

FP09-11 Executive Summary	
General Description	<p>Proposal FP09-11 requests that Federal subsistence fishing regulations be aligned with State subsistence fishing regulations for the Chignik Management Area to allow subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile. <i>Submitted by the Bristol Bay Regional Advisory Council</i></p>
Proposed Regulation	<p><i>Chignik Area — Salmon</i></p> <p>§ __.27(i)(8)(ii) <i>Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.</i></p>
Bristol Bay Regional Council Recommendation	<p>Support Proposal FP09-11 with modification.</p> <p>The modified regulation should read:</p> <p><i>Chignik Area — Salmon</i></p> <p>§ __.27(i)(8)(ii) <i>Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.</i></p>
Interagency Staff Committee Comments	<p>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.</p>
ADF&G Comments	Oppose
Written Public Comments	None

**REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-11**

BRISTOL BAY REGIONAL ADVISORY COUNCIL

Support Proposal FP09-11 **with modification** to remove the word “linear” from the proposed regulatory language.

The modified regulation should read:

Chignik Area — Salmon

*§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, **except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***

The Council supported the proposal with modification to remove the word linear from the proposed regulatory language and to describe the area only as “one mile.” Conflicting interpretations as to who has jurisdiction of the resource should not hinder subsistence users. The Council supported the proposal with the caveat that the Federal Subsistence Board will address the issue of State and Federal jurisdiction.

STAFF ANALYSIS FP09-11

ISSUES

Proposal FP09-11, submitted by the Bristol Bay Regional Advisory Council, requests that Federal subsistence fishing regulations be aligned with State subsistence fishing regulations for the Chignik Management Area to allow subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.

DISCUSSION

The proposed regulation would provide Federally qualified subsistence users additional fishing areas, currently allowed under State regulations. In January 2008, the Alaska Board of Fisheries opened these areas to subsistence fishing under State regulations. The proposed changes would allow local residents to continue long-established fishing practices while providing additional harvest opportunities in Clark River and Home Creek.

Existing Federal Regulation

Chignik Area — Salmon

§ __.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes.

Proposed Federal Regulation

Chignik Area — Salmon

*§ __.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, **except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.***

Other Relevant Federal Regulations

§ __.27(i)(8)(iv) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

Existing State Regulation

5 AAC 01.475. Waters closed to subsistence fishing. (2) in Black Lake, or any tributary to Black Lake or Chignik Lake, except the waters of Clark River and Home Creek, from each of their confluences with Chignik Lake to a point one mile upstream.

Extent of Federal Public Waters

Federal public waters within the Chignik Management Area includes all waters south of the Alaska Peninsula that are within the area and within or adjacent to the Alaska Peninsula National Wildlife Refuge, Aniakchak National Monument and Preserve, and Alaska Maritime National Wildlife Refuge (**Map 1**). Chignik Lake, Chignik River, Clark River, and Home Creek are all within the boundary of the Alaska Peninsula National Wildlife Refuge (**Map 2**).

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3.

