



Kenai Peninsula Fishermen's Association

Ensuring the Sustainability of Our Fishery Resources

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March 19, 2014

Alaska Board of Fisheries
 Board Support Section
 P.O. Box 115526
 Juneau, Alaska 99811-5526

RE: Emergency Petition / Regulatory Petition, Petition #1

Amendments to 5 AAC 21.359 as adopted 02.05.14 through the passage of UCI proposal 209 as modified by RC 151

Chairman Karl Johnstone,

The Kenai Peninsula Fishermen's Association (KPFA) is a trade organization representing commercial setnet fishermen in the waters of Cook Inlet hereby submit this petition seeking relief under; **AS 44.62.220 Right to Petition, 5 AAC 96.625 Joint board petition policy, 85-16-JB Joint Board Petition Policy (BOF&G) and 2000-203-BOF Policy On Emergency Petition Process.**

The BOF has the authority to accept a petition ...for *the adoption, amendment, or repeal of a regulation.*

The Board has a definition for an emergency ...*as an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.*

The Board has also recently adopted; **Operating Procedures Policy to not use Motion to Rescind** which states that ...*several methods to take action to repeal or change regulations. These procedural tools include Agenda Change Requests, Motions to Reconsider, Board Generated Proposals, and Emergency Petitions.* This "new" policy declines to use the *Roberts Rules of Order* guidelines for a procedural motion to rescind a previous board action.

KPFA had requested the Board address this modified Late Run Kenai River King Salmon (LRKRKS) management plan at the end of the UCI board meeting utilizing the *Board Generated Proposal* (BGP) process and on 02.13.14 RC 288 (BGP) was brought forth as a mechanism to accomplish this. Board members also reviewed RC 282 and read into the record the justifications to bring forth modified proposal 209 to address the requested clarifications and changes. The vote failed at that time with suggestion that the petition process would be more appropriate as a question of process and the use of a BGP may not fit the guidelines as stated in **2013-270-FB Criteria for Development of Board Generated Proposal**, particularly at the same meeting where the regulation was adopted or modified and at the end of that scheduled meeting time frame.

We specifically would like to address the terms used in **5 AAC 21.359 (b) (3)**. The projected inriver return and reasonable harvest opportunity are terms that have not been commonly used in this context or have not been correctly used previously within the original plan.

Return as defined in **5 AAC 39.222 (f) (30)** *“return” means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock’s spawning escapement; “return” does not include a run, which is the number of mature salmon in a stock during a single calendar year.*

There is a significant difference in management objectives for terms such as; return, run and inriver goals. The latter two terms deal with a single year episode and mortalities above the counter(s), and are considered allocative. The “return” is important to determine biological sustainable escapement goals over time.

The Department would be hard pressed to determine all the age classes within a given brood year and it is inconceivable that this could be assessed in season in real time. Therefore the 22,500 number would be near impossible to apply inseason management opportunities to any resource user and would imply immediate restrictions for all users until the season would be near completion. Applying other simply defined terms and managing for a suggested inriver goal of 17,000 as measured at the mile 8.6 counter in the Kenai River and as recommended in BGP 288, would be more clearly understood by user groups, the Department and others concerned about achieving and maintaining single year escapement goals within the SEG range while still providing reasonable opportunity.

Harvest as defined in **5 AAC 39.222 (f) (15)**, *“harvestable surplus” means the number of salmon from a stock’s annual run that is surplus to escapement needs and can reasonably be made available to harvest;*

Sec. 16.05.251 Regulations of the Board of Fisheries (d) *Regulations adopted under (a) of this section must, consistent with sustained yield and the provisions of AS 16.05.258, provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishermen.*

In (a) ... a reasonable opportunity to harvest these salmon resources over the entire run, as measured by the frequency or inriver restrictions. This statement does not guarantee that the inriver user will harvest a certain proportion of the run of king salmon, rather it allows access to the resource for catching stock that are surplus to escapement.

