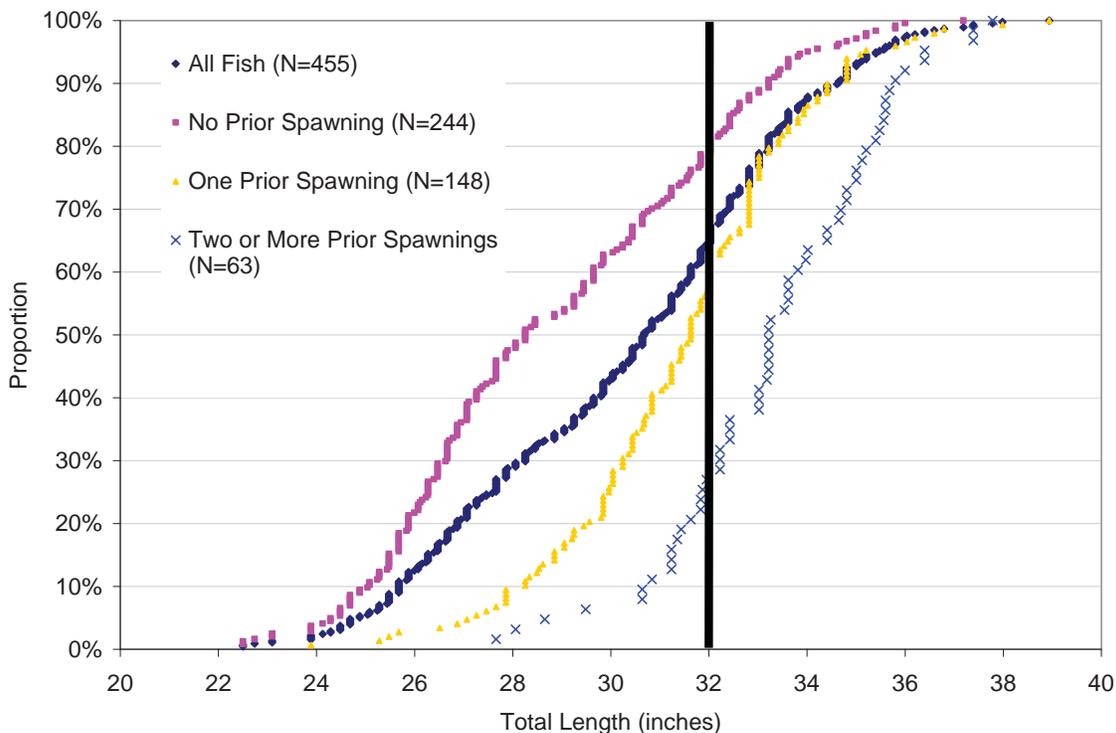


Figure 1. Cumulative proportion of adult steelhead sampled by length and spawning history at the Peterson Creek weir in 1991 (From data provided in Harding and Jones (1991 and 1992) and the Total Length (mm) = $26.93661 + 1.008434 * \text{Fork Length (mm)}$ conversion.).

fishing permits for 2008 applies the same closed waters and bait restrictions as the State and requires the 11-inch minimum size limit for cutthroat and rainbow trout that the State has in region wide regulations so that trout have the ability to spawn at least once before they may potentially be harvested. The 11-inch minimum size for trout and more liberal household harvest limits are intended to provide Federal users with an increased subsistence opportunity for trout and char.

Harvest History

The main steelhead system on the Juneau road system is Peterson Creek; however, steelhead have been reported from Cowee Creek, Eagle Creek, Windfall Creek, Montana Creek, and Fish Creek (Douglas Island). An ADF&G weir project on Peterson Creek estimated escapements of 179-222 steelhead annually from 1989 to 1991.

To date, no fish have been harvested on Federal subsistence fishing permits in Juneau roadside systems since the fishery's inception (Larson 2008, pers. comm.).

Limited data are available from the Statewide Sport Fish Harvest Survey, a mail out survey conducted by ADF&G. The survey was designed to provide statewide and regional estimates of effort and harvest of fish by sport fish license holders using sport fish gear under sport fish regulations. The Statewide Sport Fish Harvest Survey is not designed to provide detailed harvest and effort estimates for individual streams. From 1996 to 2006 there were 107 responses to the statewide harvest survey from rural residents of Southeast Alaska who reported sport fishing in Districts 11 and 15. Of these 107 entries, 32 fished in

fresh waters. A further examination of which streams were fished found that 24 of these entries were for waters crossed by the Juneau road system, including fishers from the communities of Skagway, Sitka, Wrangell, Pelican, Haines, and Gustavus. (A single survey respondent may have provided more than one of the 107 entries in survey results.) Although these harvests were reported under the Statewide Sport Fish Harvest Survey, the intent and purpose of these harvests is unknown. It is possible that the fishers were harvesting for subsistence under sport fishing regulations in the absence of subsistence regulations.

Effects of the Proposal

If this proposal were implemented, there would be no opportunity for Federally qualified subsistence users to harvest fish in Federal public waters on the Juneau road system. This could be detrimental to the satisfaction of subsistence needs if a Federally qualified subsistence user desires to harvest fish on the Juneau road system, under Federal regulation. Known conservation concerns for steelhead and trout on the Juneau Road system are addressed by restrictive permit conditions. Additional restrictions could be placed on the permit under the local Federal fisheries manager's authority if additional conservation concerns arise.

OSM CONCLUSION

Oppose Proposal FP09-04.

Justification

Adopting the proposed regulation change would not provide subsistence users with the subsistence priority as required in Section 804 of ANILCA Title VIII, and could be detrimental to the satisfaction of their subsistence needs. Known conservation concerns for steelhead and trout on the Juneau Road system are addressed by restrictive permit conditions. Additional restrictions could be placed on the permit under the local Federal fisheries manager's authority if additional conservation concerns arise.

LITERATURE CITED

FSB. 2000a. Federal Subsistence Board Meeting Materials December 5–7, 2000. USFWS, Office of Subsistence Management. Anchorage, AK. 473 pages.

FSB. 2000b. Transcripts of Federal Subsistence Board proceedings, December 6, 2000. USFWS, Office of Subsistence Management. Anchorage, AK.

FSB. 2001. Federal Subsistence Board Meeting Materials December 11–13, 2001. Office of Subsistence Management, USFWS. Anchorage, AK. 737 pages.

FSB. 2006. Transcripts of Federal Subsistence Board proceedings, January 13, 2006. USFWS, Office of Subsistence Management. Anchorage, AK.

FSB. 2007a. Federal Subsistence Board Meeting Materials December 11–13, 2007. Office of Subsistence Management, USFWS. Anchorage, AK. 399 pages.

FSB. 2007b. Transcripts of Federal Subsistence Board proceedings, December 11–13, 2007. Office of Subsistence Management, USFWS. Anchorage, AK.

Harding, R. and D. Jones. 1990. Peterson Creek and lake system steelhead evaluation, 1989. ADF&G, Division of Sport Fish, Fishery Data Series 90-37, Juneau.

Harding, R. and D. Jones. 1991. Peterson Creek and lake system steelhead evaluation, 1990. ADF&G, Division of Sport Fish, Fishery Data Series 91-31, Juneau.

Harding, R. and D. Jones. 1992. Peterson Creek and lake system steelhead evaluation, 1991. ADF&G, Division of Sport Fish, Fishery Data Series 92-46, Juneau.

Larson, R. 2008. Wrangell/Petersburg Subsistence Biologist. Personal communication. US Forest Service, Petersburg, AK.

SERAC. 2000. Transcripts of the Southeast Regional Subsistence Advisory Council proceedings, October 12, 2000. USFWS, Office of Subsistence Management. Anchorage, AK.

SERAC. 2001. Transcripts of the Southeast Regional Subsistence Advisory Council proceedings, October 18, 2001. USFWS, Office of Subsistence Management. Anchorage, AK.

SERAC. 2005. Transcripts of the Southeast Regional Subsistence Advisory Council proceedings, October 12, 2005.

**INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-04**

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.

ADF&G Comments FP09-04
December 2, 2008, Page 1 of 4

Alaska Department of Fish and Game
Draft Comments to the Federal Subsistence Board

FP09-04 Juneau Road System – No Federal Subsistence Permits

Introduction: This proposal disallows issuance of federal subsistence permits for streams crossing the Juneau road system within the City/Borough of Juneau¹ based on concern for specific relatively small and vulnerable fish stocks. These streams constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska. Although both Southeast Alaska general federal subsistence fishery permits and the Southeast Alaska spring steelhead permits allow fishing on the Juneau road system and require reporting of harvest by stream, no federal subsistence harvests by rural residents have been reported for the freshwaters of the road system within the City and Borough of Juneau boundaries. If any federal subsistence fishing were to occur, these fish stocks could be impacted before evidence of unsustainable harvests would be available. In addition, testimony from the public and Council members at the October 2008 Southeast Regional Advisory Council meeting expressed concerns about restricting non-federally qualified uses if fishing pressure on the Juneau road system increased. Public testimony requested that the Regional Advisory Council not approve regulations which would prohibit residents of Juneau from participating in the local fisheries. Adoption of this proposal would prevent potential fishery restrictions by removing the issuance of federal subsistence permits on the Juneau road system and preventing unsustainable future fishing pressure by non-local residents from developing. FP09-04 is similar to and consistent with federal regulations previously adopted in the Petersburg, Wrangell, and Sitka area under §.27(i)(13)(ix) prohibiting issuance of permits for the use of nets.

Impact on Subsistence Users: No prior harvests by rural residents have been documented for subsistence use in fresh waters of the road system within the Juneau City/Borough boundary. There is no evidence of a customary and traditional use of fish stocks for subsistence by any rural resident in fresh waters that cross the road system within the Juneau City/Borough boundary. Most Juneau area fishing occurs within marine waters, just as most fishing throughout Southeast Alaska occurs in marine waters -- outside of claimed federal waters. Meaningful subsistence fishing priorities for rural residents exist in streams that are closer to their respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish on the Juneau road system. Though daily air and ferry service exists, the Juneau area is not near or reasonably accessible to rural residents of Southeast Alaska for purposes of subsistence or sport fishing. In fact, only two sport-caught fish were reported as having been caught by rural residents of Southeast Alaska on the Juneau road system by responders to the Statewide Sport Fish Harvest Survey from 2004 through 2006. No evidence supports a contention that subsistence opportunity along the Juneau road system is utilized by rural residents living outside the Juneau City/Borough boundary.

Opportunity Provided by State: State regulations provide for a variety of sport fishing opportunities in fresh waters and adjacent saltwater shoreline areas of the Juneau road system, but these opportunities are more restricted than elsewhere in Southeast Alaska. The Alaska

¹ The Juneau area has been determined a non-rural area by the Federal Subsistence Board (Federal Board) according to federal regulations and a non-subsistence use area by the State according to specific regulatory criteria.

ADF&G Comments FP09-04
December 2, 2008, Page 2 of 4

Department of Fish and Game (Department) lists only 15 freshwater streams along the Juneau road system where anglers may fish. Although salt water shoreline areas are also available, fishing even in saltwater in the area for trout and Dolly Varden is more restricted and subject to lower bag limits than in other areas of Southeast Alaska. Nearly all freshwater sport fishing activity (approximately 80%) along the Juneau road system takes place in four primary streams (Cowee Creek, Montana Creek, Peterson Creek, and Fish Creek). The fish populations in these streams are relatively small. Several small roadside streams in the area are closed to sport fishing altogether, and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species. Juneau roadside bag and possession limits and size requirements differ in several respects from regional regulations and are more restrictive. Bag and possession limits have been reduced for coho salmon, sockeye salmon, and Dolly Varden. Cutthroat trout size limits are also more restrictive than regional regulations.

Conservation Issues: Two dozen Juneau area streams support small populations of fish and can be easily accessed from the local road system. Seven of the streams have been closed to all fishing and four streams have salmon retention prohibitions in order to assure continued sustainability. All other streams open to fishing are conservatively managed for high use and have severely restricted methods and means, size limits, harvest limits, fishing schedules (e.g., no bait, seasonal closures, slot limits, and species prohibitions). Existing harvest levels can only continue if effort does not increase substantially, most fishers practice non-retention, and the streams are conservatively managed.

The Department has continually expressed concerns about sustainability within highly accessible, liberal-harvest federal subsistence fisheries on the Juneau road system. The federal steelhead 32" size limit in this area allows a harvest rate that is unsustainable. The Federal Staff Analysis for proposal FP 06-31 at the January 2006 Federal Subsistence Board meeting (pages 395-400 in the meeting materials book) provided no biological justification for the 32" size limit other than to state "the size limit was set less than the state sport fish limit of 36" to give federally qualified users a subsistence priority."² The State 36" size limit and other State regulations were adopted to rebuild depleted stocks and are based on biological standards to achieve a sustainable harvest rate. Likewise, the sport fishing cutthroat regional minimum size limit of 11" in length was established to protect about 60% of trout populations until they can spawn at least once. The regulations in the Juneau area are even more restrictive; they impose a 14" minimum size length to allow all female cutthroat trout to spawn at least one time. In contrast, the federal regulations applicable to the area allow retention of cutthroat trout less than 14" in length, which allows harvest of juvenile cutthroat trout in areas of high use.

The State fishing regulations in place "near or within highly populated areas of Alaska for fish stocks exposed to elevated exploitation pressures" were developed to conserve and rebuild a variety of fish stocks. The current regulations in place that protect such stocks were successfully developed through utilizing the most current scientific knowledge and management methods. When all of the required data needed to manage a fishery are not available or if a fish stock has been identified as potentially over-exploited, fragile, or of concern, the fisheries are managed conservatively through restrictive regulations. In the absence of critical information about stock

² This reasoning fails to recognize that a federal regulation that is an exact duplicate of a State regulation already provides a subsistence priority because in times of shortage non-federal users are restricted first.

ADF&G Comments FP09-04
December 2, 2008, Page 3 of 4

sizes and harvest rates, the State regulations should be used by the Federal Board to help ensure sustainability of the resource. The federal regulations could jeopardize fish stocks because harvest limits are excessive for the size of streams and damage would not be evident until after it is reported. The federal subsistence permit appears to be the foundation for federal stock conservation, but its reporting requirements may be “too little, too late” for small stocks.

Under the current federal subsistence fishing regulations, these small Juneau area fish stocks could be impacted if even a few rural residents chose to travel to Juneau to subsistence fish. These federal regulations apply to the area where non-federally qualified Juneau residents and other users are subject to State sport fishing regulations. The current federal regulations provide an exemption from State sport fish license requirements, allow liberalized gear, and allow liberalized size limits. In contrast to other areas in Districts 11 and 15 open to subsistence fishing under the federal regulations, streams that cross the road system within the City/Borough of Juneau are relatively accessible to Juneau visitors, support small fish stocks, and receive increasing pressure from a large Juneau resident population, thus necessitating increased restrictions on size, gear, and limits in order to assure sustainability of those stocks while also retaining an opportunity for residents of the area to participate in fishing.³

Jurisdiction Issues: According to the Department’s Fish Distribution Database, the majority of fish habitat and documented fish observations in these streams are not located within federal land. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership to marine waters. Most of the lengths of these streams also are not within the Tongass Forest boundary. Other streams along the Juneau road system flow entirely on non-federally owned land. However, federal analysis (i.e., December 2007 Federal Subsistence Board Meeting Materials book page 181) continues to incorrectly and over-broadly claim:

Federal public waters comprise all fresh waters draining into fishing District 11 and those fresh waters draining into fishing District 15 south of the Chilkat Peninsula (near Haines), but also including the eastern side of Chilkoot Inlet north to Skagway, all within the exterior boundaries of the Tongass National Forest (Map 1). These waters include all streams crossed by roads connected to the City and Borough of Juneau road system.

In order for rural residents and enforcement personnel to know where they can legally participate in federal subsistence fisheries, we request detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not under federal jurisdiction. Significant portions of federal lands surrounding the Juneau road system are bordered by state or private lands, where there is either no federal jurisdiction or federally qualified subsistence fishers cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony illustrated to the Federal Board the importance of users understanding and knowing jurisdiction

³ Comments illustrating the Department’s ongoing concerns and conservation issues have previously been presented both in writing and orally to the Federal Board for proposals FP06-31, FP08-04, and the Department’s Fisheries Request for Reconsideration 06-05, these prior comments are incorporated by reference.

ADF&G Comments FP09-04
December 2, 2008, Page 4 of 4

and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations on State or private lands, including State-owned submerged lands, the person will likely be cited. Closing the Juneau road system area to the issuance of federal subsistence fishing permits will significantly decrease the likelihood that rural residents will be cited for violation of state law for subsistence fishing on non-federal lands along the Juneau road system.

Recommendation: Support (if the Board fails to adopt FP09-15). This action is consistent with the previously adopted federal regulation prohibiting issuance of permits for net fishing in the Petersburg, Wrangell, and Sitka road system areas (§ .27(i)(13)(ix)). The Federal Board should exempt the current Juneau City and Borough boundary area from region-wide regulations by not allowing subsistence permits to be issued for fresh waters accessible through the road system. This action would not have an impact on federally qualified rural subsistence users, who would retain a meaningful preference for the harvest of species found along the Juneau road system in other more reasonably accessible locations near their communities and primary residences and even in other portions of Districts 11 and 15; but protection would be afforded to the specific small and vulnerable stocks found along the Juneau road system. This proposal will be unnecessary and would have no effect if the Board accepts FP09-15.

