

SOUTH K BEACH INDEPENDENT

RC 31

FISHERMEN'S ASSOCIATION

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Protecting and Preserving the Kasilof River Aquarian System

March 17, 2015

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

RE: Emergency Petition

AS 16.05.310, AS 44.62.190, AS 44.62.220, AS 44.62.30, AS 44.62.250, AS 44.62.270,
5 AAC 96.625, BOF Resolution #80-81-FB, BOF Policy #2000-203-BOF, 5 AAC 21.359

Chairman Kluberton,

Cook Inlet East Side Set Net fishermen who harvest fish in the Kasilof and Kenai Sections of the Upper Subdistrict request the Commissioner with concurrence from the Alaska Board of Fisheries (BOF) to amend the current language in 5 AAC 21.359 Kenai River Late-Run King Salmon Management Plan to:

(e) (3) (A) if the use of bait is prohibited in the Kenai River sport fishery under (1) (A) of this subsection, commercial fishing periods in the Kenai and Kasilof sections may be managed independently based on abundance and are open for no more than 36 hours per week within each section, with a 36-hour continuous closure per week beginning between 7:00 p.m. Thursday and 7:00 a.m. Friday, during which the number of set gillnets operated may also be restricted to either

It is our intent to comply with AS 44.62.220 *Right to Petition*;

- (1) the substance or nature of the regulation, amendment, or repeal requested;
- (2) the reasons for the request;
- (3) reference to the authority of the agency to take the action requested.

In policy 5 AAC 96.625 *Joint Board Petition Policy* we believe that we can identify all aspects that will justify a finding of an emergency.

In this section, an emergency is 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 South K-Beach Independent Fishermen's Association (SOKI) submitted a similar proposal to the BOF on March 20, 2014. The special meeting was convened on April 3rd, 2014. Board members asked several questions from the Department to determine if they could accomplish the requested management flexibility using the Commissioners emergency order (EO) authority 5 AAC 21.363(e).

In the Peninsula Clarion article dated 04.03.2014 then "board chairman Karl Johnstone asked again about emergency order authority and whether ADFG managers felt they could do what the petitioners were asking with that authority" Commercial fisheries director Jeff Regnart said, "We do feel we have that"

In the same article area commercial fisheries manager Pat Shields was asked, "would make it easier to manage the fishery" His response, "I guess the answer would be yes." "That would provide more flexibility to the department and you would manage each section separately with the hours that were provided."

When the situation did arise this last summer (2014) many setnet fishermen requested differential openings to take advantage of the sockeye returning to both the Kasilof and Kenai Rivers. The response from Mr. Shields was that the regional managers and commercial fisheries director determined that they would not manage the areas separately based on sockeye abundance (5 AAC 21.359 (e) (3)). In a recent meeting with Mr. Shields in a public forum we asked him if he would make that same statement he had made to us post season; that the Department could use their eo authority but because of the allocation aspect they needed more 'guidance' from the BOF. We would respectfully request that the BOF convene a special meeting to discuss the merits of this petition and ask the managers why they would not use the EO authority inseason even after several board members declared on record that they felt comfortable with the Department taking inseason action that would accomplish what the petitioners had requested.

On February 9th 2015 *Division of Sport Fish* released a *Memorandum* informing us that with only two years of side by side data that, "sonar operations at river mile 8.6 will be discontinued" Expansion factors of 1.55 would not be used and a new modified netting program would be instituted. The report states, " a disadvantage is that inseason projections used for management decisions will occur at a time when a smaller fraction of the run has passed the sonar," "Projections based on smaller fractions require larger expansions and are more uncertain" The report in the next paragraph states, " Delayed run timing may be more important consideration during the late run. In 2013 and 2014, it took up to six days longer for a given proportion of the late run to pass rm 14, compared to rm 9. Decisions based on data though 21 July are currently based on the expectation that approximately 50% of the run has passed rm 9, whereas only 34% of the run had passed the rm 14 sonar by that date in 2013-2014."

In reality in 2013 on the 21st it was about 34 % and in 2014 it was 26 % of the Late Run Kenai King (LRKK). The 21st was around the midpoint with the rm 9 counter. At rm 14 in 2013 the 50% point was on the 26th and in 2014 it was the 29th. That is 9 days after the July 20th inseason assessment of the sockeye run strength to the Kenai River.