Only in **16.05.258 Subsistence use and allocation of fish and game** is the Board directed to administer "reasonable opportunity" as it relates to "harvestable" needs of the subsistence user. In (b) (4) of that section, the Board is tasked to determine ...if the harvestable portion of the stock or population is not sufficient to provide a reasonable opportunity for subsistence uses, the appropriate board shall... Clearly, other than a subsistence priority, the legislature has directed the board to provide for a "fair and reasonable opportunity" for all respective user groups. The Board is not mandated to supply a user group with a harvest opportunity, just to allow an opportunity to harvest. To do so would be allocative and in this situation would violate any attempts to conserve this resource in times of low abundance.

16.05.221 Boards of Fisheries and game. (footnote) "Conservation" implies controlled utilization of a resource to prevent its exploitation, destruction, or neglect.

16.05.251 Regulations of the board of Fisheries (e) Requires the board to use a criteria for allocation among personal use, sport, guided sort, and commercial fishermen.

Is it the intent of the BOF to allocate the king salmon resource disproportionately to the in river guided and sport fishery without consideration of the other users and for managing and maintaining other local stocks of salmon within their range? If this is not a conserving amendment to 5 AAC 21.359 then we believe that the board did not adequately address the allocation criteria when adopting this amendment. Further, we believe that the term "harvest" should be inserted after the term "reasonable opportunity" to remain consistent with all other provisions in regulation other than subsistence.

In the memorandum from; Tim McKinley, Division of Sport, dated 01.14.2014. From this report, 19,700 LRKRKS is the projected run size for 2014. McKinley states that this would be "approximately the same abundance as of the 2013 run." We believe this forecast is very conservative and deters from the standard protocols that were used in the past to forecast run size. Total mortalities associated with the LRKRKS for 2013 was 4,349 with a spawning escapement of 15,395. The total run in 2013 was 19,744 king salmon. This conservative forecast for 2014 may give more confidence that the kings returning to the Kenai mainstem in 2014 will at the very least be comparable to last year.

Implementing a 2,000 fish increase over the low end SEG and establishing this as an inriver goal will ensure a final escapement over the prescriptive low end for 2014. We recommend establishing 17,000 as a management point, as referred to in RC 288, to maintain this run within the required SEG range while balancing fair and reasonable opportunity to access this stock and other harvestable surplus salmon resources. The inriver run estimate for 2013 as reported in Table 209-1 was 17,015.

KPFA has also identified problems in amended language of (b) (4) with similar confusing language and competing management goals. From August 1 – August 15 a new escapement goal was adopted from the one that the Board re-adopted earlier in the meeting after re-consideration

on proposal 207. The Board rejected establishing an Optimal Escapement Goal (OEG) of 16,500 and returned to the Sustainable Escapement Goal (SEG) of 15,000 to 30,000.

The Board also adopted a "projected escapement" of 16,500 to 22,500 as an escapement goal range in August. In July the SEG lower goal is 15,000, but in August this minimum goal rises to 16,500. We question as to what type of escapement goal this is now classified as. Members of KPFA do not recall the board addressing **5 AAC 39.223 Policy for statewide salmon escapement goals (a) and (c) (2)**. We are very aware that with this new goal and given a similar in river exploitation as in 2013 above the counter this would result in a "new" inriver goal of 18,120. We consider this to be a re-allocation of LRKRKS to the above the sonar fisheries.

We are also not aware of any scientific justification in establishing a high range goal of 22,500. We understand that this number was recommended by the department of Fish and Game but we have not seen a specific escapement goal report or any document that would justify this number over the current approved SEG of 15,000 to 30,000. **Fishery Manuscript Series No. 13-02, March 2013, Run Reconstruction, Spawner – Recruit Analysis, and Escapement Goal Recommendation for Late-Run Chinook Salmon in the Kenai River**, page 18, *an escapement goal range of 13,000 to 28,000 would provide expected yields of at least 90% of MSY*. This is the best available science and the most current Department peer reviewed determination of achieving maximum sustained yield. The Department however recommended a higher low end goal to allow for uncertainties of data. Increasing the goal for other than conservation will continue to burden all user groups disproportionately and continue to limit a reasonable opportunity to access the resource as measured with restrictions on all users. Clearly, the Kenai River late run king salmon is not a classified "stock of concern" and does not currently require conservation measures or burden sharing. Current management practices have resulted in maintaining sustainable escapements, the Kenai late run king has continued to achieve escapement within the goal range. The Department is tasked with managing for this goal and using their inseason emergency order authority to maintain escapements to achieve sustained yields.

We request the BOF to review this emergency petition and act on it expeditiously. We would ask the Board to amend the adopted language in 5 AAC 21.359 or to remove the language that will restrict the east side setnet fishery for allocative purposes. The current adopted form of this regulation will needlessly cause our disaster declared fishery further economic harm with no verified science that would justify these restrictions.

Considering the abundant forecast for the return of sockeye to the Kenai and Kasilof Rivers for 2014, we believe that a biologically allowable resource harvest would be precluded by delayed regulatory action and would be significantly burdensome to the petitioners because the resource would be unavailable in the future. We would ask the Board to consider this a rare instances circumstances may require regulatory changes outside the process. We are concerned that there is unintended consequences to the boards actions and by the current transcripts of the UCI meeting and with discussions with individual Board members, many did not have sufficient knowledge of the previous regulation, the current science and the appropriate codified language to fully understand the severe negative economic and personal ramifications that this adopted language would have on this already distressed setnet user group.

Thank you,
Robert V. Williams
President

Board-Generated Proposal B

February 13, 2014

Note: This language is presented in the context of changes to the language adopted by the board under Proposal 209 (RC 151)

5 AAC 21.359. Kenai River Late-Run King Salmon Management Plan.

5 AAC 21.359(b) is amended to read:

(b) The department shall manage the late run of Kenai River king salmon to achieve a sustainable escapement goal of 15,000 – 30,000 king salmon, as follows:

(1) in the sport fishery,

(A) if the sustainable escapement goal is projected to be exceeded, the commissioner may, by emergency order, extend the sport fishing season up to seven days during the first week of August;

(B) from July 1 through July 31, a person may not use more than one single hook in the Kenai River downstream from Skilak Lake;

(2) in the sport fishery, that portion of the Kenai River downstream from Skilak Lake is open to unguided sport fishing from a non-motorized vessel on Mondays in July; for purposes of this section a non-motorized vessel is one that does not have a motor on board;

(3) from July 1 through July 31, if the projected inriver return of late-run king salmon is less than 17,000 [22,500] fish, in order to achieve the sustainable escapement goal and provide reasonable harvest opportunity, the commissioner may, by emergency order,

(A) establish periods in the sport fishery during which

(i) the use of bait is prohibited; or

(ii) the retention of king salmon is prohibited; if the retention of king salmon is prohibited in the Kenai River, the commercial set gillnet fishery in the Upper Subdistrict is restricted to no more than 12 hours of fishing time per week, with a 36-hour continuous closure as described in 5 AAC 21.360(c)(2)(C);

(iii) when the use of bait is prohibited the commissioner may

(A) prohibit the retention of king salmon in the personal use fishery;

(B) notwithstanding the provisions of 5 AAC 21.360(c), open fishing periods in the commercial set gillnet fishery in the Upper Subdistrict, based on the

