

To: Alaska Board of Fisheries Chairman John Jensen

From: Mt. Yenlo Advisory Committee
Chair Eric Johnson
PO Box 56
Skwentna, AK 99667

Date: 3-26-2018

Subject: Emergency Petition Upper Yentna River Subsistence Fishery

The Mt. Yenlo Advisory Committee held a meeting on 3-20-2018 and voted unanimously 9-0 to draft this emergency petition.

In lieu of recent ADF&G Emergency Order to reduce all sport harvest of king salmon in unit 4 the Mt Yenlo Advisory Committee requests emergency action regulation to allow harvest of king salmon in the Upper Yentna River Subsistence Fishery.

Justification for emergency regulation- Under the criteria listed in the Joint Board Petition Policy to be used by the BOF in determining whether or not an emergency exists, paragraph (f) of 5 AAC 96.625 reads in part: *“an unforeseen or 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 *unexpected resource situation* is the total closure of king salmon harvest in unit 4 , when ADF&G Susitna/Yentna mark recapture abundance studies show on average from 2014-2017 that 29,945 king salmon return to the Yentna River system of those 29,945 king salmon, 17,676 king salmon swim past the fish wheel area. We believe a small harvest of 100-200 king salmon which is about a 1% harvest rate has no conservation concerns and meets with the sustained yield principle and this is a *biologically allowable resource harvest* that is currently being *precluded by delayed regulatory action*. By not adopting this emergency regulation it is *significantly burdensome to the petitioners because the resource would be unavailable in the future* because once a king salmon swims past the fish wheel that king is *unavailable in the future* due to no harvest opportunity. Currently subsistence users must wait until July 15 to be able to harvest a salmon, or travel down river and into the dangerous waters of Cook Inlet 75 miles one way to Tyonek and compete with other subsistence users, since that subsistence fishery remains open. The Mt. Yenlo AC finds it unacceptable to have a *biologically allowable resource* available and not be provided with a “reasonable opportunity” to harvest during the beginning of the summer when there are no other fish and game resources available.

Other justification to take into account-

1. An error in regulation- Prior to 2011 the BOF in 1998 had found a C&T use on all salmon stocks in the Yentna River subsistence area. During the 2011 BOF meeting the ADF&G suggested the BOF set an ANS for the Upper Yentna River Subsistence fishery. Since the regulation stated that king salmon must be released, we believe ADF&G staff assumed that there should not be a C&T finding on king salmon and drafted language to exclude them. We suggest the BOF contact Div. of Subsistence staff and research this further. Dept. of Law comments for the 2011 BOF meeting stated *“While in most situations the Board has extremely broad discretion to change fishing regulations, its discretion to change C&T finding is more limited because of its affirmative (not just discretionary) statutory duty to identify C&T uses of fish and game through factual findings, and not just quasi-legislative findings as with most fishing regulations.”* *“Thus, we recommend that the Board identify an error in the 1998 positive C&T finding or significant new information previously unavailable before it reconsiders and reverses the earlier finding.”* During this meeting it was concluded by Div. of Subsistence, during their oral report, that there was no new ethnographic information regarding C&T use of salmon for the Yentna River. Through our research we could not find any findings or evidence that the BOF in 2011 went through the C&T worksheet to overrule the original 1998 BOF finding of a positive C&T for all salmon.

2. Looking through the subsistence regulation book, the Upper Yentna Subsistence fishery is the **ONLY** one that has a specific exclusion for king salmon for a C&T. This unfairly discriminates subsistence users that reside in this area that want to harvest king salmon. Once again, the BOF during its 2011 meeting reversed the positive C&T finding for all salmon without cause.

3. King salmon available to harvest through the sport fishery has dramatically decreased over the last few years and now is totally closed for harvest and could be for many years. Historically subsistence users of the Yentna area were able to meet their needs for fresh salmon during the first part of the summer through sport fishing methods.

In conclusion, we know this is a bit complicated and has 2 parts. First, the C&T designation, and secondly, regulations to allow retention of king salmon. We feel the emergency petition is the best and most timely way to correct this **error in regulation**, and provide subsistence users a **reasonable opportunity** to harvest this **biologically allowable resource of king salmon stock**, and meets the requirements of an emergency petition.

We are confident the Commissioner, ADF&G staff and the BOF will all agree that the Alaska Legislature was correct when it passed the state's first subsistence statute in 1978 and established subsistence as the priority use of Alaska's fish and wildlife.

See attached proposed new regulation.

Thank you,

Chair Mt. Yenlo AC
Eric Johnson

5 AAC 01.566. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses.

(C) salmon [OTHER THAN KING SALMON] in the Yentna River drainage outside the Anchorage-Matsu-Kenai Nonsubsistence Area described in 5 AAC 99.015(a)(3);

(e) The board finds that **100 - 200 king salmon and** 400 - 700 salmon, other than king salmon are reasonably necessary for subsistence uses in the Yentna River drainage described in 5 AAC 01.593(2)

5 AAC 01.593. Upper Yentna River subsistence salmon fishery.

In the Yentna River drainage outside the Anchorage-Matsu-Kenai Nonsubsistence Area described in 5 AAC 99.015(a)(3), salmon [OTHER THAN KING SALMON] may be taken for subsistence purposes only as follows:

(1) under a subsistence permit issued under 5 AAC 01.015 and 5 AAC 01.580;

(2) in the mainstem of the Yentna River from its confluence with Martin Creek upstream to its confluence with the Skwentna River from **June 1 through June 30 and** July 15 through August 7 from

(A) 4:00 a.m. to 8:00 p.m. Monday;

(B) 4:00 a.m. to 8:00 p.m. Wednesday; and

(C) 4:00 a.m. to 8:00 p.m. Friday;

(3) only with a fish wheel as follows:

(A) each fish wheel must be equipped with a livebox; the livebox must be constructed so that it contains no less than 45 cubic feet of water volume while it is in operation;

(B) the permit holder shall attach a wood or metal plate that is at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high to each fish wheel operated under this section so that the name and address are plainly visible;

(C) the permit holder shall be present to attend the fish wheel at all times while the fish wheel is in operation, [AND KING SALMON] and rainbow trout must be returned alive to the water;

(D) for purposes of (A) of this paragraph, a "livebox" is a submerged container that is attached to the fish wheel that will keep fish caught by the fish wheel alive;

(4) the annual limit for a Yentna River subsistence fishing permit holder is as specified in 5 AAC 01.595(a)(2)(~~4~~);

5 AAC 01.595 Subsistence bag, possession, and size limits.

(a) The total annual possession limit for each subsistence salmon fishing permit is as follows:

(2) 25 salmon for the head of a household and 10 salmon for each dependent of the permit holder.

(4) In addition to the limits in (2) of this subsection, the holder of a Upper Yentna River subsistence salmon fishing permit may take 5 king salmon for head of household and 5 king salmon for each dependent of the permit holder.