

**Kenai River Special Management Area
Advisory Board**

Thursday, December 14, 2006

5:30 p.m.

Kenai River Center

I. CALL TO ORDER:

In the absence of Ken Lancaster, Ted Wellman will be acting President

A. Roll Call

Members present: Ted Wellman, Jack Sinclair, George Heim, Brenda Trefon, Robin West, Tom Vania, Keith Kornelis, Tim Stevens, Dick Hahn, Curt Shuey, Rick Wood, Dick Dykema, Joe Connors, Gary Knopp, John Eavis (sitting in for Jeni Evans)

Members Absent: James Czarneski, Ken Lancaster

B. Approval of November 14, 06 minutes

The minutes were approved as written.

C. Agenda Changes and Approval

Move Item A. Bridge Update from Public Comment to Item A. Old Business. Discussion followed on the question of adding items to the agenda at the last minute. In question was Item C. Proposed Title 11 Regulation Change. Ted reviewed the bylaws and, even though he felt it was a sloppy procedure, there was no rule prohibiting it from being done. Ted strongly urged developing some rules to have a minimum time so that people can consider the agenda items. Item C under New Business was moved to Item B Old Business.

II. PUBLIC COMMENT

Ted stated that speakers would have three minutes to testify and that remarks should not be of the nature to offend anyone.

Robert Ruffner: Executive Director, Kenai Watershed Forum. Robert passed out a bibliography on Literature on Hydrocarbons. He stated that all of the literature listed is available at the Kenai River Center and can be copied. The first page contains documents specific to the hydrocarbons in the Kenai River.

The second page covers the effect of Hydrocarbons to aquatic life. Robert said that the Board should start to understand that there are different types of hydrocarbons. Some of them are much more toxic than others. The third page is motor emissions. He said that when they banned carburetor two-strokes from Lake Tahoe, there were a large number of people who were affected by the ban. The last page covers what happens when you ban carburetor 2-strokes. They have done this to a number of lakes with success. Robert said that he thought this was the first time it was recommended for a river.

Robert encouraged people to take a look at this information as they struggle with this issue.

Ken Tarbox: Ken submitted comments in written form to the Board. He is in support of asking the Board to recommend postponement of the regulation for 180 days and wait for Phase 2 of the boat wake study. Alternatives should be looked at and findings prepared, and the public should have an opportunity for good comment. He feels that findings should be based on science and facts.

George Parks: He agreed with what Ken Tarbox said. He spoke of a survey on the internet on Lake Tahoe which stated that the ban made no significant difference in hydrocarbons. He felt that a lot of people were running 50hp engines now. The detuning is accomplished by adding a disk which eliminates the flow of air into the carburetor. Anyone who is a mechanic knows that the rest of the gas goes into the water. What are we really trying to do: eliminate hydrocarbons, boat wakes, and safety issues? I think we have some more science to look at.

Jeff Webster: On the new fuel injected 50hp engines, the only way you can detune them is by adding an air restrictor plate. Everyone knows that you get worse gas mileage with a dirty air filter in your car.

Mike Fenton, with the Kenai River Guide Association: Mike said that we would be doing a disservice to the public if we did not move forward with this. All of the issues have been discussed and the facts have been laid out.

Dwight Kramer: Asked the board to look at the proposal submitted by Mr. Shuey. It is important that this process gets tabled so that we can do it right. It is obvious that it is being rushed through. We all know the disadvantage of 2-stroke

motors, but there are a ton of alternatives that we could have looked at that would not have been such a hardship on the private boat owners. We never looked at boat hull designs as it relates to the horsepower. He proposed the use of 2-stroke motors below the Soldotna bridge. Another solution would be to reduce guides to one trip a day. The solution would be to limit the number of people on boats to four. Flat bottom boats 18 feet and longer could carry five people. These are just examples of some of the alternatives. He asked that this issue be tabled for 90 days and come back with a better prospective.

Monte Roberts: In response to some of the different alternatives, he stated that one trip for guides a day would not work. It only puts twice as many guides on the river. Regarding the comment that it is unfair to the private boater, it is unfair to the river to not take action to clean this up now. Moving the 2 strokes further up the river will just leave the hydrocarbons in the river longer. The research has been done and you need to move forward.

