

SOUTH K BEACH INDEPENDENT

FISHERMEN'S ASSOCIATION

P.O. Box 1632 Kenai, Alaska 99611-1632 (907) 283-5098

Protecting and Preserving the Kasilof River Aquarian System

To: Alaska Board of Fisheries

Board Support/Glenn Haight Ex. Director

P.O. Box 115526

1255 W. 8th Street

Juneau, AK. 99811-5526

July 23, 2021

Re: Emergency Petition submitted to the Alaska Board of Fisheries

Current Kasilof River Escapement: 314,146 sockeye

The South K-Beach Independent Fishermen's Association (SOKI) is an ad-hoc community group who commercial set gillnet in the Kasilof Section of the Central District of Cook Inlet. We remain concerned that the Kasilof River continues to be managed to exceed the BEG and OEG. The Department is tasked to manage within prescriptive goals and the Board of Fisheries have spent countless hours at board meetings deliberating, implementing solutions to facilitate a harvest of surplus stocks of sockeye while conserving time, area and gear for adherence to other management plans.

We are requesting that the Alaska Board of Fisheries (BOF) convene in an emergency meeting to address this "Emergency Petition" because a "biologically allowed resource harvest would be precluded by delayed regulatory action". The resource "would be unavailable in the future". There is no alternative resource or harvestable stocks available to the users in this area and this fishery has petitioned the NMFS for economic disaster relief for the 2018 and 2020 fishing seasons to which the State of Alaska has certified and submitted the applications on our behalf.

Specifically, we are requesting that the BOF give clarity and direction to the Alaska Department of Fish and Game (ADF&G) through the Commissioner's authority to make in-season changes utilizing his Emergency Order (EO) powers to implement the provisions referred to in the Kasilof River Salmon Management Plan (KRSMP) and the Kasilof River Special Harvest Area (KRSHA).

The Kasilof River has exceeded the top end of its Biological Escapement Goal of (320,000) in eight of the last 9 years and has again went over this goal this year as we are writing this petition.

The Kasilof River Salmon Management Plan (KRSMP) specifies that the use of the plan to achieve conservation goals for "king salmon escapement goals" by the provisions in the Kasilof River Special Harvest Area (KRSHA) directs managers to "reduce in duration", "mandatory closures" to "meet escapement goals" and "other management plans". The new language in the Kenai River Late-Run King Salmon Management Plan (KRLRKSMP) allows exemptions in the KRSHA but implies hourly restrictions and a mandated window. This is a contradiction in directives and would further hinder the final opportunity to maintain escapements within the goal and further restrict the commissioner from his

statute authority to “achieve escapement goals for the management plans as the primary management objective”. The Biological Escapement Goal (BEG) is the primary mandate in the Kasilof unless the Kenai River Late-Run Sockeye has not projected to achieve its minimum in-river escapement.

The KRLRKSMMP demands, “close the commercial set gillnet fishery in Upper Subdistrict” and ignores all other management plans or tools that would limit efficiencies in the fishery. We believe that this again is a contradiction under the long-standing guidelines established within the Upper Cook Inlet Salmon Management Plan (UCISMP). The king plan defines “intent” to “ensure an adequate escapement” but nowhere is there a definition of this term in SSFP. The Department is constitutionally tasked with achieving “sustainable” goals as their primary objective.

We ask the Board to clarify the legal definition of the KRSHA. The Department has always historically been advised by past DNR legal advisors to the Board that the Terminal Harvest areas of the Central and Northern Districts are normally closed waters as defined in “Closed waters” in regulation. The KRSHA has listed coordinates that specify the boundaries and unlike the “Fishing districts, subdistricts and sections” the Upper Subdistricts defines open waters as to where the gillnet fisheries can operate in as “open waters”.

