

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Nos. 23-35322, 23-35323, 23-35324, 23-35354

WILD FISH CONSERVANCY,
Plaintiff-Appellee/Cross-Appellant,

v.

JENNIFER QUAN, Regional Administrator; CHRIS OLIVER, Assistant
Administrator for Fisheries; NATIONAL MARINE FISHERIES SERVICE; GINA
RAIMONDO, Secretary of Commerce; U.S. DEPARTMENT OF COMMERCE,
Defendants-Appellants/Cross-Appellees,

and

STATE OF ALASKA; ALASKA TROLLERS ASSOCIATION,
Intervenor-Defendants-Appellants/Cross-Appellees.

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

**MOTION OF THE ALASKA CONGRESSIONAL DELEGATION FOR
LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF
INTERVENOR-DEFENDANTS-APPELLANTS'
MOTION FOR STAY PENDING APPEAL**

Charlene Koski
Van Ness Feldman, LLP
1191 Second Avenue, Suite 1800
Seattle, WA 98101
(206) 623-9372
cbk@vnf.com

Tyson C. Kade
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
(202) 298-1948
tck@vnf.com

Counsel for Movant Amici Curiae

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

U.S. Senators Dan Sullivan and Lisa Murkowski and U.S. Congresswoman Mary Sattler Peltola (hereinafter, “the Alaska Congressional Delegation”) respectfully move this Court for leave to file the accompanying Amici Curiae brief in support of the Intervenor-Defendants-Appellants’ motion for stay pending appeal. Counsel for the Alaska Congressional Delegation contacted counsel of record for all parties to seek their consent for the filing of the brief. All parties have consented to the filing of this motion except for Plaintiff-Appellee Wild Fish Conservancy, who opposes the motion.

I. The Alaska Congressional Delegation’s Interest

Amici Curiae are Members of Congress—two U.S. Senators and the sole Member of the U.S. House of Representatives—elected from the State of Alaska and who were Amici Curiae in the litigation before the district court. The Alaska Congressional Delegation has a unique interest in this litigation, particularly with regard to their interest in the faithful administration of the Pacific Salmon Treaty (the “Treaty”), and the impact of the district court’s order on the troll fishery participants and fishing communities of Southeast Alaska (“SEAK”).

The Alaska Congressional Delegation shares a bipartisan interest in ensuring that the nation’s treaty obligations are met. The Treaty underlying this litigation is the product of decades of international collaboration between the United States and

Canada to manage the complexities of Pacific salmon fisheries in a sustainable, responsible manner, which includes mitigating the impacts of Treaty-protected rights on endangered species. R. & R. at 8 (Dec. 13, 2022), ECF 144, App. 31 (“R&R”) (describing U.S. interests and objectives); Decl. of Frederick Turner at 610, (May 11, 2020), ECF 43-1, App. 11 (treaty principles).¹ Congress has allocated millions of dollars to meet our nation’s obligations under the Treaty, including providing the funding necessary to implement mitigation and conservation programs. Second Decl. of Scott Rumsey at 4 (Oct. 3, 2022), ECF 133-4, App. 28. While the United States’ Treaty obligations will remain unchanged regardless of the outcome of this litigation, the district court’s order affirming the Magistrate Judge’s R&R threatens vital components of the Treaty’s negotiated approach to the management of Pacific regional fisheries.

Further, as representatives of the people of Alaska, the Alaska Congressional Delegation has an interest in ensuring that the shared environmental resources of the Pacific Ocean are protected and promoted in a fair and responsible manner that does not needlessly disrupt long-established regional fisheries.

The Alaska Congressional Delegation members serve in positions of legislative oversight of issues directly involved in this case. Senator Dan Sullivan

¹ “App.” refers to pages in the Appendix attached hereto.

has represented Alaskans in the U.S. Senate since 2015. He serves on the U.S. Senate Committee on Commerce, Science, and Transportation, which oversees issues including fisheries, marine transportation, highways, interstate commerce, and transportation, and which has jurisdiction over the Pacific Salmon Treaty Act. He is the Ranking Member of the Subcommittee on Oceans, Fisheries, Climate Change and Manufacturing. Prior to his tenure as U.S. Senator, Senator Sullivan served as the Commissioner of the Alaska Department of Natural Resources and the Attorney General of the State of Alaska, where he was regularly involved with issues related to Alaska's fisheries.

Senator Lisa Murkowski has served the people of Alaska in the U.S. Senate since 2002. She serves on the U.S. Senate Committee on Appropriations, and on its Subcommittee for Commerce, Justice, Science, and Related Agencies, which has appropriations jurisdiction over the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service, the agency with primary responsibility for implementation of the Treaty. She is also the Ranking Member of the Subcommittee on Interior, Environment, and Related Agencies, which has appropriations jurisdiction over the U.S. Fish and Wildlife Service and Bureau of Indian Affairs. Funding for Treaty implementation, including mitigation, comes through these subcommittees. Senator Murkowski is also the Vice Chair of the U.S. Senate Committee on Indian Affairs.