Bill Tappan: Asked for clarification on how long this discussion has been going on. He was told over two years. He then asked if anyone was an architect. He stated that a project is never finished in an architect's mind. There is always an improvement. This will never get moved forward if we don't move it forward. It has been studied to death.

Steve McClure, Kenai River guide: In laymen's terms, out of 10 gallons of gasoline in a 2-stroke carburetor motor, three gallons are going into the river; in a 35hp 4-stroke, its three cups; in a 50hp, roughly 3 ½ cups. That answers your question. In no way do I want to hurt the local guy who has a 2-cycle. His comment sent to Chris Degernes was that maybe we should look at only July. That's when the problem is happening. It's not a fix-all, but it would solve that part of it.

Mike Crawford: In the public, he has heard arguments about the guides screwing us with a 2-stroke issue now, or they want to have a bigger boat. He feels the majority of the objections in the public are based on misinformation. They don't understand the reason behind the regulation change. They think the guides have put forward this proposal to ban a 2-stroke engine. They don't even know that there's a pollution problem on the river. Robert Ruffner had some interesting comments about the 2-stroke engine vs the 4-stroke. We have all breathed the fumes on the 2-stroke engine. That's what is coming out of the water.

What is staying in the water? It's not a matter of whether the 50hp gets put into affect, whether we enact a 2-stroke ban ourselves or its gets done by the federal government two years from now. Let's step forward and get this done. The City of Kenai is talking about banning 2-strokes at their boat launch. If we don't get rid of the 2-strokes, we will have to reduce the number of boats on the river; whatever it takes to make the river right.

Paul Shadura: He urged the board to take Mr. Shuey's proposal seriously. We have some definite flaws in the science that we're looking at. The boat wake study is critical and should be reviewed by the public. We have contradictory science. The Department of Fish & Game statement that they are for the 50hp for the boat wake concept, but when it comes to impairment to the river, they don't believe they can stand behind this proposal. It would be improper for us to move forward without the boat wake study. Once you pass a regulation, it is very difficult to make changes. He urged that the board take a precautionary approach and respect the public's wishes.

Rich Mallowney, lodge owner: He can attest to the damage that wakes cause. It beats our bank up and our dock. This board has studied this for two years. This board represents a wide spectrum of the various users on the Kenai River. I think we need to move forward.

Dave Goggia, Kenai: The fact that they don't make a 35hp engine anymore should be a clue. He is in support of moving forward. We should take the steps that we know are good for the river now. We have come along way in protecting the banks of the river. He felt the guides were taking the brunt of this from the public because we're passionate about the river. If we delay 180 days, we're going to have 2-strokes on the river again and we're going to exceed hydrocarbons again this year.

Ricky Gease, Executive Director of the Kenai River Sportfishing Association: This regulation is going to affect me as a private boater on the river. He has a 2-stroke, and is going to have to buy a new motor. He will bite the bullet. Thinks this public process has gone well. A committee was set up to study this on a lot of different levels. A lot of different alternatives were discussed. Expert testimony was given. Three different agencies have provided input into the regulations that DNR is considering, DEC, F&G. He is impressed with the regulations

that DNR has come up with. At this stage in the game, if the board postpones action, it will jeopardize the credibility of the board.

III. OLD BUSINESS

A. Bridge Update – Jason

Jason stated that work is continuing on the deck of the bridge. They will be installing the last of the overhang brackets tonight. The bridge will close at 9:30 pm to accomplish this work. There may be further delays to facilitate the pouring of the concrete due to the cold weather. The office will be moved to Funny River Rd next week.

B. Proposed Title II Regulation Change-Curt Shuey

Curt asked for a motion to bring this to the table. Seconded by Gary Knopp.