Clearly, the KRSHA and the KRSMMP both detail when and how the Terminal Harvest area can be used and is open to Drift gillnet fisheries as well as set gillnet fisheries at a specified time and by Emergency Order (EO). This is a unique, non-traditional event that opens the “closed waters” for a specific type of fishery with its own plan and set-of-rules. This is not part of any “regular” fishery and has no specified day(s) time or expectation of an event. Fishermen do not exclusively harvest in the terminal area, they do so as a last resort when all other waters are closed or restricted.

Current capture of large KRLRK in the Kasilof section are in the single digits within the 600-foot restriction area and our estimate puts the number from 1- 3 per 10,000 sockeye. Department managers could further clarify this estimate. With the recent escapement rates “estimated” at the mile 13.7 ARIS counter in the Kenai River it would appear that migrating numbers are slow which would have the further effect of reducing “capture” of Kenai kings in the restricted fisheries to an even lower number. A number that is statistically insignificant considering the variables in the assessment process.

Definitions for an OEG in the SSFP state they will be “sustainable” with the “lower bound above the SET”. The SET has not been determined for this run yet discussions on the lower end SEG have been around 11,800. The SEG is still valid for this run and a compromise which placed a “precautionary” additional number of 1,500 kings was added to the previous “lower bound” SEG which is now 12,500.

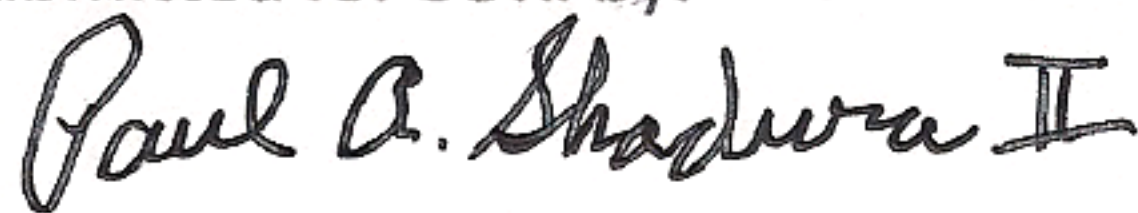
Department managers have previously indicated that they were not concerned that the lower than predicted returns would affect “sustainability”. Since this is a rather recent “goal” it should be noted that the original escapement goals have included the total return of Kenai kings and this large king “estimate” may be inaccurate or even inflated. In-season numbers of all King returns both in the Early and Late runs into the Kenai have enumerated a very healthy population of different age classes that are of a smaller weight and size. Several recent research papers have supported the trend that salmon are returning overall with a decrease in overall size and weight which may present itself with more populations in the lower age classes than was historically accepted.

Specific directives we are requesting the BOF to address in an Emergency Petition meeting.

We therefore respectfully demand for the reasons specified and for economic stability as a harvest option for the East Side Set Net (ESSN) gillnet fishery.

- 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 hour 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 fishing periods; days and dates to be determined by the Department until August 15, 2021.

Submitted for SOKI by:



Paul A. Shadura II

P.O. Box 1632

Kenai, Ak. 99611-1632

907.283.5098

sabaka@ptialaska.net

Selected Statutes and Regulations relative to this Emergency Petition:

Under the authority established under:

5 AAC 96.625 Joint board petition policy specifically under (f) ...an emergency is an unforeseen, unexpected event that either threatens a fish and game resource, or an unforeseen, unexpected resource situation where a **biologically allowed 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.**

Commissioners Authority and Responsibilities under:

16.05.060. Emergency orders (a) This chapter **does not limit the power of the commissioner or an authorized designee, when circumstances require, to summarily open or close seasons or areas or to change weekly closed periods on fish or game by means of emergency orders.**

5 AAC 21.363 Upper Cook Inlet Salmon Management Plan

(e) ...**no provision within a specific management plan is intended to limit the commissioner's use of emergency order authority under AS 16.05.060 to achieve established escapement goals for the management plans as the primary management objective. For the purpose of this subsection, "escapement goals" includes inriver goal, biological escapement goal, sustainable escapement goal, and optimal escapement goal as defined in 39.222.**