Other points to consider if regards to the Kenai River;

- 1) It has been reported that on a pink salmon year (2014) the ARIS counter was no longer counting individual Kings and the run was "estimated" using previous data because of the interference of mass amounts of pinks through the insonified area after the 28th of July. How long was the ARIS inoperable?
- 2) The run of sockeyes projected for 2015 are 3.6 million. Slightly down from 2014.
- 3) The Kenai sockeye final escapement continues to be in the high range of the OEG. A continually stressor to the systems siblings and creates a greater risk of returning less than high sustained yield.
- 4) Kenai district setnet fishermen were restricted from fishing within the third week of July and then were opened to early before there was any significant abundance of sockeye available. Closed shortly after, they missed the bulk of the run.

5 AAC 21.363 Upper Cook Inlet Salmon Management Plan (a) (3) in adopting the specific management plans described in (2) of this subsection the board will consider: (a) (3) (C) the various needs and demands of the user groups of the salmon resources of upper Cook Inlet:

Clearly the change in the LRKK assessment tool with no side by side three year analysis, no corrective factor with still unproven uncertainties in the program, a change in methodologies and a continued reliance on in river netting programs to determine run strength and the 1.1, 1.2 and some 1.3 age class component of kings in the population, coupled with an inflexible management strategy that does not allow variance for direct proximity fisheries consideration is reason enough to consider a slight change that will most likely have little negative "net" affects on conservation concerns. Consider that the total return of LRKK for 2014 was 19,000 and this year, 2015, the conservative estimate is at 22,115. Just slightly below the 22,500 number where all restrictions come off. This is *new and significant information* that was not available to the BOF for their 2014 UCI regulatory meeting.

For the Kasilof River we reference 5 AAC 21.365 *Kasilof River Salmon Management Plan* and the *Kasilof River Special Harvest Area (KRSHA)*;

Over 66% of the permit holders who fish within the ESSN fishery register in the Kasilof section. The Kasilof is projected to have another great sockeye return of 1,092,000. Last year the Kasilof River again exceeded the top and of the escapement goal. Continued returns to a spawning and rearing limited environment will eventually lead to a downturn in production as the system has experienced previous high returns and dropped production below the one spawner to one returning adult ratio.

Because the Department continued to use the terminal harvest area for **17 days** last year, a record number of 560 kings were harvested in KRSHA. Continued conflicts with commercial setnet fishermen in the area resulted in a standard 90% of the harvest was captured by 10% of less of the participant permit holders. That means 90% of those fishing in the terminal area only harvest 10% of the delivered salmon.

To make this situation more detrimental to the fishery as a whole, the average price for Kasilof terminal sockeyes was about .75 cents per pound with some processors declining to purchase any of the product. In reverse, sockeye harvested outside of the terminal area averaged over \$2.00 per pound in grounds price. That works out to over a 65% reduction in value per fish for those harvested and delivered within the terminal area. Post season discussions with regional processors indicate that they are even less inclined to purchase Kasilof sockeye caught in the *special harvest area* in 2015. With high expected returns of sockeye in the Bristol Bay area and the strength of the dollar to foreign currency it is likely that the Kasilof terminal will garner little interest by the processors. If they do buy from their selected group of fishermen the price may drop below .50 per pound (equivalent to the early 2000 salmon depressed pricing).

We haven't yet considered the continued disruption to other in river user groups who are experiencing the upstream effects of lost opportunity. We question the long term negative effects to the health and diversity of the Kasilof King run. We believe it to be a sustainable run but by a continued change in the historical harvest patterns are we avoiding one problem just to create another? *This is not an orderly or historical fishery.*

We reference again 5 AAC 21.363 Upper Cook Inlet Salmon Management Plan (a) (5) in the absence of a specific management plan, it is the intent of the board that salmon be harvested in the fisheries that have historically harvested them, a according to the methods , means, times and locations of those fisheries;

If this is a “guiding principal” for a specific management action without a plan does this mean that when plans conflict that we deter and decimate the intent language from the main objectives?

In the Peninsula Clarion article mentioned earlier we see board member Tom Kluberton stating, “the board made the changes to the king salmon management plan, at least in part, for the benefit of the inriver sport fishers who target the same fish.” Mr. Kluberton, commercial setnet fishermen do not target the kings as our gear is not selected for them and how does this request to reduce the harvest in the terminal area degrade the experience for those recreating in the Kasilof River?

We believe that we have detailed all the necessary triggers that will bring this emergency petition to the discussion table for the BOF to make a surgical decision to a management plan that has had one year to expose its problems.

- 1) We have defined the requested “substance of our amendment”, the reasons for our request and referenced the authority to take the action.
- 2) We have documented “unforeseen” “new and significant information” that was not available to the board in 2014. Department announcement on changing of assessment tools or trigger dates was not discussed in 2014 with any such detail.
- 3) I do not believe that the BOF or the Department was planning for comparatively high catches of kings in the terminal area or the increase in use of the terminal area to a record level.
- 4) It could be argued that we have unknown or potential declines in sockeye productivity in both the Kenai and Kasilof systems.
- 5) We should be concerned that we may be impacting other stocks by changing historical harvesting patterns.
- 6) By not allowing flexibility in harvesting within the constraints of the hourly limits while managing for abundance levels of sockeye entering the natal systems we will significantly and adversely affect the petitioners because the resource will not be available in the near or present future.

Our user group is well aware of the changes to our fishery with this LRKK salmon management plan. We believe that the Department and the BOF should give proper deference to our user group in trying to define the best practice to accomplish a sustainable but also a reasonable opportunity to conduct an economically viable fishery.