Regulatory History

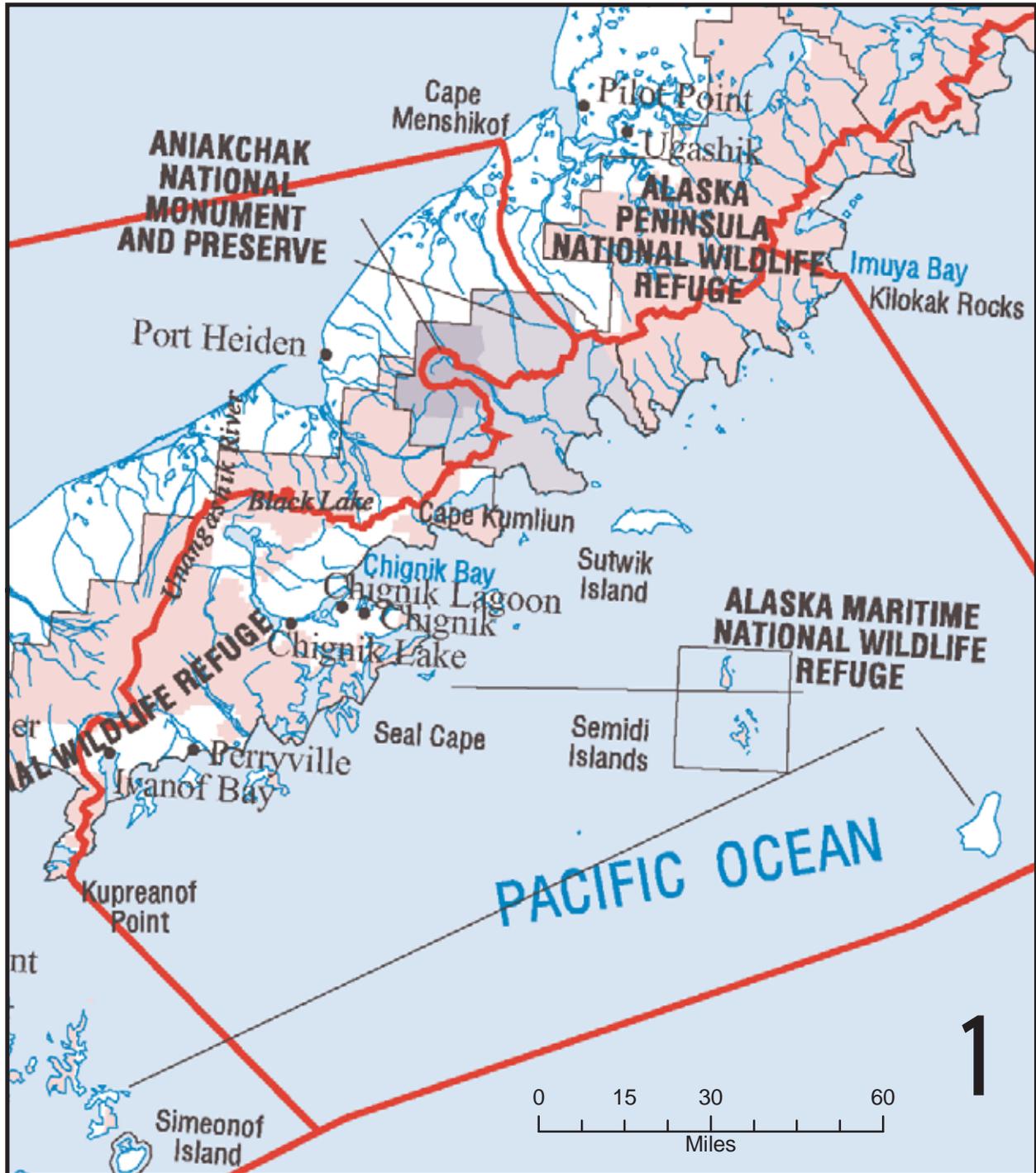
The Federal Subsistence Board (Board) adopted the current regulatory framework for the Chignik Management Area, including customary and traditional use findings, from existing State subsistence fishing regulations in 1999. The Board recently made regulatory changes for the Chignik Area in January 2006 and December 2007. In 2006, the Board amended §___27(i)(8)(i) to align Federal regulations for all Federally qualified subsistence users with any openings, closures, and changes to fishing methods issued through State Emergency Orders as defined in Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action. In 2007, the Board amended §___27(i)(8)(vi) to allow the take of salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by hand.

The Alaska Board of Fisheries most recently made changes to State subsistence fishing regulations for Chignik Management Area in January 2008. These changes included allowing subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile. The State subsistence fishing regulation was originally adopted in 1985 and previously amended in 1993 and 2005 (ADF&G 2008). According to ADF&G staff comments at the 2008 meeting (ADF&G 2008), subsistence users had reported difficulties in obtaining late season sockeye salmon and also wanted a means to harvest an occasional fresh fish for immediate consumption. ADF&G recommended limiting subsistence fishing from the confluence of both tributaries upstream one mile to protect salmon spawning further upstream in that area. ADF&G further stated (ADF&G 2008) that local residents have traditionally used both the Clark River and Home Creek for subsistence fishing.

Background and Harvest History

Residents of local communities take salmon through subsistence, commercial, and sport fish opportunities with seines, gillnets, and/ or rod and reel (Hutchinson-Scarborough and Fall 1996). Sockeye salmon are the target species in the Chignik Management Area accounting for over 50% of the subsistence harvests there in 1984 and 1989 (Hutchinson-Scarborough and Fall 1996), although other salmon species are taken (**Table 1**).

Sockeye salmon are primarily taken by residents of Chignik Bay, Chignik Lake, and Chignik Lagoon because of the availability of sockeye salmon in Chignik watershed, as well as residents’ preference for sockeye salmon (Hutchinson-Scarborough and Fall 1996). Residents of Perryville and Ivanof Bay harvest mostly coho, pink, and chum salmon because sockeye salmon are rarely found in local rivers near these villages (Hutchinson-Scarborough and Fall 1996). Some residents of Perryville and Ivanof Bay spend portions of spring and summer in Chignik or at fish camps on Chignik Lagoon, where they subsistence fish for sockeye and Chinook salmon (Hutchinson-Scarborough and Fall 1996). Fresh sockeye salmon caught in the spring and early summer are smoked, kippered, salted, and frozen (Hutchinson-Scarborough



**FP09-11 Map 1
Chignik Area**

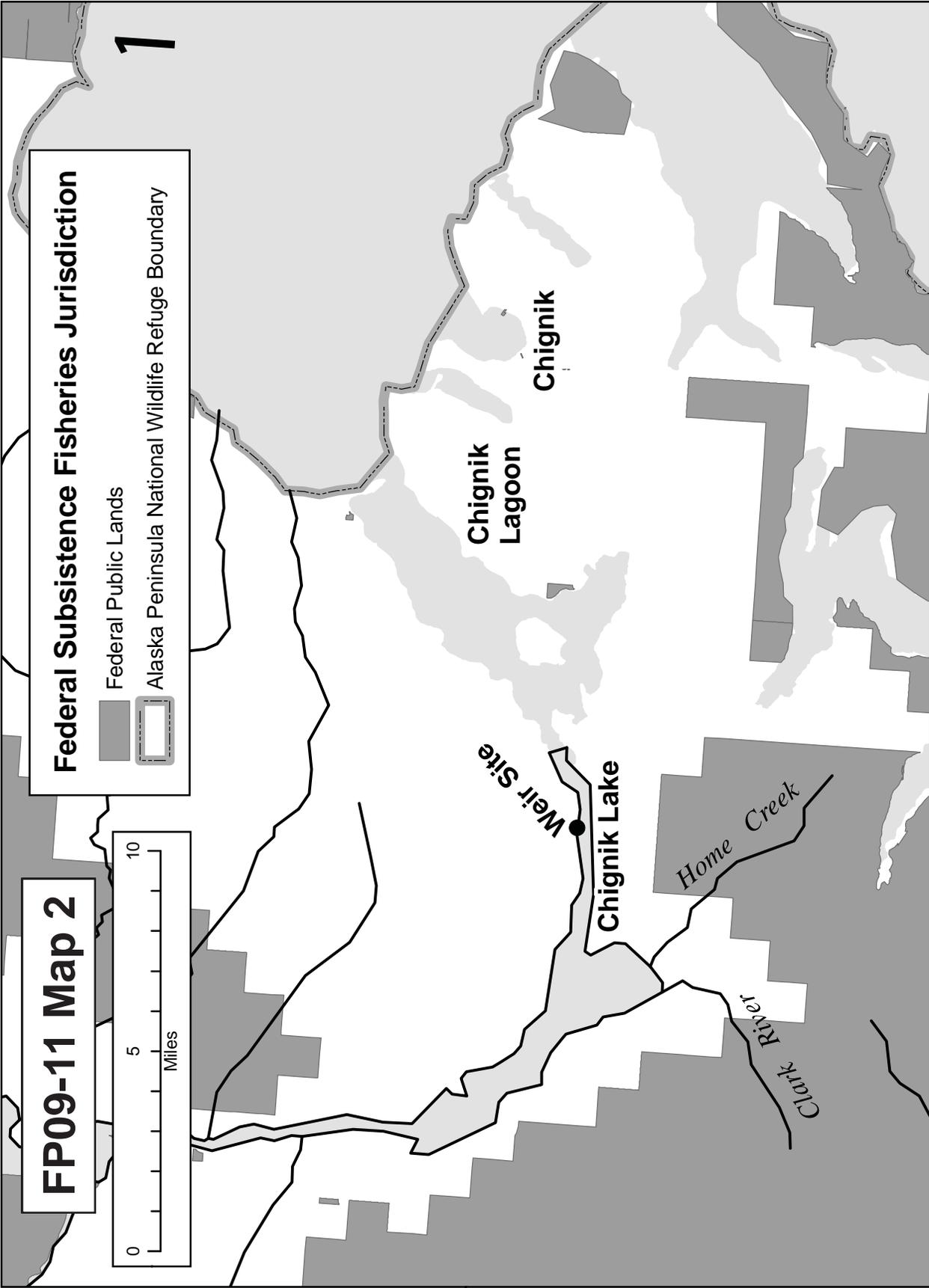


Table 1. Subsistence salmon harvest by Chignik Area residents, 1980-2006 (Stichert, 2007)

Year	Permits Issued	Permits Returned	Chinook	Sockeye	Coho Pink	Chum
1980	82	37	6	12,475	478	169
1981	29	7	0	2,049	0	0
1982	59	15	3	8,532	2	0
1983	32	21	1	3,078	1,250	850
1984	77	64	23	8,747	330	204
1985	59	48	1	7,177	26	25
1986	74	38	4	10,347	98	77
1987	2	1	0	400	0	0
1988	80	34	9	9,073	54	142
1989	68	23	24	7,551	81	147
1990	72	23	103	8,099	470	115
1991	95	58	42	11,483	275	81
1992	98	19	55	8,648	305	145
1993	201	141	122	14,710	1,265	642
1994	219	122	165	13,978	1,720	382
1995	111	95	98	9,563	723	150
1996	119	104	48	7,357	2,204	355
1997	126	103	28	13,442	2,035	840
1998	104	72	91	7,750	1,007	186
1999	106	88	243	9,040	1,191	136
2000	130	112	163	9,561	1,185	517
2001	135	122	171	8,633	2,787	213
2002	120	86	74	10,092	390	23
2003	146	127	267	10,989	1,597	286
2004	104	57	88	7,029	1,047	202
2005	119	100	224	8,171	730	353
2006	113	79	258	8,079	1,035	275

and Fall 1996). In the fall, sockeye salmon are taken after turning red, just before or after spawning (Hutchinson-Scarborough and Fall 1996). Red sockeye salmon are a valued product because they have less fat and can be dried without spoilage (Hutchinson-Scarborough and Fall 1996). Also, cool fall weather allows for less interference from blow flies when fish are being dried.

In 2006, the subsistence salmon harvest was below both the recent 5- and 10-year averages (Stichert 2007). The 2007 subsistence harvest numbers are not currently available. Subsistence users reported difficulty in obtaining late season salmon. Addressing these concerns, ADF&G (January 2008) adopted a proposal to allow for subsistence salmon fishing in the Chignik tributaries of Clark River and Home Creek. Significant increase in the subsistence harvest is not likely.