Congresswoman Mary Sattler Peltola was elected to Congress in August 2022 to serve out the late Congressman Don Young’s term. She was re-elected in November 2022. She currently serves on the U.S. House Committee on Natural Resources, which is responsible for legislation governing issues related to fisheries—including the Pacific Salmon Treaty Act—and wildlife, public lands, oceans, and Native Americans. Before her election to the U.S. House of Representatives, Congresswoman Peltola served for 10 years in the Alaska State Legislature. She grew up commercially fishing alongside her father, and she previously served as the Executive Director of the Kuskokwim River Inter-Tribal Fish Commission, where she helped mobilize 118 Tribes and rural Alaskans to advocate for the protection of salmon runs in Alaska.

As explained more fully in the proffered *Amici Curiae* brief, this case has broad-reaching implications for not only the nation’s treaty obligations, but also the State of Alaska, its fisheries, and its people. The Alaska Congressional Delegation is comprised of the three representatives that the people of Alaska have elected to represent them in Congress, and they offer a unique perspective and legislative expertise on the implications of this case for the people of Alaska.

II. Desirability and Relevance of Amici Curiae Brief

An Amici Curiae brief presenting the Alaska Congressional Delegation's perspective is desirable and relevant to the disposition of this case and motion. Fed. R. App. P. 29(a)(3).

As described above, the Alaska Congressional Delegation has a unique perspective that will help this Court decide the legal questions at issue in this case, including the need for a partial stay pending appeal. Its members share a bipartisan interest in ensuring that the nation's treaty obligations are met and that the shared environmental resources of the Pacific Ocean are protected and promoted in a fair and responsible manner that does not needlessly disrupt regional fisheries, which are an integral part of Alaska's ecosystems, culture, and economy. The Alaska Congressional Delegation proffers its brief to explain Congress' faithful administration of the Treaty's carefully balanced policy agreements, and to stress the irreparable harm this Court's decision will have on those interests if the 2019 SEAK Biological Opinion's incidental take statement authorizing take of the Southern Resident Killer Whale and Chinook salmon is vacated.

III. Conclusion

For the reasons set forth above, the Alaska Congressional Delegation respectfully requests that the Court grant the motion for leave to file.

Respectfully submitted,

/s/ Tyson C. Kade

Tyson C. Kade
VAN NESS FELDMAN, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Phone: (202) 298-1800
Fax: (202) 338-2416
Email: tck@vnf.com

Charlene Koski
VAN NESS FELDMAN, LLP
1191 Second Avenue, Suite 1800
Seattle, WA 98101
Phone: (206) 623-9372
Email: cbk@vnf.com

Counsel for Movant Amici Curiae

Dated: June 2, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A), and Circuit Rule 27-1, I hereby certify that the foregoing Motion for Leave to File Amici Curiae Brief has been prepared in a proportionally spaces typeface (using Microsoft Word 365, in 14-point Times New Roman font), contains 1,036 words total.

Respectfully submitted,

/s/ Tyson C. Kade

Tyson C. Kade

VAN NESS FELDMAN, LLP

1050 Thomas Jefferson Street, NW

Washington, DC 20007

Phone: (202) 298-1800

Fax: (202) 338-2416

Email: tck@vnf.com

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

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1191 Second Avenue, Suite 1800
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(206) 623-9372
cbk@vnf.com

Tyson C. Kade
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
(202) 298-1948
tck@vnf.com

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE¹

The Amici Curiae are Alaska's members of the U.S. Congress. The Amici share a bipartisan interest in ensuring that the nation meets its treaty obligations and protects and promotes the Pacific Ocean's shared environmental resources in a fair and responsible manner that does not needlessly disrupt long-established regional fisheries. Amici submit this brief to emphasize their interests in the faithful administration of the carefully balanced policy agreements in the Pacific Salmon Treaty ("Treaty") and to stress the immediate and irreparable harm the district court's decision will have on those public interests if not stayed pending appeal.

INTRODUCTION

If not stayed, the immediate result of the district court's order will be to needlessly decimate the upcoming summer and winter seasons of the Southeast Alaska ("SEAK") Chinook salmon troll fishery, thereby frustrating the purpose and intent of the Treaty and causing economic devastation to Alaska's SEAK troll fishery participants and fishing communities. Intervenor-Defendants-Appellants and Defendants-Appellants are likely to succeed on the merits of their claims, and the other factors weigh heavily in favor of a stay.

¹ No party's counsel authored this brief in whole or in part, and no party, party's counsel, or other person made a monetary contribution to the brief's preparation or submission.

RELEVANT FACTUAL BACKGROUND²

The Treaty represents decades of international collaboration between the United States and Canada to manage the complexities of Pacific salmon fisheries sustainably, responsibly, and in a manner that mitigates the impacts of those Treaty-protected rights on endangered species. R. & R. at 8, No. 2:20-cv-00417-RAJ (W.D. Wash. Dec. 13, 2022), ECF 144, App. 31 (“R&R”) (describing U.S. interests and objectives); Decl. of Frederick Turner at 610, No. 2:20-cv-00417-RAJ (W.D. Wash. May 11, 2020), ECF 43-1, App. 11 (treaty principles).³ At the request of the U.S. Pacific Salmon Commissioners,⁴ Second Decl. of Scott Rumsey at 4, No. 2:20-cv-00417-RAJ (W.D. Wash. Oct. 3, 2022), ECF 133-4, App. 28, Congress has allocated tens of millions of dollars to meet the United States’ obligations under the Treaty,

² The Alaska Congressional Delegation agrees with the background contained in the motion of Intervenor-Defendant-Appellant State of Alaska (No. 23-35322, ECF 15), which Intervenor-Defendant-Appellant Alaska Trollers Association has joined (No. 23-35323, ECF 19), and the statement of the case in the response by Federal Defendants-Appellants (No. 23-35354, ECF 7), and repeats them here only as necessary to support arguments in this brief.