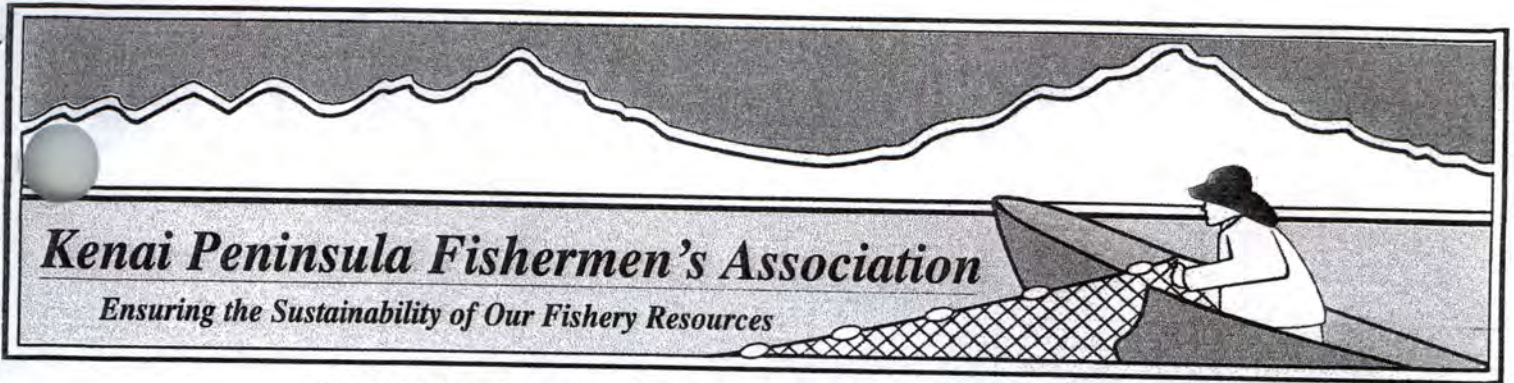
abundance of sockeye salmon returning to the Kenai and Kasilof rivers, for no more than 36 hours per week, with a 36-hour continuous closure as described in 5 AAC 21.360(c)(2)(C), during which

(i) the number of set gillnets may be restricted to either three set gillnets that are each not more than 35 fathoms in length and 29 meshes in depth or two set gillnets that are each not more than 35 fathoms in length and 45 meshes in depth; or

(ii) the number of set gillnets may be restricted to either two set gillnets that are each not more than 35 fathoms in length and 29 meshes in depth or one set gillnet that is not more than 35 fathoms in length and 45 meshes in depth;

(iii) set gillnets used that are 29 meshes in depth must be marked as specified by the department;

[(4) FROM AUGUST 1 – AUGUST 15, IF THE PROJECTED ESCAPEMENT OF KING SALMON INTO THE KENAI RIVER IS AT LEAST 16,500, BUT LESS THAN 22,500 FISH, NOTWITHSTANDING THE PROVISIONS OF 5 AAC 21.360(C), THE COMMISSIONER MAY OPEN, BY EMERGENCY ORDER, THE COMMERCIAL SET GILLNET FISHERY IN THE UPPER SUBDISTRICT TO NO MORE THAN 36 HOURS OF FISHING TIME;]



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RC 282

February 12, 2014

Alaska Board of Fisheries
Board Support Section
P.O. Box 115526
Juneau, Alaska 99811-5526

RE: Cook Inlet Regulatory Meeting 01.31- 02.13/14

Proposal 209 as amended through Record Copy (RC) 151

Chairman Karl Johnstone,

etnet commercial fishing community represented by the Kenai Peninsula Fishermen's Association request the Alaska Board of Fisheries (BOF) to invoke their authority using 2013-34-JB Criteria for Development of Board-Generated Proposal to bring to the table a Board Generated Proposal on proposal 209 as it amended 21.359 Kenai River Late-Run King (KRLRK) Salmon Management Plan.

