

REPLY TO
ATTENTION OF:DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
REGULATORY DIVISION
P.O. BOX 6898
JBER, ALASKA 99506-0898

JUN 20 2012

Regulatory Division
POA-2004-1080General Delivery
Attention: [REDACTED]
Ugashik Village
King Salmon, Alaska 99613

Dear [REDACTED]:

This letter is to remind you that as you conduct your set net operations on the Ugashik River during the 2012 fishing season you must not cause an obstruction to navigation. This letter follows our September 7, 2011 letter (enclosed) notifying you that your set net operation is in Noncompliance with the General Condition 1 of Department of the Army (DA) Nationwide Permit (NWP) Number 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Your set net operation is located within section 9, T. 31 S., R. 50 W., Seward Meridian; USGS Quad Map Ugashik C-5; Latitude 57.514114° N., Longitude -157.404775° W.; near Ugashik Village, Alaska.

Nationwide Permit 4 was issued pursuant to 33 CFR 330.5 and authorizes fish harvesting devices such as your set net operation provided that the activity conforms to all general and regional conditions applying to the NWP. Specifically, **GENERAL CONDITION 1: NAVIGATION** requires that (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

In previous fishing seasons your set nets have been reported to extend into the Ugashik River to such an extent (up to 1,000 feet) that during low tidal stages vessels have been reported to run into the set nets, foul their props in your nets, or run aground on the sand bar while attempting to avoid your nets. On July 18, 2011, the U.S. Coast Guard determined your set net operation is an obstruction to navigation (enclosed). In our September 7, 2011 letter we informed you that your set net operation is a violation of

www.poa.usace.army.mil/reg

Member Klobeston

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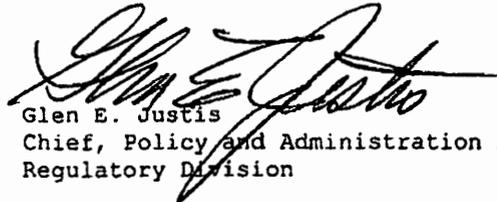
Section 10 of the Rivers and Harbors Act and directed you to reduce the length of your net to provide adequate navigational clearance for vessels. We expect that you have made the necessary changes to your set net operation to allow safe navigation during all tidal stages in order to resolve the non-compliance with general condition 1 referenced above and eliminate the obstruction of navigation documented by the USCG. You are required to notify this office within 10 days of receipt of this letter to confirm you have made the necessary modification to your set net operation.

Section 12 of the Rivers and Harbors Act provides civil penalties, including fines of not less than \$500, and not more than \$2,500, per day of violation or imprisonment of up to one year, or both, for any person who violates Section 10 of the Rivers and Harbors Act.

Nothing in this letter shall be construed as excusing you from compliance with other Federal, State, or local statutes, ordinances, or regulations which may affect this work.

Please contact Bryan Herczeg of my staff via email at bryan.a.herczeg@usace.army.mil, by mail at the address above, by phone at (907) 753-2786, or toll free from within Alaska at (800) 478-2712, if you have questions.

Sincerely,



Glen E. Justis
Chief, Policy and Administration Branch
Regulatory Division

Enclosures

U.S. Department of
Homeland Security

United States
Coast Guard



Captain of the Port
United States Coast Guard
Western Alaska

510 L Street, Suite 100
Anchorage, AK 99501
Staff Symbol: s
Phone: (907) 271-6700
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July 18, 2011



Department of the Army
U. S. Army Engineer District, Alaska
Attn: Regulatory Division
P.O. Box 6898
JBER, Alaska 99506-0898

Dear Colonel Koenig:

On June 27, 2011, Coast Guard Sector Anchorage was informed the set nets placed by [REDACTED] in Ugashik River near Ugashik Village obstruct the navigable channel. I have enclosed a map plus overhead and shore side views of this set net operation. Based on a Coast Guard investigation, I find this set net operation completely blocks the navigable channel at low stages of tide and interferes with safe navigation at nearly every other tidal stage.

In accordance with the November 29, 1996 Memorandum of Agreement (MOA) regarding *Coast Guard and Department of Army Responses to Marking and Removal of Sunken Vessels and Other Obstructions to Navigation*, my staff consulted with the Seventeenth Coast Guard District and your Policy and Administration Branch. I concur with the determination that [REDACTED] set net operation is an obstruction to navigation.

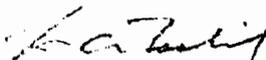
The MOA lists several factors for determining whether an obstruction is a hazard to navigation. Based on the following, I believe this set net operation constitutes an **obstruction**, but not necessarily a hazard to navigation.

- a) **Criteria:** *The degree to which the obstruction restricts, endangers, or interferes with the navigability of a body of water.* **Finding:** Both set net arrangements affect vessel traffic in the vicinity of Ugashik Village at nearly every tidal stage – vessels cannot navigate over or around the nets without risk.
- b) **Criteria:** *Physical characteristics of the obstruction.* **Finding:** Both set nets extend 1,000 feet from the shoreline across the river. The nets are fixed to a wire that extends along the surface from the shoreline to a buoy at the end, which is anchored to the river bottom. The nets are anchored to the river bottom along the entire span.
- c) **Criteria:** *Possible movement of the obstruction.* **Finding:** The nets are fixed to a wire that extends along the surface from the shoreline to a buoy at the end, which is anchored to the river bottom. The nets are anchored to the river bottom along the entire span, which prevents them from drifting off location.
- d) **Criteria:** *Marine activity in the vicinity of the obstruction.* **Finding:** Ugashik River is used by commercial and recreational vessel traffic.

- e) **Criteria:** *Location of obstruction with respect to existing aids to navigation.* **Finding:** There are no aids to navigation in the area of concern.
- f) **Criteria:** *Prevailing and historical weather conditions.* **Finding:** Based on the closest NOAA tidal station at Egegik River, Alaska the tidal range in this area is approximately 13 feet. At high tide, the river is 1,500 feet wide; at low tide, 1,000 feet. Vessels can pass at high tide, but not without risk below high tide – and not at all at low tide.
- g) **Criteria:** *Length of time the obstruction has been in existence.* **Finding:** [REDACTED] has participated in the fishery at this location since 1970. Historically, the fishery has been open annually June through August, and [REDACTED] has been operating his set net operation this year since June 21, 2011. We are not certain how long this obstruction has been in existence – we began receiving complaints June 27, 2011.
- h) **Criteria:** *History of vessel accidents involving obstruction.* **Finding:** Sector Anchorage has received numerous calls on a daily basis since June 27, 2011 from concerned citizens that either experienced or witnessed a vessel run into the set nets, foul its props in the set nets, or run aground on the sand bar while attempting to avoid the nets.

Please direct any questions in this matter to LTJG Kelly Hansen of my staff at (907) 271-6768.

Sincerely,



J. A. FOSDICK
Captain, U.S. Coast Guard
Captain of the Port, Western Alaska

Enclosure

Copy: Commander, Seventeenth Coast Guard District (dl, dp, dpw)
Alaska Department of Fish and Game (King Salmon Office)