A motion that the KRSMA board recommend to the Department of Natural Resources to postpone action on the currently proposed Title 11 regulation changes at this time, in light of recent developments and the following considerations:

- 1. A DEC proposal to list the Kenai River as “impaired” has served to galvanize the community to come together to address the problem of hydrocarbon pollution from outboard engines. The KRSMA board has created a committee for this purpose and local governments and agencies have pledged to collaborate in the effort.*
- 2. The long-awaited 2005 Phase 2 boat wake study is due to be released in the very near future.*
- 3. The currently proposed regulation changes are unlikely to address either the hydrocarbon pollution problem or boat wake erosion sufficiently without further steps.*
- 4. If enacted, the proposed regulation changes will lead to very significant expenditures by many users of the River, who will be justifiably irate at the prospect of further restrictions on the use of newly purchased boats and motors. This public sentiment will greatly inhibit further consideration of horsepower, boat size, weight, and shape restrictions, and restrictions on time or area of use. These are the most effective tools we have.*
- 5. These same tools are also most useful in addressing the closely related issues of crowding, and safety, and*

consideration should be given to all of these concerns in any final plan.

6. *The community and the River itself require a comprehensive, stable, well thought out and well grounded approach to these concerns. The past work of the KRSMA board can serve as a basis for creating such a plan, with the benefit of up to date research and the collaboration of others.*

Curt stated that it was not his intent to attack the current regulation proposal. If the current proposed regulations go forward, it will handcuff any future effort to try to deal with the hydrocarbon issue or boat wake issue. It is Curt's opinion that people will purchase new outboards and boats to comply with the new regulations. In the future, it will not be feasible to then say that you are not going to be able to use these outboards or will be limited in their use. He stated that he was in favor with going forward but not with a measure that gets us half way there and then ties us down.

Joe Connors spoke on the extensive public process to date. He is concerned about jeopardizing this process. He stated that without knowing what the decision is going to be, we would be presumptive to postpone this action. We are not going to get a comprehensive, all-inclusive solution because each year new issues come to the table. We were promised Phase II of the Boat Wake Study a year ago. We have been told we have a pollution problem by DEC. We know its gas and that it is concentrated on the lower sections of the river for a short period of the year. We have an opportunity to do something now. Joe stated that the Board had unanimously passed this position a year and a half ago.

Keith Kornelius stated that the Board had not approved this position unanimously. There were two members who abstained because there were some questions. There was an attempt to table the motion. He understands what Curt is saying. We're talking about increasing horsepower from 35 to 50. We're also talking about pollution in the river. If we all go to 35hp 4-stroke and 50hp motors, and there are more hydrocarbons going into the river, what is going to happen to all the people who buy 50hp motors and larger boats when we find that we still have a hydrocarbon problem. The City of Kenai is very concerned about the hydrocarbons in the river and has taken some action. The City has also asked the KRSMA Board to postpone the implementation until Phase 2 of the wake study

was complete and reviewed. He referred to the letter provided in the Board's packet from Rick Koch, City Manager.

Dick Dykema: Dick stated that if we postpone this action, nothing is going to be done. We owe this river to get something done now.

Gary Knopp: He felt that a lot of the issues discussed were debatable. What is not debatable is that 2-stroke motors are a serious problem. As new information comes out you have to look at it and we should not be afraid to do something different. I think it would be worthwhile to slow down, take a look. Let's address the hydrocarbon issue by banning 2-strokes for July. If you increase motor size, ban 2-strokes and a year later hydrocarbons are the same or more, then what are you going to do.

Ted Wellman had Jack Sinclair read comments made in writing by Ken Lancaster. Ken will also be voting telephonically on this motion.

Jack stated that Ken wanted to report that he believes the board has already voted on this process and it is already in motion. He believes that the motion, as it stands right now, is out of order. He believes the time to consider this kind of question would be if the Commissioner does or does not adopt the regulations after the 30 day process is completed.

Dick Dykema: Dick quoted Mike Crawford's public comment, "Whatever it takes to make the river right." He spoke on variable isolation. If you wait one year and get the 2-strokes off the river, you will then know, without doing another thing, whether the move to 50hp will work or not. If you can eliminate that one variable, then all of a sudden you compare apples to apples. All the motors on the river will be 2006 compliant, 4-stroke or injected 2-stroke. A critical variable will be eliminated that is causing a lot of confusion in this evaluation. Secondly, so we've been through a two year process; The guide crowding issue has been an issue on this board for as long as it has existed. Why is it there is never enough time to do the process right, but plenty of time to do it over and over. If you are really willing to support this fishery and this river water quality, the right thing to do is start phasing in drift fishing. You eliminate hydrocarbons, you eliminate wakes and erosion, and you eliminate a safety problem from higher powered motors. You

eliminate boat crowding because nobody is allowed to anchor in the river in a salmon hole.

Ted gave his perspective. He sympathized with what Curt is saying. He read carefully all the comments that have come in. A couple things that seem important are that we have two years of public process. We have an official action by the board and then four days before the end of the public comment period, the sponsoring group decides to pull their sponsorship. How do you think we are ever going to get a regulation adopted again if we this. It's not that there is anything new in the way of information that hasn't been discussed before. We seem to be targeting in on the idea that if we don't have a final end solution, that somehow we shouldn't do anything. Ted went over his written proposals for reducing hydrocarbons, which was handed out to the board. He plans to push these options as part of the remediation plan. When we started this process in March of 2006, at that point, the hydrocarbon issue wasn't a big issue on the horizon. At that time, we were eminently waiting for the second boat wake study to show up and we're still waiting. I believe that, based on the scope of the study, Phase II is not going to contradict Phase 1, which said you have a benefit by putting a 50hp motor on the river. If we don't proceed forward with this and get what we can right now, and then continue to work on it, we will lose another year.

Keith Kornelius: Keith said that he thought there had been some new information. One of the things that have happened is the considerable amount of discussion on the impaired river status. If it happens, there is going to be changes to get the hydrocarbons level down. There should be some concern how we are going to meet those requirements.

Ted added that when he voted for this he never felt it was the final step. We are going to have to do more to remediate the hydrocarbons than just eliminating the two-strokes. We are going to have to come up with a strategy to limit the number of boats that are down in that area at the same time. I don't see that as inconsistent with improving performance with the boats that we have. If we try to bite that off at the same time, we'll be sitting here a year from now. We will still have another year of hydrocarbon problems on the river and we will have made no progress at all.

Robin stated that he is a non-voting agency member, but has been on the board for twelve years. We have had an extensive

process. In 1998 or 1999, we started talking about hydrocarbons and they were an issue in the 80's, but we didn't know about it until the late 90's. We thought it would eventually go away since more people were buying 4-strokes. We worked for the buyback. We have had an extensive process, but the debate has evolved and people now understand that this change is going to cost them money. Agencies are going to have to make a decision on how to implement the regulations.

Keith clarified a point to the board regarding the effective date. Some people thought that this would go into effect next year. According to the regulation proposal, the change to 4-cycle would actually start January 1, 2008, so there would be one more year. There was some testimony earlier that sounded like they thought next year they would have to change to 4-stroke motors. But, the way I read the regs, it would be 2008.

Brenda said that we have the best scientists working on the boat wake study. We have to move forward to get the 2-stroke engines off the river, even if we have to compromise to removing them only in July. We have to address the hydrocarbons separately and know that, in the future, we will still be looking at boat wakes. This is just one step of many that we have to take. As a community, we should try to put pressure on our friends, family and neighbors to get the 2-strokes off the river in July. We do not want another year of increased hydrocarbon levels. If we can't do it with regulation, we should try to do it with social pressure.

Ted called for a roll call vote on the motion. An affirmative vote would pass the motion; a negative vote would deny the motion. *The Motion failed with a vote of seven no votes and four yes votes.*

C. Regulation Process update - Jack

The comment period for the regulation proposal will be open until December 19. Chris Degernes has received over 300 written comments. To reiterate what Ted Wellman said; After the public comment period ends, the Department of Natural Resources will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

D. Guide Advisory Committee report – Joe

This is a new board created under the authority of the KRSMA Board. The first meeting of the committee was held today and was well attended. The Guide Advisory Board will continue to meet monthly on the 2nd Thursday of the month at 12 o'clock at the Kenai River Center. The board is excited.