³ “App.” refers to pages in the Appendix attached hereto.

⁴ The Pacific Salmon Commission is the body formed by the governments of Canada and the United States to implement the Treaty. The Pacific Salmon Commission is a 16-person body with four commissioners and four alternates from each country representing the interests of commercial and recreational fisheries as well as federal, state, and tribal governments. Decl. of Scott Rumsey at 3, No. 2:20-cv-00417-RAJ (W.D. Wash. May 11, 2020), ECF 43-4, App. 13.

including providing more than \$18 million annually to implement mitigation and conservation programs. *Id.* at 4-5, App. 28-29.

In part, the district court's order affirming the Magistrate Judge's R&R vacates the 2019 Biological Opinion's ("BiOp") incidental take statement ("ITS") for the SEAK salmon troll fishery. The ITS is vital to the success of the Treaty's negotiated approach to management. It allows the SEAK fishery, whose annual permit holders are mostly small family-owned businesses in Southeast Alaska, Decl. of Paul Olson at 4-5, No. 2:20-cv-00417-RAJ (W.D. Wash. May 11, 2020), ECF 39, App. 2-3, to continue operating under the Treaty's Chinook salmon harvest limits while incidentally taking a small number of protected species. Without the ITS, the troll fishery cannot operate for 10 months of the year. Alaska Trollers Resp. at 11, No. 2:20-cv-00417-RAJ (W.D. Wash. Oct. 3, 2022), ECF 128, App. 19; Decl. of Paul Olson ¶ 44, No. 2:20-cv-00417-RAJ (W.D. Wash. Oct. 3, 2022), ECF 131, App. 21. The economic and social impact of this closure will be severe in many of our remote communities, where a significant fraction of our residents rely on trolling as a primary source of income. *E.g.*, Phillips Decl. ¶¶ 4-7, No. 2:20-cv-00417-RAJ (W.D. Wash. Oct. 3, 2022), ECF 132, App. 23-24.

ARGUMENT

A. Standard of Review

When deciding a motion to stay, this Court considers

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Lair v. Bullock, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). When the government is a party, the third and fourth factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1091 (9th Cir. 2014) (citation omitted). Because stays are directed at the judicial proceeding and not an individual actor, they “are typically less coercive and less disruptive than are injunctions.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (citation omitted); see also *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 656 (9th Cir. 2021).

B. The Likelihood of Success on the Merits Weighs in Favor of a Partial Stay.

When it adopted the R&R vacating the ITS for the SEAK Chinook salmon troll fishery, the district court relied on a misapplication of the vacatur standards and failed to consider the Treaty’s role in managing the complex interplay of competing interests and fishery management challenges at issue.

When determining whether to vacate an invalid agency action, a court must weigh “the seriousness of the agency’s errors against ‘the disruptive consequences of an interim change that may itself be changed.’” *Ctr. for Food Safety v. Regan*, 56 F.4th 648, 663 (9th Cir. 2022) (quoting *Cal. Cmty. Against Toxics v. EPA*, 688 F.3d 989, 992 (9th Cir. 2012) (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm’n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993) (remanding without vacatur due to unnecessary waste of already invested public resources and harm to agricultural industry))).

The “seriousness” of an agency’s error is determined by considering “whether the agency would likely be able to offer better reasoning or whether by complying with procedural rules, it could adopt the same rule on remand, or whether such fundamental flaws in the agency’s decision make it unlikely that the same rule would be adopted on remand.” *Ctr. for Food Safety*, 56 F.4th at 663-64 (quoting *Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 532 (9th Cir. 2015)). Generally, when deciding whether to vacate agency action, “courts of equity should pay particular regard for the public consequences.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted); *see also California Communities Against Toxics*, 688 F.3d at 994 (vacatur unwarranted due to public need for completion of power plant, “economically disastrous” impact of stopping

construction on plant, and fact that harms of proceeding were insignificant with mitigation).

The 2019 BiOp's prey increase program, which the district court appropriately left in place, is a salmon hatchery production program that aims to provide a four-to-five percent increase in prey available for the Southern Resident Killer Whale ("SRKW"), and which the R&R recognized is working. R&R at 31, App. 38.⁵ That increase helps accomplish the Treaty's objectives by offsetting any minimal detrimental impact Alaska fisheries might otherwise have on the number of fish available for the SRKW. Congress funds the prey increase program every year with an understanding that it will both increase prey abundance and enable certain Alaska fisheries to continue operating. *Id.* at 12, App. 32.

The evidence before the district court was that, given this successful mitigation already in place, the "prey reductions from the SEAK troll fisheries, particularly in the most important locations and seasons for the whales, are small and . . . will not jeopardize their survival or recovery." Third Decl. of Lynne Barre ¶ 5, No. 2:20-cv-00417-RAJ (W.D. Wash. Oct. 3, 2022), ECF 133-2, App. 26.

⁵ Wild Fish Conservancy seeks to stay implementation of the prey increase program pending appeal, but disrupting the program now, after careful and deliberate balancing of conservation and allocation interests through the extensive Treaty process, would reverse much of the recognized progress and endanger the wildlife Congress intended to conserve through the Treaty's mitigation and conservation programs. As the R&R concluded, vacating the program would put the SRKW at increased risk. R&R at 34, App. 39.