Thank you,



Paul A. Shadura II
Spokesperson
SOKI

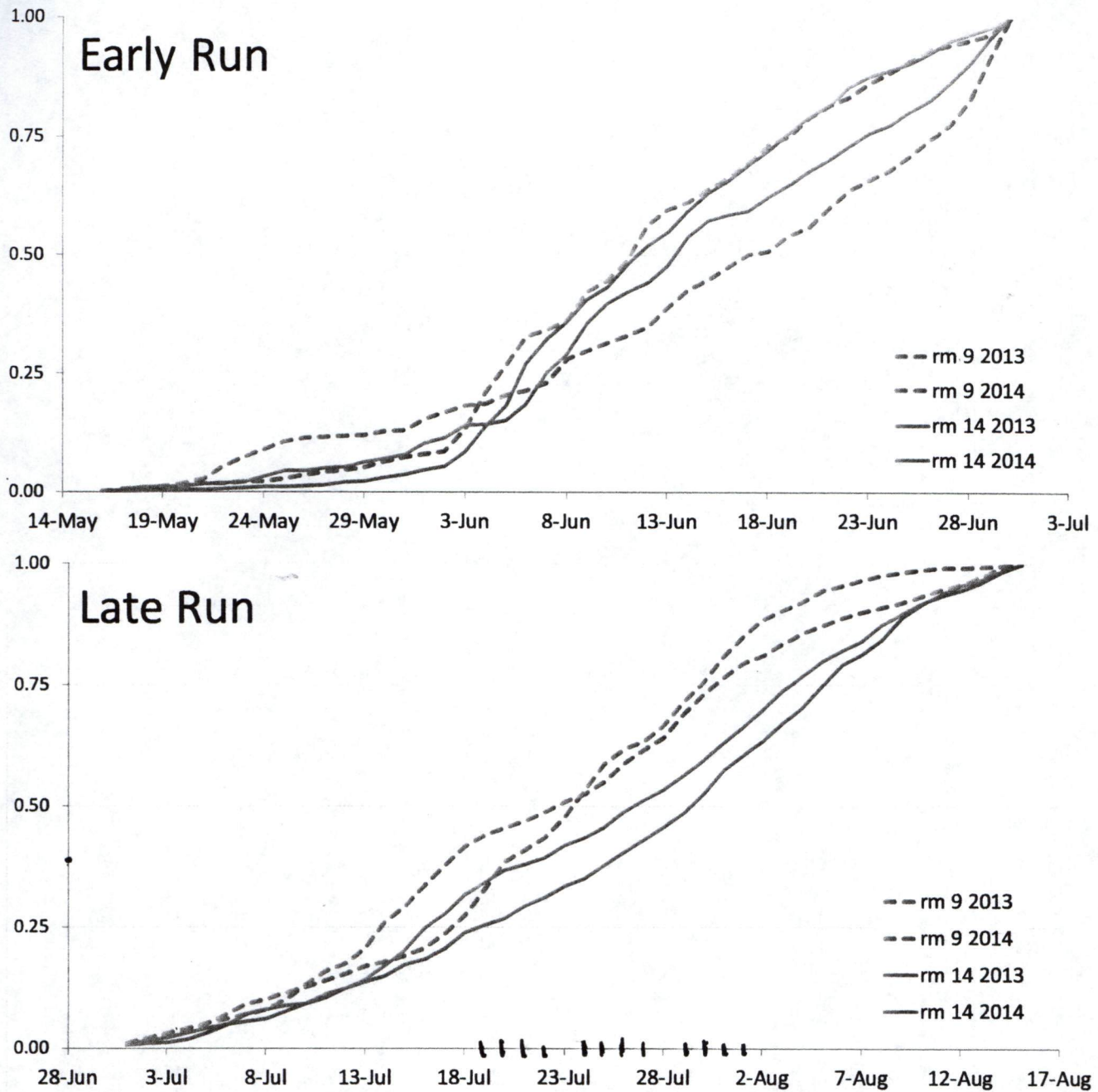


Figure 2.- Cumulative daily proportion of end-of-season abundance (run timing) for Kenai River Chinook salmon as measured by sonar at river miles 9 and 14, 2013 and 2014 early and late runs.

*ADF + G Sport Fish Division
 Memorandum: 9 February 2015

Submitted by: Christine Brandt

SOKI
Petition

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Setnet petition fails

By **Rashah McChesney***Peninsula Clarion*Like

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A petition to separate management of the Kenai, East Forelands and Kasilof sections of the commercial setnet fishery in Cook Inlet was failed unanimously by Alaska's seven-member Board of Fisheries.

During a Thursday hearing on the emergency **petition**, submitted by Paul A. Shadura II representing the South K Beach Independent Fishermen's Association, members of the board discussed whether the proposal met the criteria of an emergency.

Under state law, the board can make an emergency finding if it determines an unforeseen or unexpected event has occurred that either threatens a fishery, or one in which a regulatory inaction would prevent harvesting a surplus of those fish.

The crux of the association's, or SOKI, petition was that board members had not considered the potential effects to commercial fisheries when they **amended** the Kenai River Late-Run King Salmon Management Plan during their February meeting on the Upper Cook Inlet.

New additions to the management plan include language that would restrict the entirety of the commercial setnet fishery on the East Side of the Cook Inlet to 36 hours of fishing time per week.

However, because sockeye runs peak at different times on the **Kenai** and **Kasilof** rivers — and commercial setnetters in the Kenai and Kasilof sections target the two different runs — fisheries managers will have to allocate those 36 hours between two sections and could wind up prioritizing one river's sockeye run over another.

"Maybe managers will be saying ... let's hold off on opening up the Kasilof area, even though the run is substantial for this area, so we can make sure we have enough hours on the Kenai," Shadura said. "If we're all bound together, it would be difficult for managers to make that decision."

According to ADFG data the historic midpoint, or peak, of the Kasilof river sockeye run is about a week earlier than the midpoint of the Kenai River run.

So, instead of using the same 36-hour pool of available hours between the two sections — the SOKI **petition** requested that the board allow managers to fish the sections separately and provide up to 36-hours for both.

Board member Fritz Johnson, of Dillingham, said he thought the petition could provide Alaska Department of Fish and Game managers who are tasked with running the Upper Cook Inlet fisheries, more flexibility when managing the two sections of the fishery to intercept sockeye headed for the Kenai and Kasilof rivers.

"It may allow this department to have a little more precision in regards to managing those areas," Johnson said after he and Kodiak board member Sue Jeffrey moved to take up the petition.

Jeffrey echoed Johnson's comments and brought up the "1 percent rule" which closes the commercial setnet fisheries in August if less than one percent of the season's harvest is caught during two consecutive fishing periods.

During the February Upper Cook Inlet meeting board members adopted a proposed regulation that changes the way the rule has been calculated in the past.

