

PROPOSAL 208

5 AAC 21.368. Big River Sockeye Salmon Management Plan.

Modify description of waters open to fishing, as follows:

5 AAC 21.368 (b) Big River Sockeye Salmon Manageme...

The regulation can be made more clear without excluding one long-established fishing location that is fished primarily by one fisherman in this way:

"Salmon may be taken in the waters of the Kustatan Subdistrict along the mainland shore from the terminus of the Kustutan River, southwest to the southern boundary of the subdistrict, and in the Kalgin Island Subdistrict from a point on the SW of Kalgin Island (Lat. Long. fix point), and outward from there perpendicularly, and northward along the west side of Kalgin Island, then continuing along Kalgin Island's NE coast line until (60 .29.00 N lat. and 151 50.50 W. long), and out ward from there perpendicularly, from the near beach."

I did not include the fix point for the SW because I understand that the errors and omissions department is looking at that fix point, however, when the errors and omissions department looked at the fix point in question here, they did not conclude error.

The effect of this proposal is to leave open waters for this fishery the same as they have been practiced and enforced for 15 years, while removing the tension of unclear language.

What is the issue you would like the board to address and why? I am given to understand that the Department intends to clarify the wording of this provision by changing the long-established (Lat. Long.) fix points for this district. The Department's proposed change would have the effect of excluding one fisherman who is currently fishing in open waters. This fisherman lives in an area of Kalgin Island that is not open for the early fishery, and he would have no other place to fish on Kalgin Island in the early season. It is possible to clarify the language of the regulation without changing district boundaries as they have been practiced and enforced for 15 years.

Laches: Is a concept of law of equity, wherein a party needs to bring their cause of action in a reasonable amount of time, before others come to rely on the status quo. In this case the fix point on the NE of Kalgin Island has been in regulation for 15 years, and fishermen have come to rely on the regulation as stated. Now ADFG might be asserting that the fix point was an error. Well, that is a matter that they should have brought up 14 years ago and the remedy that the Department is suggesting now hurts people who reasonably relied on fix points as stated in regulation.

ADFG's proposal on this matter is not a conservation necessity, instead it is put forward as a regulation clarification, however, the regulation can be clarified in a way that does not exclude one location that is fished primarily by one fisherman in the early season.

PROPOSED BY: David Chessik

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