Because the ITS would cause only negligible harm, there was no need to vacate it, irrespective of any alleged flaws. Doing so was inconsistent with the applicable legal standards described above and undermines the Treaty's objectives.

C. Vacating the ITS Will Cause Irreparable Harm to SEAK Troll Fishery Participants and Fishing Communities and Undermine Treaty Objectives.

The economic and cultural devastation the SEAK fishery participants and fishing communities will experience if the ITS is vacated is well-documented in the motion of the State of Alaska and in the record. Vacatur would result in an estimated \$29 million annual loss in an industry that employs hundreds of people and would detrimentally impact an entire way of life that has existed for generations. R&R at 30, App. 37; Defs.' Objs. to R. & R. at 8, No. 2:20-cv-00417-RAJ (W.D. Wash. Jan. 10, 2023), ECF 149, App. 47; Alaska Objs. to R. & R. at 9, No. 2:20-cv-00417-RAJ (W.D. Wash. Jan. 10, 2023), ECF 148, App. 45; Alaska Trollers Ass'n Objs. to R. & R. at 3, 11-12, No. 2:20-cv-00417-RAJ (W.D. Wash. Jan. 10, 2023), ECF 147, App. 41-43.⁶ This harm easily outweighs the ITS's negligible impact, which has *already been mitigated*. Furthermore, because fisheries along the coasts of Oregon,

⁶ The Alaska Legislature recently found that, when accounting for multiplier effects of the fishing, seafood processing, and fisheries-related industries, commercial trolling in SEAK has a total annual economic impact of approximately \$85 million in total output. H.R.J. Res. 5, 33rd Leg., 1st Sess. (Alaska 2023), App. 48-50.

Washington, and Canada will continue harvesting salmon that provide prey for SRKWs, vacatur of the ITS provides no meaningful biological benefit.

As described above, the prey increase program, which Congress has funded and which the R&R concluded is working, helps accomplish the Treaty's objectives by mitigating against the already reduced fishing privileges of the SEAK Chinook salmon troll fishery. *See, e.g.,* Rumsey Decl. at 13, App. 17 (Fiscal Year 2020 Spend Plan for treaty implementation). Yet, when considering the potential environmental harms that might arise from leaving the ITS in place, the R&R failed to balance or even mention the mitigating benefits of the prey increase program. *See* R&R at 26-30, App. 33-37. Vacating the ITS does nothing to prevent harm and, instead, needlessly imposes it on SEAK's troll fishery participants and fishing communities. *See, e.g., Ctr. for Biological Diversity v. Raimondo*, No. 18-cv-112-JEB, 2022 WL 17039193, at *2 (D.D.C. Nov. 17, 2022) (holding vacatur of BiOp for federal lobster fishery in abeyance when "there are at least open questions concerning the species benefits that would accompany these great costs to the lobstermen.").

D. The Balance of Equities and Public Interest Weigh in Favor of a Partial Stay.

For reasons already stated, a partial stay would allow the SEAK salmon fishing season to proceed without injury to Wild Fish Conservancy, as any harm from the ITS is already mitigated. The public's interest in Congress meeting the Treaty's objectives also weighs in favor of a stay. *See, e.g., United States v.*

Washington, 459 F. Supp. 1020, 1106 (W.D. Wash. 1978) (recognizing public interest served by permitting the United States to honor its treaty obligations); *see also Weinberger v. Romero-Barcelo*, 456 U.S. at 312 (when granting injunctive relief, “courts of equity should pay particular regard for the public consequences.”). Indeed, since the district court issued its decision, more than 30 Alaska and Washington communities, Tribes, conservation organizations, and governments have passed resolutions or issued other statements opposing closure of the SEAK troll fishery. These documents respond directly to the magistrate’s R&R and the district court’s order and demonstrate the significant public interest at stake.⁷

The Treaty works to balance the interests of fisheries, protected species, and the rights and obligations of impacted states, countries, and Tribes. *See Turner Decl.* at 200-01, App. 7-8. When setting SEAK Chinook salmon harvest limits, it aims to “find an acceptable and effective distribution of harvest opportunities and fishery constraints that, when combined with domestic fishery management constraints, would be consistent with the fundamental conservation and sharing objectives of the Treaty.” *Id.* at 200, App. 7. The ITS program is part of that comprehensive management scheme intended to achieve the Treaty’s objectives. Vacating the ITS undermines those objectives and the public interests they protect.

⁷ For this Court’s convenience, these statements and resolutions are attached in the appendix to this brief. *See App.* 51-100.

CONCLUSION

Based on the foregoing and arguments in the motion of Intervenor-Defendants-Appellants, this Court should stay the district court's order vacating the ITS for the SEAK salmon troll fishery. Vacating the ITS would cause irreparable harm to SEAK troll fishery participants and fishing communities, frustrate the Treaty's objectives, and run counter to the public interest.