We offer these reasons as specified in the criteria:

1. This is in the public's best interest that justifies government regulation as the motion as approved did not have consistent intent as it relates to current in-regulation management plans. Access to the harvestable surplus resources of sockeye and pink salmon may be denied. The public process was limited as it relates to adoption of the language of RC 151 without the benefit of the BOF members discussing other relative RC's before adopting substitute language. Instructions from the Chairman on recess of the session on 02.04.14 directed interested parties to submit relevant RC's in response to RC 139 by the start of the morning session on 02.05.14. The public was unaware of the RC 151 submitted by BOF vice-chair Tom Kluberton. We do not believe that the other BOF members had sufficient time to read and understand the information presented to them from the deadline of submittal time to the short time that final action was taken. In discussions with individual board members, concerns were expressed that this process moved "to fast" and they did not have a reasonable understanding of the presented information, and did not fully engage the Department of Fish and Game with relative questions because of their limited knowledge of the plans before them; competing plans that would be effected by adoption of this proposal 209 into regulation.

This is an urgent matter as provisions of this modified plan require considerable expenditures estimated in the hundreds of thousands of dollars and in the tens of thousands to the individuals who wish to participate. The official opening day for the ESSN is approximately four months away. Individuals

fishing under *5 AAC 21.331 (d)* do not use 35 fathom nets but 25 fathoms as stipulated. They would be precluded from fishing two nets in the step down measures as described in (b) (3) (B) (i) and (ii). The next scheduled regular meeting of the BOF is not until March 17-21 2014 and UCI, not until 2016/2017.

3. The use of an Agenda Change Request (ACR), normal cycle proposal, reconsideration policy or motion to rescind are not available due to time constraints and board policy.
4. We believe that board members could address this at this meeting but in order to give reasonable and adequate opportunity for public comment to address the changes in *5 AAC 21.359 Kenai River Late-Run King Salmon Management Plan* as amended by proposal 209 and as amended by Record Copy 151, and to comply with notice requirements of the *Administration Procedures Act*, scheduling this BGP could be addressed at the *March 17-21 2014 Statewide King and Tanner Crab And supplemental Issues meeting in Anchorage.*

We have questioned the justification for the 22,500 number placed into regulation as we see no scientific justification or ownership from the Department of Fish and Game for this action point. This number will effectively shut down the ESSN before it can open July 1st on any year where a low sustainable range of KRLRK maybe forecasted or projected to return. This would preclude the Kasilof run of sockeye, a run harvested 70% by the ESSN and deny access to any late run Kenai River sockeye in the Kenai District or Kasilof Districts. It should be noted that both the Kenai River sockeye (*5 AAC 21.360 Kenai River Late-Run Sockeye Salmon Management Plan*) and the Kasilof River sockeye (*5 AAC 21.365 Kasilof River Salmon Management Plan*) have established goals and management directives associated with the specific management plans. It is not clear on how these directed plans will intersect with the new language of proposal 209 as amended. Managers will now have to consider three goals that are based only on highly subjective evaluations based on unproven methods that are in question.

In August, the plan becomes more unworkable. Instead of a *projected inriver goal* we now have a *projected escapement* when the inriver harvesters and personal use (PU) fisheries are scheduled to end by July 31st. ESSN fishermen could very well have been waiting on the beach in the entire month of July to meet objectives to attain the Sustainable Escapement Goal (SEG) of 15,000 to 30,000. It is possible that 30% of the KRLRK can pass through the sonar counter at mile 8.6 in August. Other than the SEG any other undefined goals are allocative as they have no reference to biological needs as expressed in *5 AAC 39.223 Policy for Statewide salmon escapement goals* for an SEG (d), *5 AAC 39.220 Policy for the management of a mixed stock salmon fisheries (b)* and *5 AAC 39.222 Policy for the management of sustainable salmon fisheries*. The board reaffirmed their commitment to an SEG for the KRLRK on a vote of reconsideration (*proposal 207*). This is not a stock of concern and implementations of any restrictions are arbitrary, allocative and are not supported by any qualified peer reviewed science.

We would respectfully request that the BOF address this issue at the earliest point within this January-February 2014 Upper Cook Inlet regulatory while in deliberation and in session. We would suggest that the BOF members thoroughly review the guidance given to them by *5 AAC 21.363 Upper Cook Inlet Salmon Management Plan* and consider the many changes they have adopted at this meeting that may relate to their previous action on Proposal 209. It is quite possible that unintended consequences may have occurred that have significantly and negatively impacted individuals and groups.