Escapement goals as stated on the current Kasilof River "fish count" in season summary ADF&G:

Biological Escapement Goal for Sockeye in 2020: 140,000 - 320,000 (Graphed above)

Optimal Escapement Goal for Sockeye: 140,000 - 370,000

5 AAC 21.365 Kasilof River Salmon Management Plan

(c)(3) ... the commissioner may, by emergency order, limit fishing during the regular weekly periods and any extra *fishing periods to those waters within on-half mile of shore*, if the set gillnet fishery in the Kenai and East Forelands Sections are not open for the fishing period; **if the commissioner determines that further restrictions are necessary to aid in achieving the lower end of the Kenai River late run sockeye and king salmon escapement goals**, the commissioner may, in an emergency order under this paragraph, further restrict fishing to within 600 feet of the mean high tide mark in the Kasilof Section and is not subject to the time limitations in 5 AAC 21.359(e) and 5 AAC 21.360;

(c)(4) ...the commissioner may, by emergency order, open the KRSHA described in (f) of this section to both set and drift gillnet fishing using only one gillnet...

(c)(5) **after July 15**, if the department determines that the Kenai River late-run sockeye salmon strength is projected *to be less than 2,300,000 and the 390,000 optimal escapement goal for the Kasilof River sockeye salmon may be exceeded*, the commissioner may, by emergency order, *open fishing for an additional 24 hours per week in the Kasilof section within one-half mile of the shore as specified* in 5 AAC 21.360(c).

(f) The commissioner may, by emergency order, **open the Kasilof River Special Harvest Area (KRSHA) to the taking of salmon by gillnets when it is projected that the Kasilof River sockeye salmon escapement will exceed 365,000 fish**. It is the intent of the Board of Fisheries (board) that the KRSHA should rarely, if ever, **be opened under this subsection and only for conservation reasons**. Before the commissioner opens the KRSHA, it is the board's intent that **additional fishing time be allowed in the remainder of the Kasilof Section first, and secondly that the mandatory closures specified in regulation be reduced in duration**, if necessary to *meet the escapement goals* contained within this and *other management plans*. The Kasilof River Special Harvest Area is defined as ...

5 AAC 21.350. Closed waters (approximate coordinates stated in the KRSHA-Terminal Harvest Area / 5 AAC 21.365 (f))

(b) (4) Kasilof River: from the southern ADF&G regulatory marker located at 60 deg 22.56' N. lat., 151 deg 20.98' W. long. To the latitude of the northern ADF&G regulatory marker located at 60 deg. 24.23' N. lat., 151 deg. 17.66' W. long. And within one statute mile of the river terminus.

5 AAC 39.222 Policy for the management of sustainable salmon fisheries

(f) (3) "biological escapement goal" or "BEG" means escapement that provides the greatest potential for maximum sustained yield;

(f) (21) "management concern" means a chronic inability, despite use of specific measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG...

(f) (25) "optimal escapement goal" or "OEG" ...an OEG will be sustainable and maybe expressed as a range and with the lower bound above the SET ...the Department will seek to maintain evenly distributed escapements with in the bounds of an OEG.

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

(a) The purposes of this management plan are to ensure an *adequate escapement* of late-run king salmon into the Kenai River system and to establish management guidelines...

(d) (3) close the commercial set gillnet fishery in the Upper Subdistrict of the Central District.

(e)(3)(F) Upper Subdistrict set gillnet commercial fishing periods that are limited under this section may be limited to fishing within 600 feet of the mean high tide mark and are exempt from hour and gear limitations identified under (e)(3)(A) – (E) of this section.

(h)...The provisions of (e)(3)(A) – (C) of this section apply to provisions of the Kasilof River Salmon Management Plan contained in 5 AAC 21.365(f) that pertain to the Kasilof River Special Harvest Area.

5 AAC 21.200 Fishing districts, subdistricts, and sections

(b)(2)(A)-(E) Upper Subdistrict: