

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
KUSKOKWIM RIVER INTER-TRIBAL )  
FISH COMMISSION, ASSOCIATION )  
OF VILLAGE COUNCIL PRESIDENTS, )  
BETTY MAGNUSON, IVAN M IVAN )  
AHTNA TENE NENE, and AHTNA, INC., )  
)  
Intervenor Plaintiffs, )  
)  
v. )  
)  
STATE OF ALASKA, ALASKA )  
DEPARTMENT OF FISH & GAME, and )  
DOUG VINCENT-LANG in his official )  
capacity as Commissioner of the Alaska )  
Department of Fish & Game, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No.: 1:22-cv-54 (SLG)

**DECLARATION OF DOUGLAS VINCENT-LANG**

I, Douglas Vincent-Lang, pursuant to 28 U.S.C. §1746, declare as follows under penalty of perjury:

**I. BACKGROUND**

1. I submit this declaration in support of the State of Alaska’s Combined Motion for Summary Judgment and Opposition to Plaintiffs’ Motions for Summary Judgment. If called as a witness, I have personal knowledge of the matters set forth herein and could and would competently testify thereto if called upon to do so.

2. For more than 34 years, I have worked in public service at the Alaska Department of Fish and Game (“ADF&G”). Since January 2019, I have served as the Commissioner of ADF&G. I also currently serve as U.S. Commissioner from the State of Alaska to the Pacific Salmon Commission, which establishes fishery regimes for Pacific Salmon stocks pursuant to the terms of the 2019 Pacific Salmon Treaty Agreement.

3. Before I became Commissioner of ADF&G, I served in various positions at ADF&G, including, among others, as the Director of the ADF&G Division of Wildlife Conservation, the Endangered Species Act Coordinator for the State of Alaska, and a research and management biologist and Assistant Director for the ADF&G Division of Sport and Fish.

4. I hold a B.S. degree in Biology/Population dynamics from the University of Wisconsin-Green Bay and an M.S. degree in Biological Oceanography from the University of Alaska Fairbanks.

5. As Commissioner of ADF&G, I am responsible for upholding the Department’s mission: To protect, maintain, and improve the fish, game, and aquatic

plant resources of the state, and to manage their use and development in the best interest of the economy and the well-being of the people of Alaska, consistent with the sustained yield principle.

6. Protecting Alaska's fish and game resources is also important to me on a personal level. I learned to fish and hunt at an early age with my grandfather. I now have three children, and one of my pastimes is teaching my children and grandchildren to fish, hunt, and enjoy Alaska's outdoors. It is important to me that the State conserve its natural treasures for my children, their children, and all future generations of Alaskans and to allow the passing of traditions to future generations. I am proud to have dedicated most of my professional career, spanning three decades, to the prudent management and preservation of Alaska's fish and game resources.

## **II. THE STATE'S REGULATION OF FISH AND WILDLIFE**

7. ADF&G maintains active and comprehensive management and research programs to ensure fish and wildlife populations are "utilized, developed, and maintained on the sustained yield principle," as required by Alaska's Constitution.

8. ADF&G manages and conducts research on fish and wildlife through four divisions and three sections: the Divisions of Commercial Fisheries, Sport Fish, Wildlife Conservation, and Administrative Services, and the Sections on Subsistence, Habitat, and Boards Support. ADF&G manages about 750 active fisheries, 26 game management units, and 32 special areas. The agency's annual operating budget is approximately \$240 million.

9. ADF&G also partners with Alaska tribes, with state, federal, and municipal agencies, and with other organizations to, among other things, conduct research, monitor fish and wildlife, and regulate the permitting process.

10. In particular, ADF&G partners with the Alaska Board of Fisheries (“Board”) to develop and enforce the State’s fishery conservation and implement the state subsistence priority. The Board’s main role is to conserve and develop the State’s fishery resources in the best interest of the economy and the well-being of the people of Alaska, consistent with the sustained yield principle. The Board has authority to adopt regulations to fulfill its mission, such as establishing open and closed seasons and areas for taking fish; setting quotas, bag limits, and harvest levels and limitations for taking fish; and establishing the methods and means for the taking of fish. The Department implements Board adopted management plans and ensures for conservation of fish stocks using its emergency order authorities.

11. In addition to partnering with the Board, ADF&G also works with various “working groups” that include federal, native, and local participants. These working groups assist ADF&G in its regulatory duties. The Department also manages the Board local Fish and Game Advisory Committees that are formed to provide the Board with local insights and positions on Board proposals impacting their areas.

12. Relevant here, ADF&G works directly with the Kuskokwim River Salmon Management Working Group (Kuskokwim Working Group), a 14-member advisory board formed in 1988 by the Alaska Board of Fisheries. The Kuskokwim Working Group includes elders, subsistence fishermen, processors, commercial fishermen, sport

fishermen, the Kuskokwim River Inter-Tribal Fish Commission, a member at large, federal subsistence regional advisory committees, and ADF&G.

13. The Kuskokwim Working Group provides ADF&G with input on management decisions through weekly meetings during the fishing season. The Working Group operates as the forum for stakeholders to exchange information and discuss inseason management decisions regarding fishing in the Kuskokwim River.

14. As required by Alaska's constitution and state law, the State seeks to achieve three primary goals when managing its waters: (1) sustain its fish for future generations (maintaining "sustained yield"); (2) ensure a priority for subsistence fishing for all Alaskans; and (3) provide sustainable commercial, sport, and personal-use fishing opportunities.

15. Protecting fish for future generations is one of the State's highest priorities. Under Alaska's constitution, all fish must be "utilized, developed, and maintained on the sustained yield principle." Alaska's fisheries are recognized as some of the best managed and most sustainable in the world. Alaska's fisheries are certified by the Marine Stewardship Council as sustainable.

16. In addition, subsistence fishing of salmon is incredibly important for the economies and cultures of many families and communities in Alaska. Under Alaska's constitution, all Alaskans (not just rural residents) may engage in subsistence fishing.

17. While much subsistence fishing is done by rural residents, some non-rural Alaskans do it too. Many Alaskans have cultural ties to rural fisheries but have been displaced to urban areas of the state for education, health, economic or other reasons. The

State's laws and regulations protecting subsistence fishing for all Alaskans ensure that individuals can return "home" to practice their culture and traditions.

### **III. THE STATE'S REGULATION OF THE KUSKOKWIM RIVER**

18. ADF&G, working together with the Board and the Kuskokwim Working Group, regulates fishing in the Kuskokwim River to ensure the conservation of fish, to implement the subsistence fishing priority, and to offer commercial, sport and personal-use fishing opportunities if there are harvestable surpluses available.

#### **A. Subsistence Fishing in the Kuskokwim River**

19. Located in southwestern Alaska, the Kuskokwim River is the second largest river in Alaska, draining an area approximately 50,200 square miles, which is 11% of Alaska's total area.<sup>1</sup>

20. The Kuskokwim is a navigable river. It begins at the confluence of its North and South Forks (near the village of Medfra) and flows for more than 700 miles before it ends in the Bering Sea.

21. The primary subsistence fishers in the main stem of the Kuskokwim River are the residents of 38 rural communities along the Kuskokwim, which collectively contain more than 4,600 households. These communities belong to one of three distinct areas commonly referred to by residents as the lower, middle, and upper river areas.

22. The lower Kuskokwim River includes the communities of Eek and Tuntutuliak and extends upstream approximately 125 miles to the community of Tuluksak. From there, the middle Kuskokwim River extends roughly 260 miles upstream

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<sup>1</sup> See Alaska Dept. of Fish & Game, *Kuskokwim River*, [bit.ly/3VisQgx](http://bit.ly/3VisQgx).

and includes all communities from Lower Kalskag to Stony River (including Lime Village). The upper Kuskokwim River begins near the community of Stony River and extends upstream approximately 233 miles to the community of Nikolai.

23. About 180 miles of the Kuskokwim River runs within the Yukon Delta National Wildlife Refuge. The refuge is contained mostly within the lower Kuskokwim River. The remainder of the Kuskokwim River is not within the federal refuge.

24. The Kuskokwim River subsistence salmon fishery is one of the largest in the State in terms of the number of participating residents and salmon harvested. Residents harvest five species of Pacific salmon for subsistence purposes: Chinook, chum, sockeye, coho, and pink. The Kuskokwim River also supports commercial and sport fisheries when there are harvestable surpluses available. These fisheries provide opportunities for income in an area where the per-capital income is low.

25. Alaska's salmon all follow the same life cycle. They begin their life as a fertilized egg in freshwater. After they hatch, they remain in freshwater for various lengths of time before migrating to the sea. Adult salmon remain in the ocean to feed for several years, before returning to the freshwater in which they were born. Once salmon find their natal stream, they begin the migration upriver to reach their spawning ground. When the salmon reach their spawning grounds, the female deposits her eggs in the gravel and the male fertilizes them. After spawning, all species of Pacific salmon die, completing their lifecycle.

26. Chinook salmon (*Oncorhynchus tshawytscha*, also known as king salmon) begin to enter the Kuskokwim River in late May and are most abundant in mid- to late

June. Sockeye (*O. nerka*) and chum (*O. keta*) salmon begin to enter in early- to mid-June. Chinook and sockeye salmon runs diminish in mid-July, and chum salmon runs diminish in late July, when the coho salmon (*O. kisutch*) run begins. Coho salmon entry into the Kuskokwim River diminishes in late August to early September although some continue to trickle in small numbers through October.

27. Each summer, families relocate to, or make frequent short trips to, seasonal fish camps situated along tributaries, sloughs, and the main stem of the Kuskokwim River. Fish camps are bases for fishing excursions as well as centralized harvest processing sites. Salmon harvests typically begin in June and continue through October throughout the drainage.

28. State law requires individuals to be Alaska residents for the preceding 12 months before harvesting salmon for subsistence uses. Under state law, all Alaskans are eligible to participate in state managed subsistence fisheries. Salmon utilized for subsistence can be harvested by set and drift gillnets, dip nets, beach seines, fish wheels, and rod and reel. Spears can be used only in the Holitna, Kanektok, Arolik, and Goodnews river drainages. The State sometimes assigns bag limits to rod and reel harvests in certain locations and imposes restrictions on net mesh size and depth.

29. Some salmon populations have decreased in recent years. In 2010, the number of Kuskokwim River chinook salmon sharply declined for unknown reasons. The 2012-2014 Kuskokwim River chinook salmon runs were the lowest estimated total runs on record. Chinook salmon runs from 2015-2018 showed improvement, but they were still below the historical average. The 2019 chinook salmon total run was near average



and was the largest run since 2009. Between 2020 and 2022, chinook runs again declined to 2015-2018 levels. Chum salmon runs have also recently been low. The 2020 chum salmon run was below average, the 2021 run was the lowest on record, and the 2022 run was the second lowest on record. In contrast, sockeye salmon runs have increased.

30. Due to these poor run sizes, the State has limited commercial harvesting of both chinook and chum salmon in the Kuskokwim River. The State also has needed to impose restrictions on subsistence fisheries and delay chum and sockeye salmon fishing to avoid incidental catch of chinook salmon.

**B. State Management of the Kuskokwim River**

31. The State has been providing for sustained yield and subsistence uses of salmon in the Kuskokwim River since statehood.

32. To ensure long-term sustainable salmon populations, ADF&G and the Board collaborate to establish “escapement goals” for Kuskokwim salmon. The “escapement” level is the number of salmon that escape Kuskokwim River fisheries to spawn.

33. Imposing a certain escapement level through regulation is necessary to maintain sustainable salmon populations. The State’s fishing restrictions have ensured that escapements generally fall within the State’s established sustainable escapement goals, which are calculated to meet future escapement and harvest needs.