Thank you,

Robert V. Williams, President

Fishery Manuscript Series No. 13-02

**Run Reconstruction, Spawner-Recruit Analysis, and
Escapement Goal Recommendation for Late-Run
Chinook Salmon in the Kenai River**

by

Steven J. Fleischman

and

Timothy R. McKinley

March 2013

Alaska Department of Fish and Game

Divisions of Sport Fish and Commercial Fisheries



ESCAPEMENT GOAL RECOMMENDATION

Information about the range of escapements that will lead to optimal yields is summarized in the optimal yield profile (OYP; Figure 8). The steeper the limbs of the OYP, and the greater the maximum probability, the better the information about sustained yield at different levels of escapement. Compared to other Alaska Chinook salmon stocks that have been analyzed in a similar manner, the OYP for Kenai River late-run Chinook salmon (Figure 8) has better than average information content (Figure 11).

Based on the foregoing analysis, the Alaska Department of Fish and Game recommends an interim sustainable escapement goal (SEG) of 15,000–30,000 Kenai River late-run Chinook salmon. At the lower bound of the recommended range, there is a high probability of achieving near-optimal yields. For example, there is greater than 95% probability of achieving greater than 70% of MSY, and 73% probability of achieving greater than 90% of MSY on average (Figure 8). Conversely, the risk of overfishing relative to attaining 90% or more of MSY is 27%. At the upper bound of the recommended goal range there is a 68% probability of achieving greater than 80% of MSY at escapements of 30,000 fish (Figure 8). The recommended goal is based on the actual escapement needed to sustain yields, so that it must be evaluated by accounting for undetected Chinook salmon passing the RM-9 sonar site. This is accomplished by multiplying DIDSON-based estimates of passage by a correction factor to reflect Chinook salmon passage in the entire cross-section of the river. We recommend a correction factor of 1.28, which is obtained from the state-space model as the inverse of p_{MR} (point estimate 0.78), the fraction of Chinook salmon detected by sonar at RM 9. Projections of harvest and release mortality¹⁹ above RM 9 must be subtracted from expanded DIDSON inriver passage estimates to project escapement during the fishing season.

The recommended interim escapement goal has the following attributes:

The new goal is transferable. The goal is expressed in the “currency” of actual fish, accounting for imperfect detection at the RM-9 site. Although the goal will be subject to review and revision (see below), it will not require reformulation after the planned transition to an upriver sonar site is complete.

The new goal is consistent with previous practice. Assuming perfect knowledge of the spawner–recruit relationship ($\alpha = 4.9$, $\beta = 0.000031$) an escapement goal range of 13,000 to 28,000 would provide expected yields of at least 90% of MSY. Alternatively, according to Eggers (1993), an escapement goal range of 16,200 ($0.8 \times S^{\wedge}_{MSY}$ point estimate) to 32,400 ($1.6 \times S^{\wedge}_{MSY}$) would provide robust yield performance. In reality, our knowledge of α , β , and S_{MSY} is uncertain, and uncertainty about the true status of the stock creates risk. Our analysis quantifies uncertainty about key parameters and begins to assess risk in an organized way. However, there is no recipe for selecting an escapement goal based on the results of such an analysis. For example, in Figure 11, optimal yield profiles from 5 other recently-reviewed Chinook salmon stocks are reproduced and rescaled for comparison with the Kenai River late-run OYP, and probabilities of achieving 90% of MSY are plotted versus the lower bound²⁰ of the escapement

¹⁹ Release mortality is obtained by multiplying creel survey estimates of number of fish released by 0.064 (Bendock and Alexandersdottir 1992).

²⁰ Given that large runs are not expected in the near future, the lower bound of the goal is currently more relevant than the upper bound for Kenai River late-run Chinook salmon.