

ALASKA BOARD OF FISHERIES
SUMMARY OF ACTION OF EMERGENCY PETITION
Submitted by Mike Crawford, Kenai/Soldotna Advisory Committee Chair
May 2013

The Board of Fisheries (Board) reviewed the attached petition requesting the adoption of emergency regulations to the Board to revise the early-run king salmon optimal escapement goal in the Kenai River and to delegate authority to the ADF&G commissioner to issue emergency regulations necessary to allow harvest opportunity (5 AAC 57.160 – Kenai River and Kasilof River Early-run King Salmon Management Plan).

Under the attached Joint Board Petition Policy, (5 AAC 96.625(f), an emergency is defined “as an unforeseen, unexpected event that either threatens a fish and game resource, or an unforeseen, unexpected resource situation where a biological 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 denied the petition, finding that the request does not meet the criteria under the policy for adoption of emergency regulation, and decided not to schedule the matter for a public hearing.

STATE OF ALASKA

Kenai/Soldotna Fish & Game Advisory Committee

Sean Parnell, Governor

Kenai/Soldotna Advisory
Mike Crawford, Chair
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May 14, 2013

To: Alaska Board of Fisheries
Board Support Section
Alaska Department of Fish and Game
P.O. Box 115526
Juneau, Alaska 99811-5526

Attention: Monica Wellard
Executive Director
Alaska Board of Fisheries

Re: Emergency Petition to the Alaska Board of Fisheries (AS 44.62.250, 5 AAC 96.625, [policy] #2000-203-BOF, [policy] 85-16-JB)

To the attention of:

Karl Johnstone, Chairman of the Alaska Board of Fisheries (BOF),

On Thursday, May 9, 2013, the Kenai Soldotna Fish and Game Advisory Committee (KSF&GAC) met at the Peninsula Sports Center in Soldotna, Alaska. The meeting was announced and a roll call indicated that there was a quorum to do our duties (5 AAC 96.050 (6)). Also in attendance were between 60 and 75 members of the public who also signed in on an attendance log.

Our main topic for discussion and possible action was the announcement of *Emergency Order 2-KS-11-13* and the *News Release* both dated May 9th 2013 which restricts the Early Run Kenai King Salmon sport fishery prior to the official opening date as described in 5 AAC 57.120, 5 AAC 57.121 and within the management plan guidelines establish in 5 AAC 57.160 *Kenai River and Kasilof River Early-Run King Salmon Management Plan*.

After considerable open comments and discussion from the "public" participants and amongst the committee members, the KSF&GAC voted unanimously to write a letter to the Department and to submit an emergency petition to seek relief from this action.

Our justification;

1. The Alaska Department of Fish and Game (ADF&G) released a publication in the week of March 24th through the 30th titled (Fishery Manuscript Series No. 13-03) *Run Reconstruction, Spawner-Recruit Analysis, and Escapement Goal Recommendations for Early-Run Chinook Salmon in the Kenai River*. This publication was not available at the last BOF regulatory meeting (*Statewide meeting was held March 19th through the 23rd*). Several changes were discussed within this document that resulted in a "memorandum" dated April 17, 2013 titled *Outlook for the 2013 Kenai River Chinook salmon Early*

Run. Under 5 AAC 39.223 *Policy for statewide salmon escapement goals (b) (8) and (9)*, the department is tasked with notifying the public whenever a new or modified escapement goal is recommended. In addition, they are required to take the allocative issues up at the next regulatory meeting. Within this regulation (c) defines the joint responsibilities between the BOF and ADF&G and the appropriateness of establishing an optimal escapement goal (OEG). A discussion of *...an estimate of expected differences in yield of any salmon stock, relative to maximum sustained yield, resulting from implementation of an OEG.*

ADF&G recommends a new SEG of 3,800 – 8,500. This is a blend of modeling that includes the accepted long term practice of using the standard formula that indicates that a goal range of 2,800 to 6,000 spawners would provide greater than 90% probability of achieving 80% of Maximum Sustained Yield (MSY). The Department has already recommended a more conservative approach by adding an additional 1,000 actual fish to the lower bound range of MSY. This higher goal is reflective of the statement, “*The new goal is higher than yield considerations alone would dictate*”.

In addition, the OEG which was established before the 2005 (2002) regulatory season was based on split-beam sonar which has evolved into the DIDSON based sonar counts. The Department contends that the recommended goals are based on actual numbers of fish spawning and must be corrected to account for undetected Chinook salmon at the current sonar sight. They recommend a correction factor of 1.55 after all DIDSON raw numbers and other indices are factored in using the conservative state spaced specific model.

The purpose of the early run King management plans are defined in regulation as to: *achieve the optimal escapement goal, to provide reasonable harvest opportunities over the entire run, and to ensure the age and size composition of the harvest closely approximates the age and size composition of the run.*

2. Given the new information the department has just recently issued, we question whether the current OEG is appropriate given that an additional 1,300 kings were added on to the previous Department recommended goal of 4,000 - 9,000 prior to the 2005 regulatory meeting. Other restrictions to time and area, methods and means have been in place for several years. New goals and methods of evaluating spawning numbers, weirs and genetic identification have furthered our knowledge of the run size and the biological escapement goal ranges. Run timing models that have been improved with the new data have indicated that the historical runs may have been of less time span than previously understood. It has been eight to ten years or more since the effectiveness of the goals have been discussed in a regulatory venue and the changes to the yields have not been reviewed by the BOF.
3. The public has been informed by the ADF&G managers up to the first week in May (2013) that this fishery would open initially with limited restrictions if any as stated within the current management plan. Our committee and the public expressed their discontent with implementing restrictions to fisheries out of the normal “in-season cycle”. Many depend on a consistent, reliable management plan to better secure their opportunities. Many believe that in-season decisions using the Commissioners authority based on actual run strengths using all available management assessments tools including run timing, abundance estimates and in-river catch per unit of effort (CPUE) is far better system to be in compliance with *Article 8 of our State Constitution that applies to General Authority and Sustained Yield.*
4. The Department states that the maximized average yield from 1986 to 2008 is an escapement of 4,400 spawners. The Forecast memorandum assumes the worst case scenario using the five year median instead of the data gathered from 1983 to 2006. This assumption is based off of high return

years which has resulted in lower number of returning adults. This is misleading in that the assumption is that this trend will continue and that the exploitation rate will exceed historical patterns. The Department's publication in its summary concludes that *...The stock has been lightly harvested since 1999*. Many of the mean values indicate a much higher return of age classes based on the long term data possibly twice the current forecast.

Local ADF&G personnel have estimated that under the current "no bait" restriction and other current restrictive requirements that does not include catch and release methods only, a harvest plus mortality of an average 300 kings will be realized without the full restrictions in place as stipulated in the current EO. This would be similar to last years (2012) numbers where an escapement number of 5,300 kings were attained.

In the Delegation of Authority of Joint Boards, 95-153-FB, Alaska Statute 44.62 .250 ...agency must find that it is necessary for the immediate preservation of the public peace, health, safety or general welfare. For fish and game regulations, the boards determined that 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 the delayed regulatory action and such delay would be significantly burdensome to the petitioners since the resource would be unavailable in the future.

We would have the BOF consider the *Fisheries Economic Disaster* declaration from the Secretary of the Interior under the Magnuson Stevens Act (MSA) and the National Marine Fisheries Service (NMFS) guidelines. Many local resource users were severely impacted over the overly cautious approach the ADF&G applied to previous Kenai River king salmon escapement goals. The Department did not have an escapement goal review that set a realistic goal for late run kings in 2012. If there had been an emergency petition filled prior to last years fishing season, using the current DIDSON data and other indices would the community have suffered the same onerous disaster do to uncertainties and overly cautious use of the *precautionary principle*?

We respectfully request that the BOF accept this petition as an emergency and that they meet as soon as practicable to modify the Early Run Kenai King Salmon goal OEG to reflect changes in the new SEG goal and other ADF&G updated corrections. We further request that the Commissioner be given authority to delegate emergency regulations to reflect changes that will allow an opportunity to harvest using as a guide [policies, findings and delegation of authority] 2002-212-FB, 2005-237-FB, 97-172-FB. We believe that the Commissioner can modify time and area, methods and means to comply to allow resource users opportunity to continue to harvest at some reasonable level within the recommended new SEG range.

It is our understanding that whatever emergency regulations are adopted at present, they will be temporary and for this season only as these issues will be discussed in length at the next regulatory meeting scheduled in January of 2014.

Thank you,

Michael Crawford
Chair
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97-172-FB

(Previously)
(FINDING #97-07-FB)

ALASKA BOARD OF FISHERIES

**DELEGATION OF AUTHORITY REGARDING REGULATIONS FOR
SPORT FISHING FOR KING SALMON IN THE DESHKA RIVER
IN THE SUSITNA - WEST COOK INLET AREA.**

In accordance with AS 16.05.270, the Alaska Board of Fisheries (board) delegates authority to the commissioner of the Alaska Department of Fish and Game to adopt, amend, or repeal regulations in 5 AAC 61 of the Alaska Administrative Code, under the Administrative Procedure Act (APA), necessary to allow sport fishing for king salmon in the Deshka River in the Susitna - West Cook Inlet Area with the following elements:

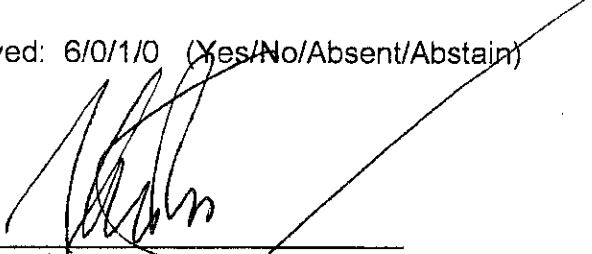
- (1) fishing for king salmon may occur only in the lower Deshka River;
- (2) seasonal limit of two king salmon;
- (3) applicable existing general regulations would remain in effect;
- (4) regulations under (1) and (2) will sunset December 31, 1998.

The board also delegates authority to the commissioner to make necessary administrative changes to any appropriate regulations, if the changes in regulations under this delegation create any conflicts with existing regulations.

At Girdwood, Alaska

Date: October 24, 1997

Approved: 6/0/1/0 (Yes/No/Absent/Abstain)



John White, Chairman
Alaska Board of Fisheries

ALASKA BOARD OF FISHERIES
2002-212-FB

EARLY RUN KENAI RIVER KING SALMON MANAGEMENT PLAN

Proposal 293 and related proposals (289, 290, 291, 292, 294, 295, 297 and 323) were reviewed both in board committee and extensively by the full Board of Fisheries in deliberations. The committee report, RC 80, devoted three pages to the discussion of the pros and cons relative to this proposal.

The board, in deliberations, considered several staff and board-generated RCs (120, 132 and 136) which contained various options for the board's consideration. In addition, the board reviewed and discussed several publicly generated RCs (92, 93, 96, 103, 106, 115, 117 and 123) dealing with the pros and cons of the fishery. Finally, individual board members had numerous discussions with the stakeholders. In short, the board was fully informed on the issues surrounding this suite of proposals.

Based upon the information provided, the board finds as follows:

- 1) There has been a long term and well recognized decline in the presence of large, five ocean king salmon in the early run Kenai sport fishery. The board's primary goal is to provide protection for these large and unique salmon.
- 2) Under the current management plan, the fishery has been changed in season in most years since the current plan's inception.
- 3) There is a significant guided sport effort in this fishery. The guides need a level of stability in the fishery in order to market the fishery to their clients, both resident and nonresident. Stability has been lacking in this fishery over the past several years.
- 4) There is a significant nonguided sport effort by mostly resident anglers. These fishers prefer to harvest these king salmon, although they, like all others familiar with the fishery, are anxious to protect the large five-ocean chinook.

Based on these findings, the board adopted proposal 293 as amended (RC 136) in an effort to balance all of these resource and stakeholder concerns.

Adopted: 2/20/02
Anchorage, Alaska


Ed Dersham, Chair

Vote: 7-0

**ALASKA BOARD OF FISHERIES
DELEGATION OF AUTHORITY TO
REFORMAT SPORT FISH REGULATION CHAPTERS
2005-243-FB**

The Board of Fisheries (board) makes the following finding:

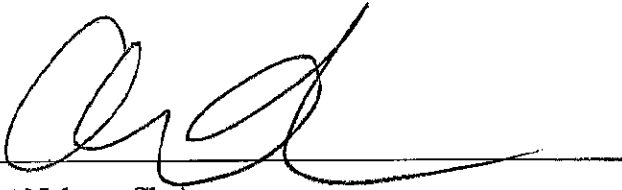
The board finds that the sport fish regulations in chapters 56 (Kenai Peninsula Area) and 61 (Susitna – West Cook Inlet Area) of Title 5 of the Alaska Administrative Code (AAC) have become voluminous, complex and difficult for users to easily comprehend.

Therefore, the board delegates authority under AS 16.05.270 to the commissioner to notice and adopt regulatory changes to create additional chapters within the AAC to accommodate the appropriate reorganization of the regulations.

Vote: 7-0

Girdwood, Ak

Date: Oct 14, 2005

Signed: 

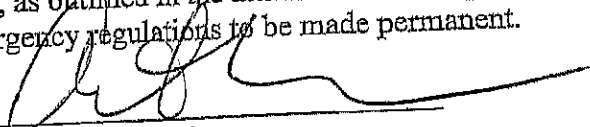
Art Nelson, Chairman

**ALASKA BOARD OF FISHERIES
DELEGATION OF AUTHORITY TO THE COMMISSIONER**

2005-237-FB

Under the authority of AS 16.05.270 the Alaska Board of Fisheries delegates authority to the commissioner to adopt emergency regulations regarding Southeastern Alaska king salmon fishing regulations for sport and commercial fisheries, as outlined in the attached record copy number 88. The Board does not intend for these emergency regulations to be made permanent.

DATED: 3/12/05
Anchorage, Alaska


Art Nelson, Chairman

Vote: 6-0-1

5 AAC 96.625. JOINT BOARD PETITION POLICY

(a) Under AS 44.62.220, an interested person may petition an agency, including the Boards of Fisheries and Game, for the adoption, amendment, or repeal of a regulation. The petition must clearly and concisely state the substance or nature of the regulation, amendment, or repeal requested, the reason for the request, and must reference the agency's authority to take the requested action. Within 30 days after receiving a petition, a board will deny the petition in writing, or schedule the matter for public hearing under AS 44.62.190--44.62.210, which require that any agency publish legal notice describing the proposed change and solicit comment for 30 days before taking action. AS 44.62.230 also provides that if the petition is for an emergency regulation, and the agency finds that an emergency exists, the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

(b) Fish and game regulations are adopted by the Alaska Board of Fisheries and the Alaska Board of Game. At least twice annually, the boards solicit regulation changes. Several hundred proposed changes are usually submitted to each board annually. The Department of Fish and Game compiles the proposals and mails them to all fish and game advisory committees, regional fish and game councils, and to over 500 other interested individuals.

(c) Copies of all proposals are available at local Department of Fish and Game offices. When the proposal books are available, the advisory committees and regional councils then hold public meetings in the communities and regions they represent, to gather local comment on the proposed changes. Finally, the boards convene public meetings, which have lasted as long as six weeks, taking department staff reports, public comment, and advisory committee and regional councils reports before voting in public session on the proposed changes.

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) The Boards of Fisheries and Game recognize the importance of public participation in developing management regulations, and recognize that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The boards find that petitions can detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

(f) The Boards of Fisheries and Game recognize that in rare instances circumstances may require regulatory changes outside the process described in (b) - (d) of this section. Except for petitions dealing with subsistence hunting or fishing, which will be evaluated on a case-by-case basis under the criteria in 5 AAC 96.615(a), it is the policy of the boards that a petition will be denied and not schedule for hearing unless the problem outlined in the petition justifies a finding of emergency. In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. 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. (Eff. 9/22/85, Register 95; am 8/17/91, Register 119; readopt 5/15/93, Register 126)

Authority: AS 16.05.251, AS 16.05.255, AS 16.05.258