



MEMORANDUM

TO: Ms. Marit Carlson-Van Dort, Chair
Alaska Board of Fisheries

DATE: August 1, 2021

FROM: Doug Vincent-Lang, Commissioner
Alaska Department of Fish and Game

SUBJECT: Every and SOKI Emergency
Petitions

Pursuant to AS 16.05.270, the Alaska Board of Fisheries (board) delegated authority to the commissioner of the Alaska Department of Fish and Game (department), under board policy 2015-277-FB, to determine whether emergency petitions submitted to the board outside of the regular board cycle constitute emergencies under 5 AAC 96.625(f).

This letter provides my decision as commissioner of the Alaska Department of Fish and Game on an emergency petition from Chris Every dated July 23, 2021 and an emergency petition from South K Beach Independent Fishermen's Association (SOKI) dated July 23, 2021.

Action Requested

Both petitions fundamentally request the board to reconsider its closure of the east side set gillnet fishery (ESSN) under provisions of the *Kenai River Late-Run King Salmon Management Plan*. The Every petition asks to reopen the ESSN fishery within 600 feet of the mean high tide mark (600-foot fishery). The basis of this request is an assertion that there is new fishery performance information, specifically king salmon harvest data from July 20, 2021, that the board has not considered. The SKOI petition requests the board give clarity and direction to the department through the Commissioner's authority to make in-season changes utilizing emergency order powers to implement select provisions contained in the Kasilof River Salmon Management Plan and the Kasilof River Special Harvest Area. The basis for this request is that the "paired restriction" that closes the ESSN fishery, including the Kasilof section, results in a "biologically allowed resource harvest is precluded by the "paired restriction" and that the resource would be unavailable in the future. Specifically, the SOKI petition, asks for:

1. Immediately open the set gillnet fishery in the ½ mile area within the Kasilof Section of the Central District for 36 hours per week regular fishing periods; days, and dates to be determined by the Department until August 15, 2021.
2. Immediately open the set gillnet fishery in the 600 ft area of the Kasilof Section for 12 hours or more regular fishing periods; days and dates to be determined by the Department until August 15, 2021.
3. Immediately open the set gillnet fishery in the KRSHA (Terminal Area) for regular periods; days and dates to be determined by the Department until August 15, 2021.

Background

The *Kenai River Late Run King Salmon Management Plan* states that if escapement of Kenai River late-run large king salmon is projected to be less than 15,000 fish, the king salmon sport fishery in the Kenai River is closed and the commercial set gillnet fishery in the Upper Subdistrict of the Central District (ESSN) is closed. The board made this “paired restriction” at their 2020 Upper Cook Inlet Board meeting to rebuild the late-run king salmon run in the Kenai River.

Finding of Emergency

It is the state policy that emergencies are held to a minimum and are rarely found to exist. The Joint Board Petition Policy of 5 AAC 96.625 that the board uses to respond to emergency petitions states that an emergency petition “will be denied and not scheduled for a hearing unless the problem outlined in the petition justifies a finding of emergency.” The policy defines “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.

Discussion

At their 2020 Upper Cook Inlet meeting, the board considered several changes to the *Kenai River Late-Run King Salmon Management Plan* and adopted amendments to the plan contained in Proposal 104 amended by RC 152. In deliberating Proposal 104 the board specifically discussed potential closure of ESSN fishery when the Kenai River late-run king salmon OEG is projected to not be met and the sport fishery for Kenai River late-run king salmon is closed. When considering this “paired restriction” the board considered 600-foot fisheries and other gear and time/area options in both the Kenai and Kasilof sections of the ESSN fishery to allow this fishery to operate when the OEG was not projected to be attained. The board opted to close the ESSN fishery in its entirety when the OEG was not projected to be attained and the inriver sport fishery was closed. “*If the projected late-run king salmon escapement is less than 15,000 king salmon 75 cm mid eye to tail fork and longer, the department shall ... close the commercial set gillnet fishery in the Upper Subdistrict of the Central District*” (5 AAC 21.359 (d)) is specific. The fact that the regulation exists establishes that the board has considered the circumstance, so it is not “unforeseen.”

In addition, the board directed the department to prioritize meeting the lower bound of the Kenai River late-run king salmon OEG over exceeding the upper bound of the Kenai River late-run sockeye salmon inriver goal and Kasilof River sockeye salmon biological escapement goal. Plainly stated, the board foresaw that management actions taken to meet the Kenai River late-run king salmon OEG may result in foregone harvest of more abundant sockeye salmon stocks.

Upon review of the record, the closure of ESSN fishery in the Kenai and Kasilof sections is not an unforeseen, unexpected resource situation. The direction of the board is clear that ESSN fishery in its entirety shall be closed if the Kenai River late-run king salmon OEG is projected to not be met

and the Kenai River king salmon sport fishery is closed. Closure of the ESSN fishery has occurred in the past and is also not an unforeseen event.

Finally, the current projection for late-run Kenai River king salmon shows that neither the OEG (15,000-30,000) nor the department's SEG (13,500-27,000) will be attained. The run would need to be more than a week late to attain the SEG and the department has never observed a run more than 4 days late.

Based on careful review of the regulations and the information available, I cannot conclude that an emergency under 5 AAC 96.625(f) exists. Accordingly, I deny the emergency petitions pursuant to AS 46.62.230.

cc: Glenn Haight, Executive Director, Alaska Board of Fisheries
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