Respectfully submitted,

/s/ Tyson C. Kade

Tyson C. Kade
VAN NESS FELDMAN, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Phone: (202) 298-1800
Fax: (202) 338-2416
Email: tck@vnf.com

Charlene Koski
VAN NESS FELDMAN, LLP
1191 Second Avenue, Suite 1800
Seattle, WA 98101
Phone: (206) 623-9372
Email: cbk@vnf.com

Counsel for Amici Curiae

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Respectfully submitted,

/s/ Tyson C. Kade

Tyson C. Kade

VAN NESS FELDMAN, LLP

1050 Thomas Jefferson Street, NW

Washington, DC 20007

Phone: (202) 298-1800

Fax: (202) 338-2416

Email: tck@vnf.com

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APPENDIX**

Charlene Koski
Van Ness Feldman, LLP
1191 Second Avenue, Suite 1800
Seattle, WA 98101
(206) 623-9372
cbk@vnf.com

Tyson C. Kade
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
(202) 298-1948
tck@vnf.com

Counsel for Amici Curiae

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Defendant-Intervenor Alaska Trollers Association's Objections to Report and Recommendation, <i>Wild Fish Conservancy v. Rumsey</i> , No. 2:20-cv-00417-RAJ (W.D. Wash. Jan. 10, 2023), ECF 147	App. 40-43

Document	App.
State of Alaska's Objections to Report and Recommendation, <i>Wild Fish Conservancy v. Rumsey</i> , No. 2:20-cv-00417-RAJ (W.D. Wash. Jan. 10, 2023), ECF 148	App. 44-45
Defendant's Objections to Report and Recommendation, <i>Wild Fish Conservancy v. Rumsey</i> , No. 2:20-cv-00417-RAJ (W.D. Wash. Jan. 10, 2023), ECF 149	App. 46-47
H.R.J. Res. 5, 33rd Leg., 1st Sess. (Alaska 2023)	App. 48-50
Southern Southeast Regional Aquaculture Association, Inc. Resolution on the Wild Fish Conservancy Lawsuit	App. 51
United Fishermen of Alaska's Resolution on the Wild Fish Conservancy Lawsuit	App. 52
City and Borough of Sitka Resolution No. 2023-02	App. 53
Letter from Max Worhatch, United Southeast Alaska Gillnetters, to Senator Dan Sullivan	App. 54-55
City of Port Alexander Resolution 23-02	App. 56-57
Letter from Pete Granger, Working Waterfront Coalition of Whatcom County, to Representative Rick Larsen	App. 58-59
Klawock Cooperative Association Resolution 23-18	App. 60-61
Letter from Phil Doherty, Southeast Alaska Seiners Association, to Senator Lisa Murkowski, Senator Dan Sullivan, and Representative Mary Peltola	App. 62-63
City and Borough of Yakutat, Alaska Resolution 23-392	App. 64
Petersburg Borough Resolution #2023-02	App. 65-66
Southeast Conference Resolution 23-03	App. 67-68
Armstrong-Keta, Inc.'s Resolution on the Wild Fish Conservancy Lawsuit	App. 69
ADFG Klawock Advisory Committee Resolution re Killer Whale Lawsuit Against SE Trollers	App. 70-71
City of Hoonah Resolution No. 23-02-02	App. 72
City of Craig Resolution 23-03	App. 73-74

Document	App.
City of Ketchikan Resolution No. 23-2874	App. 75-76
City of Pelican Resolution No. 2023-3	App. 77-78
City and Borough of Wrangell, Alaska Resolution No. 02-23-1756	App. 79
Sitka Fish & Game Advisory Committee Resolution	App. 80
Organized Village of Kake Resolution No. 2023-04	App. 81-82
Resolution of the City and Borough of Juneau, Alaska, Serial No. 3023(b)	App. 83-84
Northern Southeast Regional Aquaculture Association Resolution 3-1-23(B)	App. 85
Sitka Tribe of Alaska Tribal Council Resolution 2023-035	App. 86-87
Executive Council of the Central Council, Tlingit & Haida Indian Tribes of Alaska Resolution EC 23-14	App. 88-89
Port Townsend Marine Trades Association Letter of Support	App. 90-92
Aleutians East Borough Assembly Resolution 23-56	App. 93-94
Letter from Tim Bristol, SalmonState, et al. to Assistant Administrator Janet Coit and Regional Administrator Jon Kurland	App. 95-96
Yakutat Tlingit Tribe Resolution 2023-14	App. 97-98
Declaration of Richard Chalyee Éesh Peterson in Support of <i>Amici Curiae</i> Brief of the Alaska Congressional Declaration in Support of Intervenor-Defendant State of Alaska's Motion for Stay Pending Appeal	App. 99-100

Dated: June 2, 2023

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY, a Washington
non-profit corporation,

Plaintiff,

v.

BARRY THOM, in his official capacity as
Regional Administrator of the National Marine
Fisheries Service; CHRIS OLIVER, in his
official capacity as the Assistant Administrator
for Fisheries of the National Marine Fisheries
Service; NATIONAL MARINE FISHERIES
SERVICE; WILBUR ROSS, JR., in his official
capacity as Secretary of the United States
Department of Commerce; and UNITED
STATES DEPARTMENT OF COMMERCE,

Defendants.

and

ALASKA TROLLERS ASSOCIATION,

Intervenor-Defendant.

No. 2:20-cv-0417-MLP

**DECLARATION OF PAUL OLSON IN
SUPPORT OF DEFENDANT-
INTERVENOR ALASKA TROLLERS
ASSOCIATION'S BRIEF IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

NOTING DATE: May 18, 2020

I, PAUL OLSON, hereby declare as follows:

1. I submit this declaration in support of the Alaska Trollers Association's Motion to Intervene in this case. I have personal knowledge of the matters stated herein and, if called as a witness, could and would competently testify thereto.

