



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of  
Fish and Game**

DIVISION OF COMMERCIAL FISHERIES  
DIVISION OF SPORT FISH  
Headquarters Office

1255 West 8th Street  
P.O. Box 115526  
Juneau, Alaska 99811-5526  
Main: 907.465.4210  
Fax: 907.465.2604

TO: Karl Johnstone, Chair  
Alaska Board of Fisheries

DATE: March 27, 2014

THRU: Charles Swanton, Director  
Division of Sport Fish

SUBJECT: SOKI petition #2 to manage  
Kenai and Kasilof sections  
separately in 5 AAC 21.359  
*Kenai River Late-Run King  
Salmon Management Plan*

Jeff Regnart, Director  
Division of Commercial Fisheries

FROM: Tracy Lingnau, Region II Supervisor  
Division of Commercial Fisheries

James Hasbrouck, Region II Supervisor  
Division of Sport Fish

This letter provides Alaska Department of Fish and Game (department) staff assessment of a petition received from the South K Beach Independent Fisherman's Association (SOKI) on March 20, 2014 to the Alaska Board of Fisheries (board) to consider an emergency action out of cycle.

### **Action Requested**

This petition requests the board to amend language in 5 AAC 21.359 *Kenai River Late-Run King Salmon Management Plan* adopted February 5, 2014 during the Upper Cook Inlet board meeting. Specifically, the petition seeks to manage the commercial set gillnet fishery separately in the Kenai and Kasilof sections of the Upper Subdistrict in July and August, by adding the following language to 5 AAC 21.359(b)(3) and (4) as indicated in RC 151 (attached):

**(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 District and Kasilof District [rivers], each respective District will be allowed [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 ...**

SOKI states that it is submitting the petition to allow a more equitable opportunity to harvest sockeye bound for the Kenai and Kasilof rivers and manage for abundance-based concentrations in times of low king salmon returns.

## Background

The commercial set gillnet fishery in the Upper Subdistrict is managed primarily based on 5 AAC 21.310 *Fishing seasons*, 5 AAC 21.320. *Weekly fishing periods*, and the provisions in three management plans in Cook Inlet: 5 AAC 21.359 *Kenai River Late-Run King Salmon Management Plan*; 5 AAC 21.360 *Kenai River Late-Run Sockeye Salmon Management Plan*; and 5 AAC 21.365 *Kasilof River Salmon Management Plan*. The petition would only affect the *Kenai River Late-Run King Salmon Management*.

In February 2014, the board adopted changes to the *Kenai River Late-Run King Salmon Management Plan*. Draft regulatory language that properly formats the board's adopted changes was delivered to the Department of Law for its review on March 10, 2014 and the draft language that pertains to this petition is provided below:

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

**(e) From July 1 through July 31, if the projected inriver run of late-run king salmon is less than 22,500 fish, in order to achieve the sustainable escapement goal and provide reasonable harvest opportunity, the commissioner may, by emergency order, establish fishing seasons as follows:**

**(1) in the Kenai River sport fishery,**

**(A) the use of bait is prohibited; or**

**(B) the use of bait and retention of king salmon is prohibited, and only one unbaited, barbless, single-hook, artificial lure, as described in 5 AAC 57.121(1)(J), may be used when sport fishing for king salmon;**

**(2) in the Kenai River personal use fishery, if the use of bait is prohibited in the Kenai River sport fishery under (1) of this subsection, the retention of king salmon is prohibited in the personal use fishery;**

**(3) in the Upper Subdistrict set gillnet commercial fishery, notwithstanding the provisions of 5 AAC 21.360(c)(1)(B), (2)(B), and (3)(B), based on the abundance of sockeye salmon returning to the Kenai and Kasilof Rivers,**

**(A) if the use of bait is prohibited in the Kenai River sport fishery under (1)(A) of this subsection, commercial fishing periods are open for no more than 36 hours per week, 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**

**(i) 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; set gillnets used that are not**

**more than 29 meshes in depth must be identified at the end of the gillnet with an attached blue buoy that is not less than nine and one-half inches in diameter; or**

**(ii) 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; set gillnets used that are not more than 29 meshes in depth must be identified at the end of the gillnet with an attached blue buoy that is not less than nine and one-half inches in diameter; or**

**(B) if the use of bait and the retention of king salmon is prohibited in the Kenai River sport fishery under (1)(B) of this subsection, commercial fishing periods are open for no more than 12 hours per week, with a 36-hour continuous closure per week beginning between 7:00 p.m. Thursday and 7:00 a.m. Friday.**

**(f) From August 1 through 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)(1)(B), (2)(B), and (3)(B), 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.**

The new language proposed in the petition would appear in this regulation as a new subparagraph (e)(3)(C) and additional language in (f) above. We note that the reference in the proposed new language to the Kenai and Kasilof “Districts” is incorrect. These are designated as sections, not districts.

### **Criteria for Finding of Emergency**

Under the criteria listed in the Joint Board Petition Policy used by the board in determining whether or not an emergency exists, paragraph (f) of 5 AAC 96.625 reads, in pertinent part:

...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.

### **Discussion**

Based on the information presented, it does not appear to us that either: (a) an unforeseen or unexpected event that threatens a fish resource; or (b) an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action has been shown.

SOKI focuses on the second of these criteria. It points to board’s regulatory changes for August to reflect the differences in late season concentrations of sockeye available to Kenai and Kasilof

Section set netters, with the one percent closure rule now taking into consideration the different productions, and anticipates that the Kasilof Section will probably close earlier than the Kenai Section in many years. SOKI does not believe that, with the current restrictions in place, the 70 miles of ESSN beaches can be treated the same or have the same concentrations of salmon available to them at any particular time, and that the change is needed to relieve inequities and assist managers in targeting openings that will give the most opportunity to harvest abundant sockeye while still allowing management flexibility. SOKI includes with its petition a page of bullet points under the heading “conflicting issues to consider with the Kenai River Late-Run King Management Plan,” with many of the bullet points being questions.

It is difficult to determine that a finding of an emergency under 5 AAC 96.625 (f) has been satisfied by this petition. The petition would allow the commercial set gillnet fishery to be managed separately in the Kenai and Kasilof sections of the Upper Subdistrict in July and August. Management of the commercial set gillnet fishery in the Upper Subdistrict was discussed extensively by the board at the February 2014 meeting. The board adopted regulations such that the one-percent rule for fishing in August will apply to the two sections separately. However, the board did not separate management with regard to the *Late Run King Salmon Management Plan* and how the total number of hours fished per week applies to the set gillnet fishery in July and August. Under draft regulations, the department would manage the set gillnet fishery in the two sections together, as it has historically done on or after July 8. The two sections would be opened and closed to commercial fishing at the same time; therefore the total hours fished each week would be equal for each section. The petition would specifically allow the department to open and close commercial fishing in each section separately; therefore the hours fished in each section would only apply to that section of the fishery and hours fished in each section may not be equal. This change would likely affect management and harvest of salmon in each section. Any change in harvest would be dependent on distribution, run strength, and run timing of king and sockeye salmon returning to the Kenai and Kasilof rivers. Thus, it is difficult to say that a biologically allowable harvest would be precluded by delayed regulatory action, or that this possibility was unforeseen or unexpected by the board.

cc: Cora Campbell, Commissioner  
Glenn Haight, Executive Director, Boards Support Section  
Forrest Bowers, Deputy Director, Division of Commercial Fisheries  
Lisa Olson, Deputy Director, Division of Subsistence  
Tom Brookover, Deputy Director, Division of Sport Fish