Federal regulations require that Federally qualified subsistence users have a subsistence fishing permit (issued by the State of Alaska) to take salmon with seines or gillnets in the Chignik Area. However, Federally qualified subsistence users are not required to have a State permit to take salmon by snagging (hand line, rod and reel), spear, bow and arrow, or capture by hand in the Chignik Area, because State regulations do not allow the subsistence take of salmon by these methods. However, subsistence salmon

harvests using these methods would likely be low since most people use these methods to catch an occasional fresh fish.

Effects of the Proposal

If adopted, Federally qualified subsistence users would be provided additional opportunities to fish in areas currently open to people fishing under State subsistence regulations. This regulation could potentially create enforcement concerns by escalating the divergence between Federal and State regulations regarding method and means of harvest in this area. The additional fishing opportunity is not expected to greatly impact subsistence harvest levels or the sockeye salmon population within the Chignik Management Area.

OSM CONCLUSION

Support Proposal FP09-11 **with modification** to change linear mile to mile to clarify the areas open to subsistence fishing, reduce regulatory complexity, and enforcement concerns.

The modified regulation should read:

Chignik Area — Salmon

*§ __.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, **except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***

Justification

Adoption of Proposal FP09-11 would allow Federally qualified subsistence users to continue long-established fishing practices while providing additional harvest opportunities in Clark River and Home Creek. Federally qualified subsistence users would be provided the same opportunities to harvest salmon in the Chignik Lake tributaries of Clark River and Home Creek currently available to people fishing under State subsistence regulations. No adverse impacts on sockeye salmon stocks within the Chignik Management Area are expected. The recommendation to delete the word “linear” from the proposed regulatory language will clarify the areas open to subsistence fishing, reduce regulatory complexity and enforcement concerns.

LITERATURE CITED

ADF&G 2008. Staff comments on subsistence, personal use, and commercial finfish regulatory proposals for the Chignik Management Area. Report to the Alaska Board of Fisheries, January 2008. RC 2 Pages 3–5. ADF&G, Divisions of Subsistence, Sport Fish and Commercial Fisheries. Juneau, AK.

Bouwens, K. A. 2004. An overview of the Chignik Management Area Herring and Salmon Fisheries and Stock Status: Report to the Alaska Board of Fisheries, November 2004. Fishery Management Report No. 04-09. ADF&G, Divisions of Sport Fish and Commercial Fisheries. Juneau, AK.

Hutchinson-Scarborough, L. and J. Fall. 1996. An Overview of Subsistence Salmon and Other Subsistence Fisheries of the Chignik Management Area, Alaska Peninsula, Southwest Alaska. ADF&G, Division of Subsistence. Technical Paper No. 230, Juneau, AK.

Stichert, M.A. 2007. Chignik Management Area salmon and herring annual management report, 2006. ADF&G, Fisheries Management Report No. 07-XX, Anchorage.

Stichert, M. 2007. Chignik Management Area Commercial Salmon Fisheries and Stock Status Report to the Alaska Board of Fisheries, ADF&G Divisions of Sport Fish and Commercial Fisheries, Fisheries Management Report No. 07-63.

**INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-11**

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 FP09-11
December 2, 2008, Page 1 of 4

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

FP 09-11 Opening Fishing in Tributaries of Chignik Lake

Introduction: This proposal would open federal subsistence fishing for one linear mile of water in both Clark River and Home Creek upstream from their confluence with Chignik Lake, located within the state Chignik Fishery Management Area. This proposal purports to align the federal regulations with recent actions taken by the Alaska Board of Fisheries to liberalize the State subsistence fishery. However, modifications to the proposal are needed in order to align federal and state regulations as intended. The Alaska Department of Fish and Game (Department) opposes the proposal as written, but could support it with modifications outlined below.