E. Water Quality/Emissions Committee – Guidelines for Emissions Solutions and Strategies Discussion – Ted

Ted stated that on his Memorandum dated December 5, Proposals for Reducing Hydrocarbons. He tried to list everything that we might want to consider on this committee. Not necessarily that I am recommended each and every one of these, but I wanted them out on the table. I would invite everyone on the board to be creative in thinking about different ways and things we might do to reduce hydrocarbons.

Ideas included:

- Directly reducing the number of boats in the king fishery.
- Indirectly reducing the number of boats by eliminating the way the king fishery is administered.
- Change fishing methods
- Cut down on motor run times and other operational issues
- More drift fishing
- Limit the number of guides through limited entry program.
- Limit boat use not related to the king fishery

Ted would like to have an extra meeting each month to address this issue, commencing after Christmas. Suggestions should be in writing.

Rick felt that some of the items might have to go to the Board of Fish.

Ted said that his intention was to not limit the Board to making recommendations to just DEC, DNR F&G or the Borough. We are able to make recommendations to whomever we want.

Joe reminded the Board that the Board of Fish process is coming up and, at the same time, there is a serious movement within the State to go to a limited entry fresh water guide program. So, they might be solving some of the very issues that we are concerned about. The burden is shared by all user groups.

Regarding the discussion handout on Guidelines for Emissions Solutions and Strategies, Ted read that the KRSMA Board should not entertain proposals which constitute legal/political challenges to the sufficiency of sampling, jurisdiction, water standards or other attempts to avoid or redefine the problem. Ted said that he did not want to entertain proposals such as 'let's change the 10 ppb standard'. He stated that proposals should be in writing and that public comment should be readily accepted. The board should stay focused on the problem of hydrocarbons as opposed to other related issues. We will be talking about other related issues because they interconnect. But, the idea is to avoid the problem of trying to solve all the problems at once.

Curt explained the last bullet on the handout. He stated that the bylaws state that a board member carries the responsibility to represent the broad public interest and no member shall consider he/she merely an advocate of a specific group. He said that he had heard comments of people coming to the meeting and stating that they have been instructed to vote this way before it has even come up for discussion.

Ted asked the Board their preference of thinking about these guidelines until the next meeting. It will be put on the agenda as an action item.

Discussion followed on the fine line of discussing issues which are allocation issues and handled by the Board of Fish.

Also, it was recommended by Rick Woods to have a deadline for the proposals. It was requested that this be placed on the agenda for the next meeting. Talk about rules for submitting proposals for action items.

Joe recommended that the notice to the public contain information on what the action items will be for the next meeting.

F. Committee Assignments update – Ken

Ted asked that this item be postponed until Ken Lancaster returns.

Keith advised that he is retiring and Rich Koch (pronounced “Cook”), City Manager of Kenai, will be replacing him as the City of Kenai representative. He had talked to Rich about committee assignments and he would like to be on the hydro-carbon and water quality committees.

Ted suggested that we wait until Ken returns.

G. Kenai River Center update – Pam

Pam reviewed the Kenai River Guide trends and numbers and additional statistics for 2006. Both documents were in the board packet. She stated that the biggest eye opener was the increase of 30 newly opened guide businesses.

H. Guide Academy Report – Joe

Joe advised the board that they had just finished the 3rd guide academy. Fourteen students were in attendance. The academy is improving as it evolves. There are three more scheduled for 2007. Pam stated that guides with two years or less of service have until April 2008 to complete the academy.

IV. NEW BUSINESS

A. Kenai Park Ranger Selection – Jacques

Jacques reported that they are in the process of hiring two new park rangers. An offer has been made to one candidate, Alison Eskelin, and she has accepted. Alison has a bachelor’s degree in biology and she has worked for ADF&G on the Kenai River and the Kasilof River for the past four-five years. She is a skilled boat operator. The process is still pending on the hiring of the second candidate. He hoped to have them on board by January when they will both attend the academy.

B. KRSMA Comprehensive Management Plan revision - Jack

Jack stated that the DNR transition team for the Governor brought their report to the new Governor. In that report, was a proposal to start revisions of the Comprehensive Management Plan for the Kenai River. This is a reminder to the new administration that this is something that we need to go after.

Ted asked Jack if the Board needed to take any action to start the revision process. Jack stated that Ed made sure that this

was included in his briefing. When the new Commissioner gets settled in, we need to invite Marti to address the board and then the Board can forward their comments to them.

V. PUBLIC COMMENT

Roland Maw spoke on the 50th Anniversary of the Compact Act legislation that gave the State certain rights and privileges concerning the management of resources within the boundaries of the State. Since then, we have had a number of other federal statutes come down the line that takes precedent over that act. The Clean Water Act is one of them. One of the things that we are seeing across the state is that day by day, we are losing our rights granted under the Compact Act. Roland asked the Board to question if the action that the Commissioner may or may not take with this regulation is telling the federal administrator that, "I don't have to do something". If it does, all she has to do is put in the federal register that in 60 or 90 days she is going to intervene and take jurisdiction. It will be a mute point.

Paul Shadura: He discussed the situation with mixing zones. We have a new administration. Also, the discussion of moving the Habitat Division back to ADF&G is very real and hot on the table. He suggested that the Board become proactive in recommending that Habitat Division move back into ADF&G. The review period for the mixing zones is coming up again in 2007. He urged the board to get in their comments before the end of the month.

Joe Connors made a MOTION that we send a letter in support of bringing back the Habitat Division to ADF&G and in support of our previous position on the mixing zones. Seconded by Dick Hahn.

Discussion followed on the Board's history of supporting these positions. Ted stated that these are letters that the Board has already sent and it would be just a matter of reissuing the letters. Curt would like to see the letters.

Ted asked Jack to provide copies of the letters to the new board members and everyone else who wants to add additional comments to incorporate into the letters. The letters were essentially against allowing mixing zones and they were in favor of maintaining the Habitat section within ADF&G rather than the transfer to DNR. The Board opposed that.

Robin suggested sending a cover letter recognizing that these issues are being discussed and to re-enforce the Board's position.

MOTION passed unanimously.

VI. ADJOURNMENT

A. Board Comments

Keith Kornelis: Keith discussed the City of Kenai Ordinance No. 2202-2006. The Ordinance was introduced on December 6 at the City Council Meeting and was open to the public for comment. Basically, effective on May 1, 2007, the City of Kenai code is going to be changed to say that the Kenai Municipal Boat Launch is limited to vessels and boats powered by four-cycle or direct injection two-cycle engines. On December 20, this will be before the council. They are asking for comment from the KRSMA Board. It could be a real problem in the July dip netting period.

Rick Wood brought up the issue of the City of Kenai ordinance not allowing two-cycle engines effective May 1, 2007, when the proposed Title 11 regulation change to ban two-cycle engines would not be in effect until January 1, 2008. Will this make all the people without 2006 compliant motors run up to Eagle Rock launch and the Pillars launch loaded with fish because they cannot use the city dock?

Tom Vania: Tom updated the Board on the Department's move to establish a framework for limited entry program for both the sportfish and salt water guide industry. A task force was formed made up of four salt water representatives and four fresh water representatives. They talked about such things as: criteria for establishment; industry economics; resource conservation; who would be granted a limited entry permit; area endorsement; unit endorsements; initial issuance; duration of issuance; sale; transfers; ownership caps; use provision; who would oversee it, would it be Fish & Game, CFDC or a new entity such as Sportfish Entry Commission. They discussed fees; percent value of permit; criteria that should be used to determine if a fishery would be limited; criteria to determine optimum number of permits and client days in a fishery; how shares would be distributed; need to obtain a super exclusive registration authority. All of those things were discussed in the initial meeting. They are looking at putting together a communication plan. He told the Board to keep an eye on the ADF&G web page. There will be a new link on the Sportfish

page. They are looking at establishing a blog because they would want to obtain comment. They understand it has to have the full industry's support and participation. They will be putting together a Q&A to send out to guides. There is a timeline of the end January 2007 to have draft legislation. The task force will have another meeting to discuss the draft legislation at the end of January.

Robin West: Thanked Keith for his time on the Board and wished him well in his retirement.

Curt Shuey: Thanked everyone for the lively discussion on the motion.

- B. Date/Agenda of Next Meeting
Next meeting will be January 11, 2007