Prior to 2014, managers calculated the harvest of the entire set gillnet fishery in the Kasilof, Kenai and East Foreland sections of the Cook Inlet — those fisheries were "decoupled." Now the rule is calculated in each section separately and is expected to cause the Kasilof section to be closed more frequently.

According to **ADFG data**, had the new criteria been applied in the two fisheries over the last 13 years, the Kasilof section would have been closed early in nine of those years reducing their sockeye harvest by more than 77,000 fish.

Jeffrey also asked ADFG managers to clarify whether ADFG emergency order authority would be restricted by the recently adopted changes to the management plan.

Under Alaska statute the commissioner of ADFG can open or close seasons or areas for fishing or change weekly closed periods for fish or game via emergency order. The Board of Fisheries cannot adopt a regulation that would limit the power of the commissioner to exercise that authority.

"In the actual new language now, yes," said Tim Baker, an ADFG regional management coordinator over Cook Inlet salmon and herring fisheries.

Baker said the new regulations —which are designed to kick in when Kenai River king salmon are returning to the river in low numbers — would trigger a reduction in the number of hours that the set gillnet fisheries could be fished.

“Those are significant reductions on what they would normally do in this case if we’re trying to conserve king salmon,” Baker said.

Orville Huntington, board member from Huslia, asked if the SOKI petition would make it easier to manage the fishery.

“I guess the answer to that would be yes,” said Pat Shields, ADFG commercial area management biologist who manages the Upper Cook Inlet setnet fisheries. “That would provide more flexibility to the department and you would manage each section separately with the hours that were provided.”

Some board members were unconvinced that the petition was a necessary change to the new regulations.

Tom Kluberton, board member from Talkeetna, said the board made the changes to the king salmon management plan, at least in part, for the benefit of inriver sport fishers who target the same fish.

“We all know the economic consequences that amounts to millions of dollars and the loss of those 389 guiding outfits,” Kluberton said.

Allowing the commercial set gillnet fishers in the southern part of the Cook Inlet to fish also reduced the amount of fish available to anglers and commercial fishers in the northern part of the Cook Inlet, he said.

“In my mind, there’s nothing unforeseen about what we were doing,” Kluberton said. “Yes, there are impacts on all fisheries and I think this petition is an effort to reduce that impact on one set of fisheries ... so I’m not able to register the same level of concern that I’m hearing from some of my fellow board members.”

As deliberations progressed, board chairman Karl Johnstone asked again about emergency order authority and whether ADFG managers felt they could do what the petitioners were asking with that authority.

“We do feel we have that,” said Jeff Regnart, director of ADFG commercial fisheries division.

However, while ADFG has that authority, it has rarely been used to separate fishing between the Kenai and East Foreland section and Kasilof section of the commercial setnet fishery.

During the last five years, commercial area managers have fished the Kasilof section separately of the Kenai and East Foreland section for 15 days, according to ADFG data.

During those time periods, the Kasilof setnet fishery has been restricted to within half a mile of the beach — instead of its usual one and a half miles.

Shields said ADFG managers don't typically split the two fisheries up via emergency order as doing so would allow commercial fishers in one section to harvest fish that could have been harvested in the other — an allocative decision that managers try to avoid.

In addition to emergency order authority that could regulate the two fisheries, Regnart said managers could also use the Kasilof Special Harvest Area — a fishery that opens two miles around the mouth of the Kasilof river to all drift gillnet and commercial setnet fishers in the Cook Inlet.

Using it for king salmon conservation is a relatively new use for the area, which was designed to allow Kasilof section setnet fishers to harvest Kasilof sockeye when Kenai River sockeye were returning in low numbers.

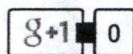
Shields said ADFG managers used the special harvest area, which has been in place since 1986, as a king salmon conservation tool for the first time during the 2013 fishing season.

While it could technically be possible to pack the 450 setnet permit holders in the Cook Inlet into the two-mile area — as there are no restrictions on how far apart their nets have to be — Shields says the fishery can sometimes become chaotic as it "puts people in possible scenarios of contention."

Christine Brandt, an East Side Setnet fisher who listened in on the proceedings in Soldotna, echoed Shields' sentiment saying that the special harvest area closed off inriver fishing in the Kasilof as so many nets were in the water near the mouth.

"We hate it," Brandt said. "It doesn't provide equal opportunity for everyone in the area."

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