Impact to Subsistence Users: If adopted as proposed, federally qualified subsistence users would be allowed to subsistence fish in the lower mile of Clark River and Home Creek, currently closed under federal regulations. The Federal Subsistence Board recently authorized expanded methods and means and eliminated permit and reporting requirements in the Chignik watershed. If this proposal were adopted, current federal regulations would allow federally qualified subsistence users to utilize methods and means significantly different from what is allowed under State regulations (rod and reel, bow and arrow, spear, bare-hand capture, and snagging) in Clark River and Home Creek without a federal subsistence permit. State regulations prohibit using the above-listed means for subsistence fishing. Adoption of FP09-11 would cause confusion and expose federally qualified users to State citation because there are no federal public lands in or near the area identified in this proposal. Federally qualified subsistence users using methods and means not authorized under State law would risk being cited if they are standing on State and/or private land, including state-owned submerged lands, when fishing under federal subsistence regulations in the area. (See attached land status map.) Liberal State subsistence fisheries are allowed on all lands (state, federal, and private), so adoption of this proposal is not necessary for meaningful subsistence opportunity.

Opportunity Provided by State: Salmon may be harvested under Alaska Board of Fisheries regulations using gillnets and purse seines. The State provides a subsistence preference on all lands, and liberal state subsistence fisheries for salmon are provided on the Alaska Peninsula. The subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if they need it. Legal gear types allowed for the Chignik area subsistence fishery include gill nets and seines, except that in Chignik Lake purse seines may not be used. Additional gear types can be specified and added to the state subsistence permit (5 AAC 01.470).¹

Each management area has specific stipulations on the respective area's subsistence permits, e.g., timing restrictions to separate subsistence and commercial fishing, gillnet length limits in areas

¹ **5 AAC 01.470. Lawful gear and gear specifications**

(a) Salmon may be taken by seines and gillnets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(b) Fish other than salmon may be taken by gear listed in 5 AAC 01.010(a), unless restricted under the terms of a subsistence fishing permit.

ADF&G Comments FP09-11
December 2, 2008, Page 2 of 4

open to commercial fishing, and closed waters. A commercial salmon license holder or a Commercial Fisheries Limited Entry Salmon Permit holder may subsistence fish for salmon during a commercial salmon fishing period (5 AAC 01.485) but may not subsistence fish 12 hours before or 12 hours after each commercial fishing period. If a commercial salmon license holder or a Commercial Fisheries Limited Entry Salmon Permit holder in the Chignik Management Area goes subsistence fishing in Chignik Lagoon, Lake or River, that holder is required to contact Department staff at the Chignik weir in order to separate subsistence and commercial harvests.

The Alaska Board of Fisheries established the combined amounts necessary for subsistence for communities in the Alaska Peninsula area as 34,000-56,000 salmon annually. The amounts necessary for subsistence for the Chignik Area (Chignik Bay, Central, and Eastern Districts of Chignik Management Area) is 5,900 – 14,250 salmon annually.

Conservation Issues: No salmon runs on the Alaska Peninsula are currently listed as “a stock of concern” by the Alaska Board of Fisheries. However, the recent late-run sockeye salmon returns, which primarily migrate to Chignik Lake and its tributaries, have slightly decreased over time. Both Clark River and Home Creek are the primary spawning beds for the tributary bound portion of the late-run sockeye salmon which return to the Chignik River watershed. Increases in undocumented in-tributary exploitation would not be detectable due to the lack of a federal reporting requirement. Significant increases of unreported harvest in Clark River and Home Creek may lead to conservation issues which might not be detected in a timely manner and might require severe fishery restrictions when detected.

The Federal Board recently liberalized allowable methods and means for federal subsistence fisheries and eliminated permitting and reporting requirements for federally qualified users who choose to utilize rod and reel, bow and arrow, spear, bare-hand capture, and snagging. The elimination of permitting and reporting requirements by federally qualified users causes the Department to have serious concerns about the potential for localized depletion of sockeye salmon stocks in Clark River and Home Creek if a significant increase of harvest results. Since the Federal Board does not monitor the federal subsistence fishery in this area, authorizing additional freshwater subsistence fisheries that target unmonitored wild stocks is not consistent with principles of sound management and conservation of fish and wildlife resources.

Deliberations on FP08-11 at the December 2007 Federal Board meeting included specific discussions by three Federal Board members who were in support of adopting the proposal because the expected increase in harvest was estimated to be reasonably small and the proponent’s intent was to harvest one or two fish at a time (Federal Board Transcripts, December 20, 2007, pages 228 and 229). Further discussion by the Federal Board and Regional Advisory Council chairs also focused on liberalizing Federal subsistence users’ methods and means to allow for harvests of individual salmon for immediate sustenance while traveling light in the course of camping, picking berries, or hunting. Discussions at the Federal Board meeting did not consider the impacts adoption of FP08-11 would have on the sockeye salmon stocks within Clark River and Home Creek, because both were closed to federal subsistence fishing at the time of the Board meeting. Cumulative unreported harvest from creeks that are near communities and easily accessible was also not considered by the Federal Board at the December 2007 meeting when the

ADF&G Comments FP09-11
December 2, 2008, Page 3 of 4

methods and means were liberalized to allow snagging, bare-hand capture and similar means for light travelers within the federal subsistence fisheries on the Alaska Peninsula.

At the December 2007 meeting, the Federal Board approved FP08-11, which liberalized methods and means and eliminated reporting requirements while using those methods and means, based on information suggesting the level of harvest would be a small number of individually harvested fish by subsistence users traveling light in the field. During 2008, the Department received reports of federal subsistence users harvesting their winter supply of salmon from these tributaries of concern by federal methods and means without permits and harvest reporting. As stated in objections to FP08-11, the Department has serious conservation concerns with unreported harvests and the methods and means which were allowed. Those concerns have increased with FP09-11 and the recent disclosure of significant federal subsistence harvests in Home Creek and Clark River.

Jurisdiction Issues: In order for rural residents and enforcement personnel to know where they can legally participate in federal subsistence fisheries, the Department requests 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 area 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 (Federal Board Transcripts December 11, 2007 pages 89-91) illustrated the importance of users understanding and knowing jurisdiction and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations while on State or private lands, including State owned submerged lands, the person may be cited.

Other Issues: During the Bristol Bay Regional Advisory Council meeting, the Council recommended modifying the proposed regulation language from “...*those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream **one linear mile***” to “...*those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream **one mile***.” The description change of “one linear mile” to “one mile” was recommended by the Regional Advisory Council to match the existing State regulation description of “one mile” in order to reduce confusion. The Department agrees that the description of “one mile” should match the State regulatory language. However, changing the regulation to also match the gear type allowed by State regulations would address confusion, reporting, and potential conservation issues. The Department recommends the following regulatory language:

Chignik Area — Salmon

§____.27(i)(8)(ii) *Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, **except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***

ADF&G Comments FP09-11
December 2, 2008, Page 4 of 4

§____.27(i)(8)(iv) *You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines and in the waters of **Clark River and Home Creek from their confluence with Chignik Lake upstream one mile you may only use gillnets. In all other waters, you may also take salmon without a permit with a subsistence permit** by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.*

Recommendation: Oppose. The Federal Board is urged to modify the proposal so that federal subsistence users are authorized to use only the same methods and means in the Clark River and Home Creek waterways as are authorized in state regulations. Adopting a modified version of the proposal which would allow federally qualified subsistence users to fish in the lower mile of Clark River and Home Creek with gill nets would mirror State subsistence fishery regulations. Federally qualified users who participate in the federal subsistence fishery while using a gill net would be required to obtain a permit and report harvests. The Department would support the above proposed modified regulation which ensures same gear type usage and annual reporting of harvests to allow continuation of sound management of the fisheries.