34. In 2018, after performing its regular review of Kuskokwim salmon escapement goals, ADF&G released its new escapement goal recommendations for Kuskokwim salmon stocks. ADF&G reviews these goals about every three years, timing

its reviews to align with regularly scheduled Board of Fisheries meetings to facilitate public input.<sup>2</sup>

35. ADF&G and the Board regulate and manage fishing on the Kuskokwim River through the Kuskokwim River Salmon Management Plan (“Management Plan”).<sup>3</sup> The Management Plan provides guidelines for managing the Kuskokwim River salmon fisheries in a “conservative manner” that “result[s] in the sustained yield of salmon stocks large enough to meet escapement goals, amounts reasonably necessary for subsistence uses [ANS], and for nonsubsistence fisheries.”<sup>4</sup> Under the Management Plan, ADF&G must manage the river using “the best available data, including preseason and inseason run projections, test fishing indices, age and sex composition, harvest reports, passage escapement estimates, and recognized uncertainty, to assess run abundance.”<sup>5</sup>

36. The Management Plan provides detailed instructions for managing salmon fisheries inseason, including automatic emergency shutdowns of fisheries when escapement levels fall short of the State’s goals.<sup>6</sup> Per the Plan, ADF&G employs a sophisticated combination of methods for gathering yearly data on salmon run strength, including telemetry, sonar, aerial studies, test fisheries, weirs, and computer modeling.<sup>7</sup>

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<sup>2</sup> The State’s next review and set of escapement goals was delayed due to COVID-19 disruptions.

<sup>3</sup> 5 AAC 07.365; *see also* 5 AAC 39.222.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 5 AAC 07.365.

<sup>7</sup> ADF&G, *Chinook Salmon Research Initiative*, [bit.ly/3V0CCDK](https://bit.ly/3V0CCDK).

ADF&G also works with rural fishermen to collect local observational data about salmon runs.<sup>8</sup>

37. ADF&G routinely collects and archives the most up-to-date and comprehensive data set on Kuskokwim salmon. Salmon assessment on the Kuskokwim River consists of a wide range of projects that monitor in-season run abundance, timing, harvest, demographics, and escapement. Since 2020, there have been 15 projects operated annually within the Kuskokwim River to assess the salmon populations. Of those projects, nine have been directly operated by ADF&G or have had ADF&G as an operations partner.

38. ADF&G employs expert staff to analyze and interpret the data it gathers.<sup>9</sup> ADF&G then uses this data and analysis to develop annual preseason forecasts and strategies for reaching the State's escapement goals.

39. ADF&G works year-round to develop and enforce Kuskokwim River salmon policies, and it implements the State's escapement goals and management plan during the salmon in-river migration, which is when fishermen harvest salmon.

40. As the salmon migration season begins, ADF&G makes decisions regarding in-season management according to the Management Plan, considering input from the Kuskokwim Working Group, the preseason forecast for chinook salmon, and the assessed in-season run strengths of the salmon returns.

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<sup>8</sup> *Id.*

<sup>9</sup> AR 1029; *see* ADF&G, *Our Structure & Staff*, [bit.ly/44062pA](https://bit.ly/44062pA).

41. The Kuskokwim River chinook salmon migration begins in late May every year. Pursuant to the Management Plan, if preseason run strengths are forecasted to be poor, ADF&G will typically announce in early May, before the chinook salmon season begins, a closure of the Kuskokwim River to chinook salmon fishing, including subsistence fishing.

42. During the harvest season ADF&G meets at least once a week with the Kuskokwim Working Group to review and discuss in-season run assessments and harvest levels and to make recommendations on in-season management actions.

#### **IV. FEDERAL INVOLVEMENT AND COOPERATION**

43. The federal government, when making its own management decisions, largely relies upon State-collected and analyzed data. While the federal government operates some data-collection projects on the Kuskokwim River, such as weirs and harvest surveys, and performs its own scientific analysis of the data it collects, it otherwise relies on ADF&G's data, analysis, preseason forecasts, and management goals.