2. I am a member of the Alaska Trollers Association. I recently moved to

DECLARATION OF PAUL OLSON IN SUPPORT OF DEFENDANT-
INTERVENOR ALASKA TROLLERS ASSOCIATION'S BRIEF IN
OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION (2:20-cv-0417-MLP)

Page 1

LANDYE BENNETT BLUMSTEIN LLP
1300 SW 5th Avenue, Suite 3600
Portland, OR 97201
Tel: (503) 224-4100

43W6451

1 summer troll seasons. I have attached as Exhibit "A" to my Declaration a fuller description of
2 the way in which the seasons are structured.

3 13. One of my primary work emphases involves the valuation of ecosystem services
4 in southeast Alaska and doing research and writing related to how those services influence the
5 local, regional and national economy. In particular, I review and collect socio-economic data on
6 an annual basis, and over the past two years have worked with the Alaska Sustainable Fisheries
7 Trust to publish an annual report – “Sea Bank” – that quantifies the value of southeast Alaska’s
8 fisheries and visitor economies to coastal communities.

9 14. The Alaska troll salmon fishery is the second largest fleet in the state of Alaska,
10 second only to Bristol Bay. There are over 1,000 individual permit holders active each year.
11 These are almost all family-owned businesses. Women increasingly captain the boats, and
12 female crew members are commonplace and growing in number. We typically generate roughly
13 \$30 million in ex-vessel income, meaning, the price paid directly to the fishermen. We support
14 thousands of employees in southeast Alaska. Troll fish generate value throughout the Pacific
15 Northwest economy, first through local processors in southeast Alaska and eventually as a
16 premier fish at “white tablecloth” restaurants. Nearly every business in southeast Alaska
17 communities benefits from the troll fishery.

18 15. Over 80 percent of the active permit holders reside in southeast Alaska
19 communities. Many of the remaining permit holders are Washington residents like myself who
20 spend up to six months operating in southeast Alaska and consider southeast Alaska
21 communities to be our second homes.

22 16. The data that I review each year shows that the Wild Fish Conservancy’s lawsuit
23 will be devastating to southeast Alaska’s communities. The largest private sector economy in
24 southeast Alaska over the past decade has been the tourism industry, which supports dozens of
25 retail businesses in all major communities. When I am not fishing I work with eco-tour
26 companies who have interests in the conservation of southeast Alaska’s salmon, scenery, and

wildlife. I attend visitor industry teleconferences held by the Juneau Economic Development Council, Forest Service meetings for visitor products providers, and draft letters for eco-tour companies advocating for protection of the natural environment. Through this work I have personal knowledge that many visitor products providers will not operate in 2020 because of the global COVID-19 pandemic, and those who do hope to operate anticipate losing at least half of their normal operating season.

17. Southeast Alaska's top private sector economy is the visitor products industry. Published economic studies show that this industry provides a \$1 billion economic impact when including indirect and multiplier economic impacts. In 2017, over 1.5 million people visited southeast Alaska – two-thirds of all visitors to the state. These visitors spent \$700 million in southeast Alaska, supporting 11,924 jobs and \$445 million in labor income.

18. Commercial fishing is the second largest private sector economy in southeast Alaska. According to reports published by the National Marine Fisheries Service regarding U.S. fisheries, in 2017, southeast Alaska supported six of the top 100 seafood producing ports in the United States: Sitka, Ketchikan, Petersburg, Juneau, Wrangell, and Yakutat. These six ports alone produced 260 million pounds of seafood, generating nearly \$218 in landed values. Salmon is the most important seafood product by far, with 2017 landings of 247 million pounds worth \$169 million.

19. The troll fishery has an even greater significance to the viability of southeast Alaska coastal community economies because of the high level of resident participation. Economic studies show that the "multiplier" economic effects associated with jobs and wages generated by the troll fishery increases due to year-round purchases of goods and services in support of fishing operations and local, resident households. Economists estimate the total annual economic output of the troll fishery in southeast Alaska at \$85 million. Chinook salmon accounts for roughly 44 percent, or \$37 million of this annual economic output. A copy of the most recent study of the economic impact of the Alaska Troll salmon fishery that focuses on the

HONORABLE MICHELLE L. PETERSON

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WILD FISH CONSERVANCY,

Plaintiff,

v.

BARRY THOM, *et al.*,

Defendants,

and

ALASKA TROLLERS ASSOCIATION,

Defendant-Intervenor.

