

FP09-08 Executive Summary	
General Description	Proposal FP09-08 requests that the salmon dip net fishery be allowed to occur from shore as well as from boats within the Moose Range Meadows area of the Kenai River. <i>Submitted by Ninilchik Traditional Council</i>
Proposed Regulation	§ __.27(i)(10)(iv)(D)(i) <i>At the Kenai River Moose Range Meadows site, dip netting is allowed only from the bank or a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).</i>
Southcentral Regional Council Recommendation	Oppose
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	Oppose
Written Public Comments	1 Oppose

**REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-08**

SOUTHCENTRAL REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-08. No Federal lands are available to allow fishing from shore without serious damage to the river bank.

Staff Analysis FP09-08

ISSUES

Proposal FP09-08, submitted by Ninilchik Traditional Council, requests that the salmon dip net fishery be allowed to occur from shore as well as from boats within the Moose Range Meadows area of the Kenai River.

DISCUSSION

The proponent states that fishing from the bank would provide a more effective means of harvesting salmon than fishing from a boat, as provided under current regulations for the salmon dip net fishery at the Moose Range Meadows site of the Kenai River (**Map 1**). The proponent states that not all subsistence users have access to boats, so not all Federally qualified subsistence users are able to participate in the salmon dip net fishery at this site. Also, the river is difficult to navigate in much of this area since it is very rocky and fast flowing. Federally qualified rural residents can use an existing fishing platform within the site to harvest fish when using a rod and reel but not when using a dip net.

Existing Federal Regulation

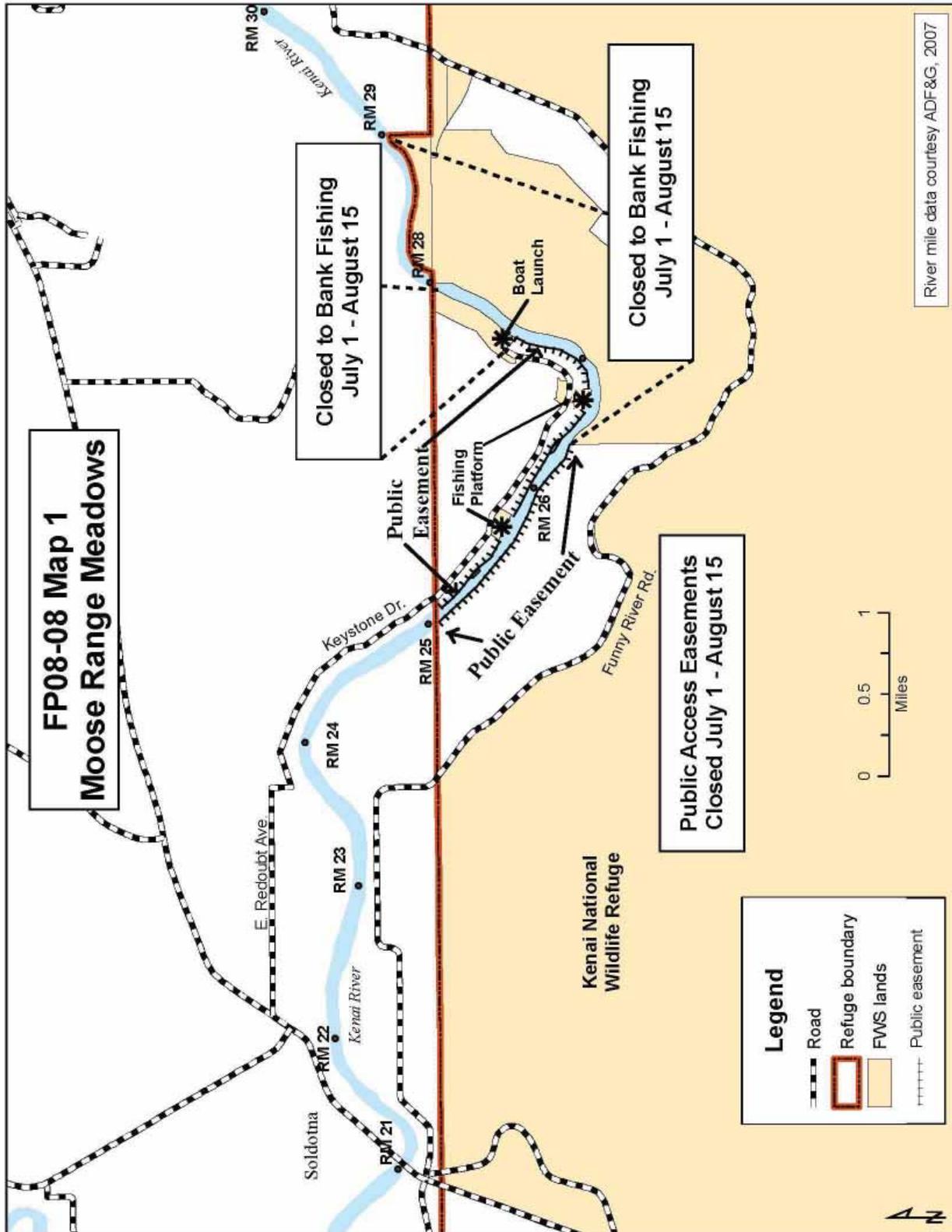
§____.27(i)(10)(iv)(D)(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

