



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Fish and Game

DIVISION OF COMMERCIAL FISHERIES
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RC 4

Date: February 28, 2018

To: Mr. John Jensen, Chair
Alaska Board of Fisheries

Through: Scott Kelley, Director
Division of Commercial Fisheries

From: Bert Lewis, Coordinator
Region II Commercial Fisheries Division

Subject: Petition requesting the Alaska Board of Fisheries adopt an emergency regulation amending 5 AAC 21.310 to allow commercial fishing in the North Kalifornsky Beach statistical area (NKB, north of Blanchard Line and south of Kenai River mouth) of the Kenai Section with set gillnets within 600 feet of the mean high tide mark, on or after July 8, regardless of whether the salmon fishing season in the Kenai Section has otherwise begun, when the Kasilof Section is open to commercial fishing with set gillnets, but the Kenai and East Foreland sections are not.

Chris Every submitted a petition to the Alaska Board of Fisheries (board) on February 5, 2018. Since the petition was received within 30 days before a regularly scheduled board meeting, the board's policy provides that the board will address the petition at the March 6–9, 2018 Statewide Dungeness Crab, Shrimp, and Miscellaneous meeting in Anchorage.

This letter provides information from the Alaska Department of Fish and Game (department) concerning matters raised in the petition and an assessment of the petition policy criteria.

Action Requested

Mr. Every requests the Alaska Board of Fisheries adopt an emergency regulation amending 5 AAC 21.310 as follows:

- (ii) Kenai and East Forelands Sections: from July 8 through August 15, unless closed earlier by emergency order under (iii) of this subparagraph; from August 11 through August 15, the fishery is open for regular periods only; on or after July 8, **including a date during a closed weekly fishing period under 5 AAC 21.320**, when the Kasilof Section is open to commercial fishing with set gillnets and the Kenai and East Forelands Sections are closed to commercial fishing with set gillnets, commercial fishing with set gillnets may be allowed within 600 feet of the mean high tide mark in that portion of the Kenai Section north of the latitude of the Blanchard Line at 60° 27.10' N. lat., and south of the latitude of the

ADF&G regulatory marker located south of the Kenai River mouth at 60° 30.49' N. lat.;

Background

The provision allowing fishing within 600 feet of shore in NKB when the remainder of the Kenai Section is closed was adopted at the 2017 Upper Cook Inlet (UCI) board meeting after deliberation on Proposal 136 amended with substitute regulatory language in RC96. During the 2017 fishing season, the department interpreted (with Alaska Department of Law consultation) the new provision to apply only after the fishing season had opened in the Kenai Section. In 2017, July 8 and July 9 fell on a Saturday and Sunday, respectively, which are closed weekly fishing periods. Based on this, the fishing season in the Kenai and East Foreland sections did not open until Monday, July 10, which was the first regular fishing period in the Kenai and East Foreland sections on or after July 8. Since the fishing season was not open on July 8 or July 9, the department determined that it could not open NKB within 600 feet of shore until after July 10, 2017 per 5 AAC 21.310(a), which states:

(a) if an opening date specified in this section for a fishing season in any district, subdistrict, or section falls on a date during a closed weekly fishing period under 5 AAC 21.320, the fishing season will open the first day of the next open weekly period.

Additionally, 5 AAC 21.310 (b)(2)(C)(i) and (ii) states the entire Upper Subdistrict set gillnet fishery (ESSN), which consists of the Kasilof, Kenai, and East Foreland sections, closes no later than August 15, but from August 11–15, the fishery is open for regular periods only. In 2017, August 14 fell on a Monday, therefore, the ESSN fishery closed by regulation at 7:00 p.m. on that day. However, because the upper end of the Kasilof River sockeye salmon Biological Escapement Goal had been exceeded by August 14 and the Kenai River inriver goal was not projected to be exceeded, the fishing season was extended in the Kasilof Section for 4 hours on August 14 and for 13 hours on August 15 to harvest surplus Kasilof River sockeye salmon. This additional fishing time was based on provisions found in 5 AAC 21.363(e). The department did not also open the NKB waters within 600 feet of shore to commercial salmon fishing with set gillnet gear after 7 p.m. August 14, 2017 because it was determined that doing so was not an effective way to harvest the few remaining surplus Kasilof River sockeye salmon in light of the other salmon species that would likely be harvested. This determination was based on the board's intent to minimize coho salmon harvest in the ESSN fishery in August when they established the no-later-than August 15 fishery closure date. This area is in the Anchorage-Matsu-Kenai Peninsula Nonsubsistence Area.

Discussion

Under 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.

In his petition, Mr. Every suggests that an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action has occurred and further delays will be significantly burdensome to Kenai Section set gillnet fishermen because the resource will not be available in the future. He asserts the board intended the department have the option of fishing within 600 feet of shore in NKB beginning July 8 and extending through August 15 when Proposal 136 was adopted. When the department did not open NKB waters within 600 feet of shore to commercial salmon fishing with set gillnet gear on July 8 or during other than regular periods from August 14-15, 2017, Mr. Every believes these actions are inconsistent with board intent, and therefore, he is requesting the board adopt an emergency regulation to clarify this matter.

Prior to the 2017 UCI commercial fishing season, the Alaska Department of Law and Department of Fish and Game reviewed records from the 2017 UCI finfish board meeting related to Proposal 136. Based on this review the department determined commercial fishing with set gillnet gear within 600 feet of the mean high tide mark in NKB outside the commercial salmon fishing season in the Kenai Section, would be inconsistent with board intent. The board's record does not specifically direct the department to open waters of NKB within 600 feet of the mean high tide mark outside the commercial salmon fishing season, therefore, based on the information available, the department does not believe that an emergency under 5 AAC 96.625(f) exists.

cc: Glenn Haight, Executive Director, Alaska Board of Fisheries
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Hazel Nelson, Director, Division of Subsistence
Seth Beausang, Assistant Attorney General, Department of Law