Case No. 2:20-cv-417-RAJ-MLP

DECLARATION OF
FREDERICK H. TURNER

Exhibit A

Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens**Consultation on the Delegation of Management Authority for Specified Salmon Fisheries to the State of Alaska**

NMFS Consultation Number: WCR-2018-10660

Action Agencies: The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA)

Affected Species and NMFS' Determinations:

ESA-Listed Species*	Status	Is Action Likely to Adversely Affect Species?	Is Action Likely To Jeopardize the Species?	Is Action Likely to Adversely Affect Critical Habitat?	Is Action Likely To Destroy or Adversely Modify Critical Habitat?
Lower Columbia River Chinook Salmon (<i>Oncorhynchus tshawytscha</i>)	Threatened	Yes	No	No	No
Snake River Fall-run Chinook Salmon (<i>O. tshawytscha</i>)	Threatened	Yes	No	No	No
Upper Willamette River Chinook Salmon (<i>O. tshawytscha</i>)	Threatened	Yes	No	No	No
Puget Sound Chinook Salmon (<i>O. tshawytscha</i>)	Threatened	Yes	No	Yes	No
Upper Columbia River spring-run Chinook Salmon (<i>O. tshawytscha</i>)	Endangered	No	No	No	No
Snake River spring/summer-run Chinook Salmon (<i>O. tshawytscha</i>)	Threatened	No	No	No	No
California Coastal Chinook Salmon (<i>O. tshawytscha</i>)	Threatened	No	No	No	No
Central Valley spring-run Chinook Salmon (<i>O. tshawytscha</i>)	Threatened	No	No	No	No

effects of fisheries under the new agreement. As discussed above, the fisheries off the U.S. West Coast and inland waters are managed to meet more restrictive domestic objectives for ESA listed salmon, and thus will not likely change as a result of the 2019 Agreement.

2.5.1.1 Retrospective Analysis

The effect of the 2019 Agreement on ERs and natural escapement for ESA-listed Chinook salmon was considered using a retrospective analysis. The analysis was conducted using the FRAM. The FRAM is the tool used primarily for assessing Chinook salmon fisheries by the PFMC off the west coast and in Puget Sound and is described in more detail below.

The retrospective analysis used for analyzing the effects of the proposed action relies on a review of past circumstances to develop an understanding of the likely influence of the 2019 Agreement on the fisheries, and the resulting effects on ERs and escapements of ESA-listed species and other stocks of concern. Actual outcomes over the next ten years will depend on year-specific circumstances related to individual stock abundance, the combined abundances of stocks in particular fisheries, and how fisheries actually are managed in response to these circumstances.

The retrospective analysis uses years from the recent past (1999 through 2014) because they provide a known set of prior circumstances regarding stock abundance and actual fishery affects. The retrospective analysis considers how outcomes would have changed under alternative management scenarios. The scenarios are explained in more detail below, but generally represent 1) what actually occurred based on post season estimates of stock abundance and fishery catches; 2) what we can reasonably expect to occur under the 2019 Agreement given an informed assessment of how fisheries are likely to be managed in the future, i.e., with domestic constraints in addition to those prescribed in the 2019 Agreement ; 3) the previous scenario but with SEAK fisheries set to levels of the 2009 agreement, to isolate the effects of the proposed action; and 4) how the fishery provisions in the 2019 Agreement would perform if there was an unexpected and broad scale decline of 40 percent in the abundance of Chinook salmon. The 40 percent abundance decline scenario is unlikely to occur during the term of the 2019 Agreement but is included to cover the situation of a prolonged and broad scale down turn in productivity and abundance that could occur as a consequence of long term cycles in ocean conditions or global climate change.

Before describing the scenarios used in the retrospective analysis in more detail, it is important to highlight one point. Although the bilateral Agreement sets limits on the fisheries, domestic conservation considerations often result in fisheries that are reduced further than require by the Agreement. The 2019 Agreement sets limits on harvest in both AABM and ISBM fisheries, but it is important to understand the context within which the limits were established. The fishery limits in the 2019 Agreement are the result of a complex bilateral negotiation wherein the Parties sought to find an acceptable and effective distribution of harvest opportunities and fishery constraints that, when combined with domestic fishery management constraints, would be consistent with the fundamental conservation and sharing objectives of the Treaty. The fisheries subject to the Agreement are governed by these constraints. The bilateral fishing regimes are reflective of many considerations, including the historical relationship among fisheries, the variable and evolving nature of the resource base in both countries, and a balancing among

fisheries to allocate fishing opportunities and fishery constraints between and among mixed stock and more-terminal fisheries in the two countries. The fishery and stock-specific annual limits in the agreed regimes were negotiated with the clear understanding that, as previously described above, more restrictive fishery and stock-specific measures often would be required and applied in each country as necessary to meet domestic objectives, such as those required to meet ESA obligations for listed Chinook salmon species. This understanding is specifically acknowledged in paragraph 5(c) of the Chinook chapter of the 2019 Agreement which says:

either or both parties may implement domestic policies that constrain their respective fishery impacts on depressed Chinook stocks to a greater extent than is required by this Paragraph;

Past experience has borne out this relationship between the international limits established in the PST agreements and domestic constraints: fisheries in Canada and the southern U.S. in particular often have been more constrained by ESA and/or other Canadian or U.S. domestic management considerations than was necessary to comply with the applicable bilateral Agreement. As an example, from 1999 to 2002 Canadian AABM fisheries were reduced greatly relative to what was allowed under the 1999 Agreement because of domestic concerns particularly for their WCVI Chinook stock. More recently, Canada has managed the NCBC AABM fishery at levels well below that required by the 2009 Agreement. Southern U.S. fisheries in Puget Sound and along the coast were also often constrained beyond the applicable ISBM requirements because of ESA and other management considerations and conservation constraints. Generally fisheries in SEAK have been managed to stay within PST catch limits. However, in 2018 SEAK fisheries were voluntarily and deliberately managed to a harvest limit that was 10 percent below the allowable harvest limit that was determined by the 2018 SEAK preseason AI from the PSC Chinook Model in order address concerns for Chinook salmon stocks in SEAK, Northern BC and the Transboundary Rivers. This difference between what was required in past bilateral agreements and the tighter constraints that have been applied for domestic reasons is used to inform the modeling in some of the scenarios described below and analyzed herein in the retrospective analysis.