Additionally, for public access of Kenai National Wildlife Refuge lands and waters:

50 CFR 36.39(i)7(viii)(B) From July 1 to August 15 the public may not use or access any portion of the 25-foot wide public easements along both banks of the Kenai River within the Moose Range Meadows area; or along the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements. You may obtain maps showing these closed areas from the Refuge Manager by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.

Proposed Federal Regulation

*§____.27(i)(10)(iv)(D)(i) At the Kenai River Moose Range Meadows site, dip netting is allowed ~~only~~ from **the bank or** a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).*



Existing State Regulations

The following State regulations protect riparian habitat in the Moose Range Meadows areas by prohibiting or restricting sport fishing at certain times of the year:

5 AAC 57.180. Riparian Habitat Fishery Management Plan

(d) From July 1 through August 15, the following Kenai River riparian habitats are closed to all fishing, except fishing from a boat that is located more than 10 feet from shore and not connected to the shore or any riparian habitat:

(15) on the south bank of the Kenai River, between ADF&G regulatory markers located at river mile 26.4 and river mile 30.0;

(16) on the north bank of the Kenai River from an ADF&G regulatory marker located at the upstream edge of the boat ramp at the end of Keystone Drive at approximately river mile 27.3, upstream to ADF&G regulatory markers located at the Kenai National Wildlife Refuge boundary delineated by the power line at river mile 28.0;

(e) For purposes of this section, riparian habitat means all areas within 10 feet in either direction from the Kenai River waterline.

Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3. For the Moose Range Meadows portion of the Kenai River, Federal public waters under consideration for this proposal analysis include all waters within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge from about river mile 29 downstream to about river mile 26.5 (**Map 1**).

Customary and Traditional Use Determinations

In the Kenai Peninsula District for waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, residents of Cooper Landing and Hope have a positive customary and traditional use determination for all fish and residents of Ninilchik have a positive customary and traditional use determination for salmon.

Regulatory History

Pre- and Early Statehood Fisheries

Until 1952 freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly regulated commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).

State Fisheries

A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides Alaska Board of Fisheries guiding principles and provisions to use when adopting management plans for specific stocks.

The State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area in 1992 (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, Kyuktolik, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage. Under State regulations, only State sport fisheries are allowed in the Moose Range Meadows area. From July 1 through August 15, as per the Riparian Habitat Fishery Management Plan for the Kenai River drainage (5 AAC 57.180 (d)(16)), people sport fishing for salmon in this area must do so either from a boat that is located more than 10 feet from shore and not connected to the shore or any riparian habitat, or the north bank fishing platforms.

Federal Subsistence Fisheries

Federal regulations for subsistence fisheries were first established in 1999. For salmon, trout, Dolly Varden, and char in Cook Inlet there was no customary and traditional use determination; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users. In 2002, regulations for take in Cook Inlet were established for salmon, trout, Dolly Varden, and char. This subsistence fishery required a permit, and seasons, harvest and possession limits, and methods and means for take were identical to State of Alaska sport fishing regulations. The Federal Subsistence Board (Board) established this fishery as an interim measure to provide some subsistence opportunity in Cook Inlet for local rural residents, pending collection of additional information on community and area-specific harvest patterns to refine customary and traditional use determinations as well as regulations for take. The Board concluded that this information was necessary because of the unique circumstances of the Kenai Peninsula, where rural communities are interspersed among much larger non-rural communities, and there have been no subsistence fisheries in the freshwaters of the Kenai Peninsula for over 50 years.

The Board did not consider any further regulatory proposals for Cook Inlet until 2005. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with one exception. In November 2006, the Board adopted FSA06-01b which provided a temporary 2006-2007 winter subsistence fishery for resident species in Tustumena Lake. The Board considered fishery regulatory proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals establishing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig resident species fishery in Tustumena Lake, and a temporary fish wheel salmon fishery in the Kasilof River. The Board considered, but did not adopt, a 2008 proposal that would have allowed dip net fishing from the shore in the Moose Range Meadows site of the Kenai River (FWS 2007a and FSB 2007). The Board's motion to adopt the proposal failed with a tied vote (3 for and 3 against). While all Board members agreed that riparian habitat protection was an important concern for this area, they could not agree on whether allowing Federally qualified subsistence users to fish from the bank would result in habitat damage.

Biological Background and Harvest History

Salmon populations in the Kenai River are healthy, and harvests, while large, have been within sustainable limits. The proponent is not requesting changes to household or annual total harvest limits for the Kenai River subsistence salmon dip net fishery. An extensive portion of the staff analyses for the dip net fishery regulations adopted by the Board in May 2007 was devoted to the biological status and harvest

history of salmon species in the Kenai River (FWS 2007b). Little additional new biological information is available since that time. However, Federal subsistence harvest information for 2007, the first full season under the new fisheries regulations, is available along with preliminary information for 2008.

For the Kenai River in 2007, a total of 110 salmon permits were issued and 103 were returned (Sonnevil 2007 pers. comm.). Forty-three permit holders reported a total harvest of 692 sockeye salmon from the Kenai River. Of these, 610 were harvested from the Russian River Falls salmon dip net fishery site (450 by dip net, 160 by rod and reel), 66 from the upper Kenai River (all by rod and reel), and 16 from the Moose Range Meadows salmon dip net fishery site (12 by dip net, 4 by rod and reel). One permit holder reported no success during one day of fishing. Thirty-five of the successful permit holders were Cooper Landing residents, four were Ninilchik residents, and four were Hope residents. Additionally, two Cooper Landing residents reported a harvest of five coho salmon from the Kenai River, and one rainbow trout was reported harvested from the Russian River Falls site.

For the Kenai River in 2008, a total of 190 permits were issued to 141 individuals (Palmer 2008 pers. comm.). One hundred fifty-nine permits were issued for the Kenai River (134 for salmon and 25 for resident species), while the remaining 31 permits were issued for the Kasilof River (26 for salmon and 5 for resident species). One hundred-four permits were issued to Cooper Landing residents, 25 to Hope residents, and 61 to Ninilchik residents. The reported harvest of sockeye salmon is 1,349 from the Kenai River and 108 from the Kasilof River. About 82% of these were harvested in the dip net fisheries at Russian River Falls (1,090) and the upper Kasilof River (108), while the remaining 18% were harvested in the salmon rod and reel fisheries at Moose Range Meadows (172) and the upper Kenai/Russian River (87). Additionally, two Chinook salmon were harvested in the dip net fishery in the upper Kasilof River, and five coho salmon were harvested in the rod and reel fishery at Moose Range Meadows. Rod and reel harvest levels are likely conservative because there is no requirement for in-season reporting except when rod and reel gear is used to harvest household limits in the salmon dip net fisheries.

Other Alternatives Considered

During the 2008 regulatory cycle, Ninilchik Traditional Council submitted a similar proposal (FP08-08) requesting use of dip nets from shore at the Moose Range Meadows fishing site. While the Council did not recommend and the Board did not adopt this proposal, three alternatives to the proposal were also discussed: 1) allowing dip net use from the fishing platform at the site when it was rebuilt, 2) building another platform to accommodate subsistence users, and 3) allowing dip net use from shore prior to and after the bank closure period that extends from July 1 through August 15.

Allowing use of dip nets on the existing fishing platform would prevent bank trampling, but would also place two different gear-type groups in direct competition with each other and would likely cause social conflicts. The platform at the dip netting site, as well as another one outside the site, were originally built and designed to help replace lost sport fishing opportunities for sockeye salmon resulting from the 1989 Exxon Valdez Oil Spill, and up to 30,000 people use these fishing platforms each year (West 2007, pers. comm.). Under existing Federal subsistence regulations, platforms can be used by Federally qualified subsistence fishers using rod and reel gear, but not by those using dip nets. Aside from constant monitoring by an enforcement officer, limiting or avoiding social conflicts could be accomplished by separating people using dip nets from those using rod and reel gear on the platform through time or area restrictions. Another option discussed was to allow dip net users to use the platform only as an access point to the river bed, but not allow them to fish from the platform. However, dip netting while standing in the river at this site would not be feasible since the water is usually too deep and the area is very rocky.

Building another platform to accommodate dip net and other subsistence users would prevent bank trampling and avoid social conflicts with other users. However, Federal public lands within the Moose Range Meadows fishing site have conservation covenants that preclude such development. Therefore, it would be necessary to find and purchase, or obtain a long-term use agreement for, a private land parcel on which a platform could be built. This would require considerable funding, which is not currently available.

Allowing dip net use from shore prior to and after the bank closure period that extends from July 1 through August 15 might provide some additional fishing opportunity. However, since dip netting is most effective for harvesting sockeye rather than Chinook or coho salmon, allowing dip netting from the bank before and after the sockeye salmon run would not provide much actual fishing opportunity. Also, access to the river bank on Federal public lands in the Moose Range Meadows fishing site is difficult since there are no trails, and fishing activities after the bank closure period can still damage riparian habitat in an area that is critical to rearing juvenile Chinook salmon. Although rod and reel fishing is allowed from the river bank prior to and after the bank closure, most people still use the fishing platforms during these time periods due to access issues. While trails, fishing platforms, and boardwalks would allow access and prevent bank trampling, they cannot be built on Federal public lands in this area due to conservation easements.

Effects of the Proposal

While all the land in this area of the Kenai River was set aside for the Kenai National Moose Range in 1941, much of it was conveyed to Salamatof Native Corporation in the 1980s under the Alaska Native Claims Settlement Act (ANCSA). As part of the negotiated settlement agreement, Salamatof received a smaller amount of fee title acreage that they were allowed to subdivide and develop in exchange for public access easements, which are not Federal public land. The Federal government retained ownership of the river bed and islands in this area. The easements allow access to the river bed for fishing but not use of the shoreline, which remains private property. There are now many homes and business establishments in this area, and public easements allowed development of an extensive sockeye salmon sport fishery in this area. This caused social conflicts between fishers and private property owners, as well as extensive bank trampling.

In 1995, flooding resulted in the loss of large sections of river bank in this area, and the Refuge Manager instituted emergency closures to avoid further damage by preventing access. These emergency, seasonal access closures were placed into regulation after completion of an Environmental Assessment. They complement seasonal bank closures to sport fishing made by the State in this area. Federal and State closures extend from July 1 through August 15, the peak period for sockeye salmon sport fishing. The purpose of these closures is to protect sensitive riparian areas that provide important rearing habitat for juvenile salmonids, particularly Chinook salmon. Once the vegetative cover is destroyed, bank areas are more prone to erosion and sloughing due to flooding, as occurred in 1995, as well as to ice floes and boat wakes.

The Refuge reacquired some parcels from Salamatof Corporation using *Exxon Valdez* Oil Spill funds (Weiner 2000). These funds were to be used to “restore and protect fish habitat on the Kenai River,” and “improve existing recreation access to the Kenai River watershed in a manner that restores and protects riparian fish and wildlife habitat.” Two platforms were built on north bank parcels to accommodate sport fishing, while still protecting riparian vegetation. One of these platforms lies within the Moose Range Meadows fishing site. Conservation covenants were placed on other parcels to preclude development, including construction of trails, walkways, and fishing platforms. Most rod and reel fishing occurs from

boats and fishing platforms even before and after the bank closure dates. This is partly due to limited access options, but also to the fact that fishing effort prior to July 1 is primarily for Chinook salmon while effort after August 15 is primarily for coho salmon. Unlike sockeye salmon, Chinook and coho salmon do not migrate close to shore in large numbers, and fishers in boats are much more effective in harvesting Chinook salmon than those on shore.

Allowing dip netting from shore at the Moose Range Meadows fishing site could provide some increased fishing opportunity for Federally qualified subsistence users since not all users have boats and the river is difficult to navigate at this site. However, there are probably few shore locations at this fishing site where water depth, current flow, and river bed substrate are suitable for dip netting. While potential subsistence use would probably be much less than past sport fishing use that resulted in damage and loss of riparian habitat in 1995, even low levels of use could be detrimental to riparian habitat over time. Federal public lands on the north shore are more easily accessed without a boat than Federal public lands on the south shore. However, except for a north bank fishing platform, there are no trails, walkways, or other platforms to access the river bank from Federal public lands within this site. Under existing Federal subsistence regulations, the fishing platform can be used by Federally qualified subsistence users only if they fish with rod and reel gear. Allowing use of the fishing platform by dip net users would likely result in user group competition and conflict.

OSM CONCLUSION

Oppose Proposal FP09-08.

Justification

Restricting dip netting at the Moose Range Meadows site to boats makes it difficult or impossible for some subsistence users to fish at this site with dip nets. However, much of the riparian zone in the Moose Range Meadows site provides rearing habitat for juvenile salmonids, and can be degraded through continued use. To avoid damaging this habitat during the period of greatest sockeye salmon sport fishing activity, July 1 through August 15, the Kenai National Wildlife Refuge closes public easements through private lands, which prohibit public access to the shoreline and river bed, and recognizes ADF&G sport fishing closures of river banks on Federal public lands. During this time period, all sport fishing occurs either from boats, north bank fishing platforms, or private lands. While the number of Federally qualified subsistence users that might choose to dip net from shore at this site would be much less than the number of sport fishers that used and damaged the banks at this site prior to bank closures, even moderate bank trampling, over time, could result in riparian habitat damage and decreased survival of salmonids, particularly Chinook salmon.

Under existing regulations, Federally qualified subsistence users can dip net from a boat at the Moose Range Meadows site, while standing in the river or from a boat at the Kenai River Mile 48 site, and from the bank or while standing in the river at the Russian River Falls site. They can use rod and reel gear in addition to dip nets at all three Kenai River dip net sites to fill their annual household salmon limits. Federally qualified subsistence users can also participate in the salmon rod and reel fishery, which occurs throughout a much large proportion of Kenai River drainage Federal public waters and has greater daily and annual harvest limits than those allowed for the State sport fishery. Salmon harvested in the salmon rod and reel fishery are not included as part of household limits for the dip net/rod and reel salmon fishery. Also, Federally qualified users can use existing fishing platforms to access Federal public waters when using rod and reel gear. Taken as a whole, existing Federal subsistence Kenai River drainage salmon fisheries provide a meaningful preference for Federally qualified subsistence users, while also conserving healthy fish populations and critical riparian fish habitat.

LITERATURE CITED

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**INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-08**

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP 09-08 to be a thorough and accurate evaluation of the proposal and provides sufficient basis for the Regional Council recommendation and Federal Subsistence Board action on the proposal.

The ISC noted that the Federal Subsistence Board may want to consider another field trip to the Kenai Peninsula in 2009 to see how land ownership patterns and Federal land access issues affect subsistence fishing opportunities in the Moose Range Meadows area.

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Alaska Department of Fish and Game
Comments to Federal Subsistence Board

FP09-08 Allow Shore-Based Dip Nets and Rod and Reel at Moose Range Meadows

Introduction: FP09-08 proposes to allow federally-qualified subsistence users from Hope, Cooper Landing, and Ninilchik/Happy Valley to fish from the bank in addition to fishing from a boat in the waters that flow through Moose Range Meadows area while fishing with dip nets and rod and reel. This proposal is identical in its intent with proposal FP08-08 submitted by the same proponents and rejected at the December 2007 Federal Subsistence Board (Federal Board) meeting. Current federal regulations only authorize fishing from boats in this area for reasons discussed at the May 2007 and December 2007 Federal Board meetings. Those reasons include:

1. The entire shore of federal land identified as the Moose Range Meadows area is closed to all fishing within 10 feet of the waterline from July 1– August 15.¹
2. Lands in which there is a federal interest, including trails, banks, and catwalks, have legal easements that preclude these shore-based activities in order to protect riparian habitat; participants could be cited under both state and federal² law.
3. Private lands in the area are not subject to federal subsistence fishery jurisdiction.
4. Adoption of a proposal allowing shore-based federal subsistence fishing would create conservation, enforcement, and confusion issues among all users.

Opportunity Provided by State: The Kenai River is located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under State law. The State provides a broad array of personal use, recreational, and educational fisheries to meet needs for personal and family consumption as well as cultural purposes. The personal use and educational fisheries provide opportunity to harvest salmon more efficiently and closer to home, and these existing opportunities are frequently not used or are used at very low levels. Due to accessibility and high use of the Kenai harvest of rainbow/steelhead trout, lake trout, and Arctic char/Dolly Varden, regulations must be conservative. However, significant opportunity has been preserved on the Kenai, and more liberal regulations apply in many nearby waters providing adequate opportunities for harvest of rainbow/steelhead trout, lake trout, and Arctic char/Dolly Varden under State sport fishing regulations.

Conservation Issues: Adoption of this proposal would result in impacts on fish and their habitat. Allowing fishing from shore will significantly impact the riparian habitat closure areas. From July 1 – August 15, the shoreline -- which is defined to extend 10 feet into the water and include uplands measured from the river waterline -- is closed to any fishing activity in order to protect riparian habitat. These dates were selected to protect the shore from human impact during the majority of the sockeye salmon return to the Kenai River and during the late Chinook

¹ The entire section of south shoreline from river miles 26.4-30.0 (entire federal dip net fishery area) is seasonally closed from July 1 – August 15. The section of the north shore line from River Mile 27.3- 28 is also seasonally closed from July 1 - August 15. Federal closures apply to “*the 25-foot wide public easements along both banks of the Kenai River within Moose Range Meadows area; or along the Homer Electric right-of-way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements.*”

² These easement closures are reflected in federal regulations at 50 CFR 36.39(i)(7)(viii)(B).

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salmon run. This time period may be the most important part of the vegetation growing season. Fishing-related activities, which include walking, running, stomping, standing, and storage of equipment that a person carries and uses to fish, have significant impact on vegetation. The riparian habitat zone is important to the productivity and health of the anadromous river ecosystem. Regulations were developed to protect this fragile zone from trampling and long-term damage due to concentrated and repetitive impacts to the vegetation and soils.

An assessment of fish habitat in the Kenai River was conducted by the Alaska Department of Fish and Game (Department) in 1994 (Liepitz; 1994³). This study identified and evaluated a variety of Kenai River habitat types and conditions. The study concluded that the riparian habitat zone from river miles 17.5 – 39.5, which includes the Moose Range Meadows area, contains the greatest amount (42.3% of total mainstem) of overhanging vegetation and under-cut banks of the Kenai River. The study further concluded the river substrate between river miles 17.5-39.5 contains the greatest amount of gravel and cobble material within the entire mainstem, which supports the greatest opportunity for spawning and provides important cover habitat in the crevices between the cobbles for juveniles to rest, feed, and rear. Testimony given by the Office of Subsistence Management and Fish and Wildlife Service at the October 2007 meeting of the Southcentral Regional Advisory Council indicated the riparian habitat within the Moose Range Meadows area is significant and is of the highest quality for the rearing of juvenile Chinook and coho salmon in the Kenai River watershed.

Discussions at the October 2008 Southcentral Regional Advisory Council meeting indicated that, if this proposal were adopted, participation in the Moose Range Meadows federal subsistence dip net fishery could heavily impact the riparian habitat. Discussions focused on the potential for large numbers of users who would prefer the easily accessible dip net and rod and reel fishery at this proposed in-town location behind the largest chain department store on the Kenai Peninsula over the less accessible Russian River Falls federal subsistence dip net and rod and reel fishery. Currently, participation in the federal subsistence dip net and rod and reel fishery at the Russian River Falls is growing rapidly, and harvest would likely be much larger if the fishery were more easily accessible. If FP09-08 is approved, the magnitude of the Moose Range Meadows federal subsistence fishery would quickly increase and would be accompanied with commensurate riparian habitat damage.

Jurisdiction Issues: All of the shoreline on both sides of the Kenai River in the area of the federal dip net and rod and reel fishery is either closed to fishing within 10 feet of shore from July 1 – August 15 (including standing in the water) or is not federal land. The areas in which there is federal interest that are not closed to fishing within 10 feet of shore⁴ consist of public easements which do not allow any fishing activities. No fishing is allowed from a 17(b) easement on private land granted for public access. Fishing under federal regulations cannot occur while the user is standing on State or private land. Federal subsistence users can access the river through Kenai Borough Property Parcel # 13526401 upriver of the boat launch but cannot legally fish while standing on the easement and cannot store tackle or equipment used to fish on

³ Liepitz, Gary S. An assessment of the cumulative impacts of development and human uses on fish habitat in the Kenai River, Technical report no. 94-6, Alaska Dept. of Fish and Game, Habitat and Restoration Division, Anchorage, Alaska.

⁴ Kenai Peninsula Borough Property Parcels # 13526221, 13526024, and 13526025.

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the easement. The Kenai River shoreline from River Mile 28-29 is private property and is downstream of refuge lands, so no claim to federal reserved water rights exists in this stretch (and no such claim can be made unless the Secretaries take the extraordinary step of seeking to impose extraterritorial jurisdiction, which would be highly difficult to justify).

Other Comments: The mixing of gear types and user groups that would result from adoption of this proposal would likely cause elevated social conflicts, enforcement issues, and displacement of current users. There are only two small sections of shoreline in the Moose Range Meadows area, as identified in the Federal Subsistence Board meeting material book (page 278) in the FP08-08 Federal Staff Analysis, which could be used to conduct a Federal subsistence fishery from shore. These two spots are already currently used by thousands of anglers annually.

Recommendation: Oppose.

WRITTEN PUBLIC COMMENTS

Oppose. This proposal would allow subsistence users to dip net from the bank of the Kenai River at the Moose Range Meadows site. At the time the Federal Board creates this fishery they specifically did not allow dip netting from the shore because the shore line is currently closed to all fishing (July 1 – August 15 bank closure is when it is the high water flows on the Kenai River, where the mean high water line is along and amidst the riparian bank). Both state and federal managers have concluded that habitat within the riparian zone of the Moose Range Meadows area contains some of the most important rearing habitat for juvenile and adult salmon within the Kenai River watershed. Trampling the currently protected riparian zones within this area will negatively affect salmon productivity that will lead to serious conservation issues. Passage of this proposal will negate the proactive regulatory efforts of state and federal managers intended to protect critical shoreline habitat from damage.

To a large degree this decision was made when the Board acted in 2007 and this appears to be an extension of opportunity already granted.

We oppose allowing dip net fishing from the bank in this critical riparian habitat area. Regardless of the user's qualifications regarding federal subsistence, we do not believe critical riparian habitat should be degraded. It should be noted that these lands were originally selected by a local native village corporation and removed from the boundaries of the Kenai National Wildlife Refuge. EVOS monies were used at a later date by the Federal government to repurchase a portion of this land selection back from the native village corporation, and place an additional conservation easement on riparian habitat in the remaining private properties. The conservation measures negotiated by the Federal government and the native village corporation that are now in place at the Moose Range Meadows area are due in large part to the recognition of all on their importance as critical and sensitive riparian habitat for juvenile and adult salmon.

The Federal Subsistence Board was correct in its past actions that placed conservation of this critical riparian habitat area utmost in its decision making process when it enacted the existing subsistence priority opportunities in the Moose Range Meadows area in effect today.

Kenai River Sportfishing Association