

This document contains comments regarding ACR 7. The following is the staff comments regarding ACR 7:

ACR 7 – Increase maximum gillnet mesh size in the Yukon Area commercial salmon fishery (5 AAC 05.331).

WHAT THE AGENDA CHANGE REQUEST SEEKS TO CHANGE: This would clarify current regulations to include a maximum mesh size of seven-and-one-half inches for directed king salmon commercial fisheries in Yukon Area Districts 1–6.

PRESENT SITUATION: Currently, gillnets of six-inch or smaller mesh are established by emergency order and during times when the commissioner determines it necessary for the conservation of a salmon species. Gillnet mesh size can also be established at seven-and-one-half inches by emergency order for the conservation of salmon.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST:

- a) Is there a fishery conservation purpose or reason? No.***
- b) Does the agenda change request correct an error in regulation? No.***
- c) Does the agenda change request address an effect of a regulation on a fishery that was unforeseen when that regulation was adopted? No.***

Yukon Delta Fisheries Development Association (YDFDA) firmly believe that the answer to (b) (Does the agenda change request correct an error in regulation?) should be Yes. As stated in ACR 7, we believe that the original error that technically eliminated the use of unrestricted mesh size occurred in the 1985 regulations and was carried forward through subsequent regulation books, up through the present. However, in practice, gillnets with unrestricted mesh size were regularly allowed in directed king salmon fisheries from the inception of commercial fishing on the Yukon River through 2007.

In their comments, the staff states, ***In 2010, the Alaska Board of Fisheries (board) adopted Proposal 90 that established a maximum mesh size of seven and one-half inches for all Yukon Area gillnet fisheries.*** However, the 2010 BOARD decided to delay the initiation of the gillnet mesh size regulation change from unrestricted to a maximum of seven-and-a-half inches for the entire Yukon River until the 2011 season. This was done to allow fishermen to obtain new nets that were no larger than seven-and-one-half inches. The BOARD's action was reflected in the 2010 regulation book as follows:

5 AAC 05.331. GILLNET SPECIFICATIONS AND OPERATION.

- (i) Beginning in 2011, in Districts 1-6, notwithstanding any other provision of this section that allows a person to take salmon with a gillnet that has a mesh size greater than seven and one-half inches, a person may not take salmon with a gillnet that has a mesh size greater than seven and one-half inches.***

However, this regulation, 5 AAC 05.331(i) in the 2010 regulation book, is in error because it does not reflect the 2010 BOARD's action or intent. Technically, 5 AAC 03.330 (i) allows a person to take salmon with a gillnet that has a mesh size greater than seven and one-half inches only when the department seeks to conserve chum salmon 5 AAC 05.331 (h) (Appendix A1). This is because all fishing periods are established by emergency order and 5 AAC 05.331 and all periods established by emergency order is limited to a maximum mesh size of 6 inches.

5 AAC 05.331. GILLNET SPECIFICATIONS AND OPERATION.

(h) Notwithstanding (b) – (d) of this section, during times when the Commissioner determines it to be necessary for the conservation of chum salmon the commissioner, by emergency order, may close the fishing season in Districts 1-6 and immediately reopen the season during which a person may not take salmon with a gillnet that has a mesh size less than eight inches.

Section 5 AAC 05.331 (h) is the only section in the regulation where a person may take salmon with a gillnet that has a mesh size greater than seven and one-half inches. In other words, the maximum mesh size for all salmon fisheries in the Yukon River is 6 inches unless there is a conservation concern for chum salmon. Therefore, we believe that Staff's comment regarding ACR 7, that in 2010, ***Existing gillnet fishery regulations were amended to be consistent with this maximum gillnet mesh size*** is wrong because the regulation is in error.

The error contained in the 2010 and 2011 regulation was then carried forward through the 2022 regulations (Appendix A2). In an effort to streamline and make the regulations less confusing, ADF&G submitted two proposals, Proposal 84, for subsistence regulations, and Proposal 88 for commercial regulations. These two proposals were thought to be housekeeping proposals. However, Proposal 88, commercial fishing regulations, continued to maintain the error or omission in regulation that was first made during the 1985 BOARD meeting. Prior to and during the 2023 BOARD meeting, YDFDA and ADF&G had discussions regarding the error or omission that limited commercial gillnet net size on the Yukon River to a maximum of 6 inches. In discussions with ADF&G, YDFDA submitted RC 34 (Appendix A4) to rectify the regulation and that would stipulate that seven- and one-half inches as the maximum mesh size of gillnets used in commercial fisheries in all Yukon Area districts. YDFDA specifically asked BOARD member John Jensen to present and speak to RC 34. YDFDA explained to BOARD member Jensen that Proposal 88 as written would eliminate the directed commercial king salmon fishery throughout the Yukon and limit the maximum mesh size of commercial gillnets to six inches, instead of the 2010 BOARD action that limited the gillnet mesh size in the Yukon Area to seven-and-one-half. YDFDA stressed that this was not any of the BOARDS previous actions or intent. However, when BOARD member Jensen spoke to RC 34, he did not mention that Proposal 88, as written, would eliminate the directed commercial king salmon fishery but concentrated on the five- and one-half inch part of the regulation and briefly stated that it was already covered by the six inch maximum. Proposal 88 passed, as written. When YDFDA spoke with BOARD member Jensen during a break he was visibly shaken at what had occurred and asked the BOARD for reconsideration. In conjunction with this, YDFDA submitted RC 57 (Appendix A5), which requested reconsideration of Proposal 88. BOARD member Jensen informed YDFDA that the votes were not there to reconsider Proposal 88. Accordingly, the current

regulation, 5 AAC 03.331 (Appendix A3) perpetuates this error or omission. ACR 7 seeks to finally rectify the error that persisted in commercial fishing regulations since 1985.

The issue of maximum gillnet mesh size in Yukon Area fisheries has been a contentious issue for decades. Numerous proposals have been submitted to limit the maximum mesh size of gillnets to 6 inch. They all have failed. Only one proposal, Proposal 90 in 2010, which was amended by the BOARD to allow gillnets of seven and one half or less was passed in 2010. Actions by the BOARD during the 2023 AYK meeting in passing Proposal 88, basically as a housekeeping proposal, that inadvertently eliminated the use of gillnets with a mesh size maximum of seven and half inches, without any public notice, circumvents the public process. Accordingly, we urge the BOARD to accepted ACR 7 and schedule to hear a proposal that would rectify and clarify the regulations.

Appendix A 1. Select Yukon Area Regulations, 2009-2010.

5 AAC 05.331. GILLNET SPECIFICATIONS AND OPERATION.

(a) No person may operate set gill net gear that exceeds 150 fathoms in aggregate length; no person may operate drift gill net gear that exceeds 50 fathoms in length.

(b) In districts 1 and 2, salmon may be taken only with gill nets of six inch or smaller mesh during periods established by emergency order.

(c) In District 3, salmon may be taken only with gill nets of six inch or smaller mesh during periods established by emergency order.

(d) In district 4, salmon may be taken only with gill nets of six-inch or smaller mesh after a date specified by emergency order.

(e) No gill net gear may be operated in a manner to obstruct more than one-half the width of any waterway. In the intertidal zone, this restriction applies at all stages of the tide.

(f) In Districts 4-6, gillnets with

(1) greater than six-inch mesh may not be more than 60 meshes in depth;

(2) six-inch or smaller mesh may not be more than 70 meshed in depth;

(g) In Districts 1-3, gillnets with

(1) greater than six-inch mesh may not be more than 45 meshes in depth;

(2) six-inch or smaller mesh may not be more than 50 meshes in depth.

(h) Notwithstanding (b) – (d) of this section, during times when the Commissioner determines it to be necessary for the conservation of chum salmon the commissioner, by emergency order, may close the fishing season in Districts 1-6 and immediately reopen the season during which a person may not take salmon with a gillnet that has a mesh size less than eight inches.

(i) Beginning in 2011, in Districts 1-6, notwithstanding any other provision of this section that allows a person to take salmon with a gillnet that has a mesh size greater than seven and one-half inches, a person may not take salmon with a gillnet that has a mesh size greater than seven and one-half inches.

Appendix A2. Select Yukon Area Regulations, 2022

5 AAC 05.331. GILLNET SPECIFICATIONS AND OPERATION.

- (a) A person may not operate
 - (1) set gillnet gear that exceeds 150 fathoms in aggregate length;
 - (2) drift gillnet gear that exceeds 50 fathoms in length.
- (b) In Districts 1 and 2, salmon may be taken only with gillnets of six-inch or smaller mesh during periods established by emergency order.
- (c) In District 3, salmon may be taken only with gillnets of six-inch or smaller mesh during periods established by emergency order.
- (d) In Districts 4 and 6, salmon may be taken only with gillnets of six-inch or smaller mesh during periods established by emergency order.
- (e) No gillnet gear may be operated in a manner to obstruct more than one-half the width of any waterway. In the intertidal zone, this restriction applies at all stages of the tide.
- (f) in Districts 4 - 6, gillnets with
 - (1) greater than six-inch mesh may not be more than 60 meshes in depth;
 - (2) six-inch or smaller mesh may not be more than 70 meshes in depth.
- (g) In Districts 1 - 3, gillnets with
 - (1) greater than six-inch mesh may not be more than 45 meshes in depth;
 - (2) six-inch or smaller mesh may not be more than 50 meshes in depth.
- (h) Notwithstanding (b) - (d) of this section, during times when the commissioner determines it to be necessary for the conservation of chum salmon, the commissioner, by emergency order, may close the fishing season in Districts 1 - 6 and immediately reopen the season during which a person may not take salmon with a gillnet that has a mesh size of less than eight inches.
- (i) In the Yukon Area, notwithstanding any other provision of this section that allows a person to take salmon with a gillnet that has a mesh size greater than seven and one-half inches, a person may not take salmon with a gillnet that has a mesh size greater than seven and one-half inches.
- (j) Notwithstanding the other provisions of this section, in Districts 1 - 3, during times when the commissioner determines that it is necessary for the conservation of king salmon, the commissioner may, by emergency order, close the fishing season and immediately reopen the season during which a person may take salmon only with a gill net that has a mesh size of five and one-half inches or less and that is not more than 30 meshes in depth.

Appendix A3. Select Yukon Area Regulations, 2023

5 AAC 05.331. Gillnet specifications and operations.

- (a) Set gillnet gear may not exceed 150 fathoms in aggregate length.
- (b) Drift gillnet gear may not exceed 50 fathoms in length.
- (c) Salmon may be taken only with gillnets of six-inch or smaller mesh during periods established by emergency order.
- (d) No gillnet gear may be operated in a manner to obstruct more than one-half the width of any waterway. In the intertidal zone, this restriction applies at all stages of the tide.
- (e) In Districts 1 - 3, gillnets with
 - (1) greater than six-inch mesh may not be more than 45 meshes in depth;
 - (2) six-inch or smaller mesh may not be more than 50 meshes in depth.
- (f) In Districts 4 - 6, gillnets with
 - (1) greater than six-inch mesh may not be more than 60 meshes in depth;
 - (2) six-inch or smaller mesh may not be more than 70 meshes in depth.
- (g) Notwithstanding any other provision of this section, during times when the commissioner determines it to be necessary for the conservation of a salmon species, the commissioner may, by emergency order, close the fishing season in Districts 1 - 6 and immediately reopen the season during which a person may take salmon with a gillnet that has a mesh size of seven and one-half inches.
- (h) Notwithstanding any other provision of this section, in Districts 1 - 3, during times when the commissioner determines that it is necessary for the conservation of king salmon, the commissioner may, by emergency order, close the fishing season and immediately reopen the season during which a person may take salmon only with a gillnet that has a mesh size of five and one-half inches or less, and that is not more than 30 meshes in depth.
- (i) Notwithstanding any other provision of this section, and [5 AAC 01.249](#) and [5 AAC 05.359 - 5 AAC 05.369](#), during times when the commissioner determines that it is necessary for the conservation of a salmon species, the commissioner may, by emergency order, close the fishing season and immediately reopen the season specifying the area in which one or more of the following gear limitations may be implemented:
 - (1) for fish wheels, as described in [5 AAC 05.333](#), the operator must closely attend the fish wheel while it is in operation, and all salmon must be immediately released to the water alive and must bypass any livebox unless retention is allowed by emergency order;
 - (2) dip nets may be used as described in [5 AAC 05.362\(k\)\(1\)\(A\)](#); all salmon caught with a dip net must be released to the water alive unless retention is allowed by emergency order;
 - (3) a beach seine may be used as described in [5 AAC 05.362\(k\)\(1\)\(B\)](#); all salmon caught with a beach seine must be released to the water alive unless retention is allowed by emergency order.

Appendix A4. RC 34, 2023 Alaska Board of Fisheries AYK meeting

YDFDA

RC034

Yukon Delta Fisheries Association (YDFDA)

SUGGESTED LANGUAGE TO AMMEND PROPOSAL 88

5 AAC 05.331 (c) IN BOLD & UNDERLINE

PROPOSAL 88

5 AAC 05.331. Gillnet specifications and operations.

Repeal and replace Yukon Area commercial salmon fishing gear specifications, as follows:

5 AAC 05.331 is amended to read:

- (a) Set gillnet gear may not exceed 150 fathoms in aggregate length;
- (b) Drift gillnet gear may not exceed 50 fathoms in length;
- (c) Salmon may be taken only with gillnets of **SEVEN-AND ONE-HALF OR SMALLER MESH**, six-inch or smaller mesh, **FIVE-AND ONE-HALF OR SMALLER MESH, OR FOUR-AND THREE-QUARTER SMALLER MESH** during periods established by emergency order.
- (d) No gillnet gear may be operated in a manner to obstruct more than one-half the width of anywaterway. In the intertidal zone, this restriction applies at all stages of the tide.
- (e) In Districts 1 - 3, gillnets with
 - (1) greater than six-inch mesh may not be more than 45 meshes in depth; (2) six-inch or smaller mesh may not be more than 50 meshes in depth.
- (f) In Districts 4 - 6, gillnets with
 - (1) greater than six-inch mesh may not be more than 60 meshes in depth;
 - (2) six-inch or smaller mesh may not be more than 70 meshes in depth.
- (g) Notwithstanding any other provision of this section, during times when the commissioner determines it to be necessary for the conservation of a salmon species, the commissioner, by emergency order, may close the fishing season in Districts 1 - 6 and immediately reopen the

season during which a person may take salmon with a gillnet that has a mesh size of seven and onehalf inches.

(h) Notwithstanding any other provision of this section, in Districts 1 - 3, during times when the commissioner determines that it is necessary for the conservation of king salmon, the commissioner may, by emergency order, close the fishing season and immediately reopen the season during which a person may take salmon only with a gillnet that has a mesh size of five and one-half inches or less and that is not more than 30 meshes in depth.

(i) Notwithstanding any other provision of this section and in provisions 5 AAC 01.249 and 5 AAC

05.359-5 AAC 05.369, during times when the commissioner determines that it is necessary for the conservation of a salmon species, the commissioner may, by emergency order, close the fishing season and immediately reopening the area in

which one or more of the following gears may be allowed;

(1) all salmon species caught by the gear types specified by the commissioner must be released to the water alive unless retention is allowed by the emergency order;

(A) for fish wheels (5 AAC 05.333): the operator must closely attend the fish wheel while it is in operation, and all salmon species specified for release must bypass any livebox;

(B) dip nets may be used as described in 5AAC 05.362(k)(1)(A);

(C) a beach seine may be used as described in 5AAC 05.362(k)(1)(B).

Appendix A5. RC 57, 2023 Alaska Board of Fisheries AYK meeting

YDFDA - Proposal 88 Request for Reconsideration

RC057

Prior to 2011 fishing season, mesh size for the directed king salmon season was unrestricted.

At the 2010 Board of Fisheries meeting, the Board amended Proposal 90 to set the maximum mesh size that could be used on the entire Yukon Area to 7.5 inches for subsistence and commercial fishing.

C/A Proposal 90: Prohibit commercial and subsistence gillnets over 6 in mesh size on the Yukon River. (Amended: Established a maximum mesh size of 7.5 inches effective with the 2011 season.)

Since that time, there has been no proposals that sought to reduce the mesh size in the Yukon Area.

The current regulation is wrong. It states that the maximum mesh size that can be used in the Yukon Area is 6.0 inch.

Accordingly, Proposal 88 is wrong in stating that the maximum mesh size that can be used in the Yukon Area is 6.0 in

The only mention of 7.5 inch in the current regulations is when it is used to conserve summer ~~dm~~ salmon when there is a harvestable surplus of kings.

The last proposal that sought to limit the maximum mesh size for the Yukon Area failed in 2019. This proposal addressed Districts 4, 5, and 6 only.

F (0-7)

92 Restrict gillnet mesh size to a maximum of 6 inches in Districts 4, 5, and 6 subsistence and commercial salmon fisheries. Meeting 01-18-19: 3:59:34 PM 2019.

RC 34 sought to correct the error in regulations and also to add the current mesh sizes used for commercial fishing.