44. The federal government does not go through a formal process to set its own escapement or subsistence goals. The federal government also does not formally develop its own management plan.

45. In response to the *Katie John* cases, the federal government asserted regulatory authority under ANILCA over Alaska's navigable waters. This approach led to a balkanized regulatory regime over Alaska's navigable waters. For example, the federal government has claimed authority to regulate a significant portion of the Kuskokwim River, from the river mouth to the rural village of Aniak at the edge of the Yukon Delta

National Wildlife Refuge. But the State remains responsible for sustaining yield and protecting subsistence uses for the *entire* Kuskokwim River, including those portions that are outside of the federal refuge.

46. These conflicting regulatory regimes create a serious conflict when salmon populations are low and the State is forced to implement restrictions. During periods of weak runs in the Kuskokwim, the State must limit early fishing opportunities for lower Kuskokwim subsistence fishers while run strength and timing are still uncertain to prevent overfishing to ensure for escapement and to preserve subsistence fishing opportunities for those residents living in the upper Kuskokwim above the refuge. But the federal government does not have to take those factors into consideration. This regulatory narrowness has led to overfishing within federal preserves and corresponding harms to those living upstream.

47. Since *Sturgeon v. Frost* was issued in 2019, the federal government has continued to aggressively assert regulatory authority over Alaska's navigable waters, including the Kuskokwim River. Until recently, this legal issue never reached a breaking point because the federal government typically deferred to the State's management decisions within the Kuskokwim. Indeed, before 2021, fisheries on the Kuskokwim River were successfully managed for decades with little conflict between the State and the federal government.

## **V. THE 2021 AND 2022 SEASONS**

48. The federal government's cooperation with the State began to erode in the spring of 2021.

49. In May 2021, as the salmon season approached, the State was projecting that the Chinook salmon run in the Kuskokwim would be in the range of 94,000-155,000.<sup>10</sup> Consistent with its management plan, the State was preparing to restrict fishing in the Kuskokwim River drainage to protect the Chinook population while also providing subsistence fishing opportunities for all Alaskans.

50. On May 7, before the State issued its orders, Boyd Blihovde (the federal Refuge Manager) issued an “emergency special action” ordering that “Federal public waters of the Kuskokwim River within and adjacent to the exterior boundaries of the Yukon Delta National Wildlife Refuge” would be “closed to the harvest of all salmon by using gillnets by all users effective June 01, 2021.”<sup>11</sup> The emergency special action created an exception for “Federally qualified subsistence users,” authorizing them to use gillnets in “the main stem in the Kuskokwim River” on June 2, 5, 9, 12, and 15.<sup>12</sup>

51. The State took a more conservative approach and waited for additional inseason salmon-run data before issuing its emergency orders. On May 11, the State issued emergency orders that prohibited subsistence fishing with gillnets throughout the Kuskokwim River starting on June 1, 2021.<sup>13</sup> But the State authorized subsistence fishing on various dates and locations along the Kuskokwim, including “[s]ubsistence fishing with set gillnets” in parts of the river within the Yukon Delta Refuge on June 2, 5, and

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<sup>10</sup> AR 512.

<sup>11</sup> AR 506.

<sup>12</sup> AR 507.

<sup>13</sup> AR 512-14

9.<sup>14</sup> Unlike Blihovde’s orders, the State’s orders authorized subsistence fishing for all Alaskans that qualified for subsistence fishing, not just rural Alaskans, allowing locally displaced residents to travel “home” to practice their culture and traditions

52. The State issued its orders after the Refuge Manager’s because it was waiting to receive and analyze in-season data to make an informed decision about openings. The State did not want to preemptively announce openings for subsistence uses before the data supported that decision.

53. On May 27, the Federal Subsistence Board (“FSB”) wrote a letter to me asserting that the State’s orders put “non-federally qualified fishers at legal risk” because Blihovde’s orders “tak[e] precedence” over the State’s.<sup>15</sup>

54. On June 3, I responded to the FSB’s letter, explaining that I had a legal obligation “to provide for the subsistence needs of Alaskans when harvestable surpluses allow,” and that, based on the State’s data and assessments, “there [were] sufficient resources to provide subsistence opportunities for all Alaskans while still managing Chinook salmon stocks conservatively.”<sup>16</sup>

55. I never received any evidence from the federal government showing that our orders had any meaningful impact on subsistence fishing for rural residents. Nor is it likely that any such evidence exists.

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<sup>14</sup> AR 512-16.

<sup>15</sup> AR 544-45.

<sup>16</sup> AR 568.

56. As a logistical matter, it is not easy for those living far from the Kuskokwim to engage in subsistence fishing. There is no road access to the Kuskokwim River, and the subsistence fishing the State authorized requires a boat and a specialized gillnet, which may be up to 300 feet long (50 fathoms). So non-rural Alaskans typically do not engage in subsistence fishing unless (1) they fly by plane to the Kuskokwim, (2) the boat and gear are already available to them at the river when they arrive, and (3) they have family members living locally.

57. Publicly available data also supports the State's conclusion that our orders opening subsistence fishing to all Alaskans had no meaningful impact on subsistence fishing for rural residents. The State has measured salmon harvest numbers on days when subsistence fishing was allowed for all Alaskans and on similar days when subsistence fishing was allowed only for federally qualified users. There is no meaningful difference in harvest numbers between the two days.

58. In my experience, the individuals who return to the Kuskokwim to engage in subsistence fishing already have significant ties to the community but were displaced to other areas of the State.

59. On June 10, after receiving additional inseason data, the State issued another executive order authorizing "subsistence fishing with gillnets" on parts of the Kuskokwim River within the Yukon Delta Refuge on June 12 and 15.<sup>17</sup>

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<sup>17</sup> AR 634.



60. On June 17, Blihovde issued another emergency action authorizing “federally qualified subsistence users” to use gillnets in “[f]ederal public waters in the main stem of the Kuskokwim River” on June 19.<sup>18</sup> The State did not support Blihovde’s actions, which contradicted the State’s closures and were unsupported by the State’s scientific data and analysis. The State opened fishing on June 19 only in the middle Kuskokwim, not in the lower Kuskokwim River.<sup>19</sup>

61. On June 24, after receiving data showing a salmon surplus, the State issued an emergency order authorizing subsistence fishing with gillnets along parts of the Kuskokwim River within the Yukon Delta Refuge on June 28.<sup>20</sup> We believed that this opening was warranted based on in-season assessments indicating the chinook salmon run abundance was adequate to provide additional harvest. We determined that there was no biological justification to further delay this fishing period.

62. The next day, the FSB wrote a letter to me, asserting that the State’s order was unlawful because Blihovde had “closed the mainstem and several tributaries of [the] Kuskokwim River within the exterior boundaries of the [federal] refuge to gillnet fishing” and his order “supersedes [the] State’s authority.”<sup>21</sup>

63. On June 30, I wrote a letter in response, explaining that we had concluded, based on the State’s “up-to-date science, biology, and experience,” that there were “sufficient fish available to allow Alaskans an opportunity to subsistence fish to feed

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<sup>18</sup> AR 738-39.

<sup>19</sup> AR 772-74.

<sup>20</sup> AR 859, 919-20.

<sup>21</sup> AR 911

their families and practice their cultural way of life.”<sup>22</sup> I noted that Blihovde had not “provided any scientific or biologic data to [the State] that would call [its] information and science into question.”<sup>23</sup> Without “credible evidence” contradicting our approach, the State would “continue to manage the river and fishery based on its assessment of run strength.”<sup>24</sup>

64. On July 1, after receiving additional inseason data, the State issued another emergency order permitting subsistence fishing with gillnets along parts of the Kuskokwim River within the Yukon Delta Refuge on five dates in July.<sup>25</sup> We concluded that these limited fishing opportunities would “conserve chum and king salmon while providing subsistence harvest opportunity for other species.”<sup>26</sup> The same day, Blihovde issued another emergency special action, which purported to authorize subsistence fishing with gillnets on the same five dates, but only for “Federally qualified subsistence users.”<sup>27</sup>

65. On April 6, 2022, in advance of the 2022 salmon season, the United States sent a letter to the State of Alaska threatening legal action if the State continued to “authorize subsistence harvest by all Alaskans on a day when no comparable federal opening exist[s]” or issued any other orders “authoriz[ing] harvest of Kuskokwim salmon

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<sup>22</sup> AR 1029.

<sup>23</sup> AR 1030.

<sup>24</sup> *Id.*

<sup>25</sup> AR 1112-13.

<sup>26</sup> AR 1112.

<sup>27</sup> AR 1042-43.

within the [Yukon Delta National Wildlife] Refuge in a manner contrary to the Board's actions."<sup>28</sup>

66. In my letter in response, I noted that as recently as 2020 the State and the federal government had "agreed to scheduling concurrent subsistence fishing openers" and I again emphasized that the State was legally required "to provide a subsistence opportunity for [these] users when a harvestable surplus exists."<sup>29</sup>

67. The following month, we were preparing to issue new orders restricting gillnet fishing due to the historically low levels of chum salmon escapements the prior year. Yet on May 2, Blihovde issued an emergency special action inexplicably authorizing federally qualified subsistence users to fish using gillnets on June 1, 4, 8, 12 and 16.<sup>30</sup>

68. The State strongly opposed Blihovde's order. Under principles of sound management, it was premature for Blihovde to make these early fishing opportunity announcements while run strength and timing was still so highly uncertain.

69. In a May 12 letter to Blihovde, I warned that opening fishing on June 12 and 16 "prior to any inseason assessment" was "premature," "highly illogical and scientifically unsupportable," and "irresponsible management," because "run strength ...

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<sup>28</sup> AR 2422-23.

<sup>29</sup> Dkt. 5-2 at 8; AR 2453-54.

<sup>30</sup> AR 2487-88.

[was] still highly uncertain.”<sup>31</sup> I asked the FSB to provide a “biological justification” for its actions.<sup>32</sup> The FSB never responded.

70. On May 13, consistent with these concerns, the State issued emergency orders that prohibited subsistence fishing with gillnets in the Kuskokwim River beginning on June 1, but opened subsistence fishing on parts of the river within the Yukon National Refuge for all subsistence users only on June 1, 4, and 8.<sup>33</sup> Unlike Blihovde’s order, the State did not permit gillnet fishing on June 12 and 16.<sup>34</sup>

71. By the end of the 2022 season the State had met all assessed escapement goals for chinook and sockeye salmon. But while the State’s goals were met or exceeded in the lower and middle Kuskokwim River, escapement farther upstream to the headwaters region was poor. If the Kuskokwim River had remained closed to subsistence fishing on June 12 and June 16, as the State’s orders provided, it is likely that the upriver headwater communities would have had more opportunity to share in the harvest and escapement would have been larger. For example, escapement to the Salmon (Pitka Fork) River—a project located upstream of the federal reserve in the headwaters region—was the lowest on record and only 23% of its historical average. Similarly, while there were 9.9 Chinook salmon per household within the Yukon Delta National Wildlife Refuge, the headwater communities upriver were left with only 1.7 Chinook salmon per household.

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<sup>31</sup> Dkt. 9-1 at 1.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> AR 2516-20.

<sup>34</sup> *Id.*

72. ADF&G had repeatedly warned the Refuge Manager about this possible outcome and had urged the Refuge Manager to take a more cautious management approach, as the State did. The State seeks to ensure that adequate numbers of Chinook salmon pass through the Refuge to provide for escapement needs and for subsistence harvest stocks for rural Alaskans living along the *entire* river—including upriver and outside the Refuge. The Refuge Manager was aware of the impact of his orders to the Kuskokwim fisheries above the Refuge, yet he disregarded the State’s concerns.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2023.

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Douglas Vincent-Lang