For this analysis, the following four scenarios were run in FRAM using a retrospective analysis of the 1999-2014 fishing years:

Scenario 1: FRAM Validation

- *FRAM runs using actual post-season fishery catches and best available estimates of annual stock abundances.*

The FRAM Validation scenario approximates what actually occurred from 1999 to 2014 based on post season information. These runs are also used in other forums to evaluate the model and the management system and their relative success in meeting fishery and stock specific management objectives. These were described in Section 2.4, Environmental Baseline, as the exploitation between 1999 and 2014 and from this point forward are referred to as Scenario 1. See for example Figure 25 and Table 33.

Exhibit C

PACIFIC SALMON COMMISSION

Treaty Between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon



Prepared by the
Pacific Salmon Commission
January 2020



Article IV: Conduct of Fisheries

In order to facilitate the implementation of Articles III, VI and VII:

1. Each Party shall submit an annual report on its fishing activities in the previous year to the other Party and to the Commission. The Commission shall forward the reports to the appropriate Panels.
2. The Panels shall consider the reports submitted pursuant to paragraph 1 and shall provide their views to the Commission. The Commission shall review the reports of the Panels and shall provide its views to the Parties.
3. Each year the State of origin shall submit preliminary information for the ensuing year to the other Party and to the Commission, including:
 - (a) the estimated size of the run;
 - (b) the interrelationship between stocks;
 - (c) the spawning escapement required;
 - (d) the estimated total allowable catch;
 - (e) its intentions concerning management of fisheries in its own waters; and
 - (f) its domestic allocation objectives whenever appropriate.

The Commission shall forward this information to the appropriate Panels.

4. The Panels shall examine the information submitted pursuant to paragraph 3 and report their views to the Commission with respect to fishery regimes for the following year.
5. The Commission shall review the reports of the Panels and shall recommend fishery regimes to the Parties.
6. On adoption by both Parties, the fishery regimes referred to in paragraph 5 shall be attached to this Treaty as Annex IV.
7. Each Party shall establish and enforce regulations to implement the fishery regimes adopted by the Parties. Each Party, in a manner to be determined by the Commission, shall notify the Commission and other Party of these regulations and shall promptly communicate to the Commission and to the other Party any in-season modification.

HONORABLE MICHELLE L. PETERSON

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WILD FISH CONSERVANCY,

Plaintiff,

v.

BARRY THOM, *et al.*,

Defendants,

and

ALASKA TROLLERS ASSOCIATION,

Defendant-Intervenor.

Case No. 2:20-cv-417-RAJ-MLP

DECLARATION OF Scott Rumsey
National Marine Fisheries Service,
West Coast Region

I, Scott Rumsey, declare and state as follows:

1 post-doctoral research at Oregon State University before joining the National Oceanic
2 and Atmospheric Administration (NOAA) in 2001.

3 3. Since 2018 I have served as the shadow to the federal Alternate Commissioner on
4 the Pacific Salmon Commission (Ms. Staci MacCorkle, U.S. Department of State). In
5 this role I have become familiar with the management under the Pacific Salmon Treaty,
6 negotiation of the 2019 Pacific Salmon Treaty Agreement, the overall funding the U.S.
7 Pacific Salmon Commissioners agreed to pursue in connection with the Pacific Salmon
8 Treaty Agreement, as well as the specific actions included in that initiative for the
9 conservation of Puget Sound Chinook salmon and Southern Resident killer whales
10 (SRKW). The Pacific Salmon Commission is the body formed by the governments of
11 Canada and the United States to implement the Pacific Salmon Treaty. The Pacific
12 Salmon Commission is a sixteen-person body with four Commissioners and four
13 alternates from each Country, representing the interests of commercial and recreational
14 fisheries as well as federal, state and tribal governments.

15 4. In my capacity as WCR Deputy Regional Administrator, I am responsible for the
16 budget planning and obligation of the Congressionally appropriated funds to implement
17 the Pacific Salmon Treaty Agreement. Through my experience managing the Pacific
18 Coastal Salmon Recovery Fund, I am intimately familiar with the underlying science,
19 planning, and implementation for habitat restoration actions and hatchery production to
20 recover Endangered Species Act listed salmon, steelhead, and SRKW.

21 5. In preparation for this declaration, I have reviewed the 2019 Biological Opinion on the
22 Consultation on the Delegation of Management Authority for Specified Salmon Fisheries
23 to the State of Alaska (2019 Opinion). I also reviewed the Consolidated Appropriations
24
25
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1 Act, 2020, Public Law 116-93 (January 2020) as well as the U.S. Section to the Pacific
2 Salmon Treaty FY2020 Funding Agreements (Spend Plan) (Attachment A) and a
3 briefing document on the Spend Plan prepared for Congress (Attachment B).

4 Additionally, I reviewed plaintiff's motion for a preliminary injunction and the
5 declarations filed in support of the motion by Dr. Deborah Giles and Dr. Robert Lacy.
6

7 6. The purpose of this declaration is to address the issues raised by the above
8 declarants concerning the funding of conservation and mitigation measures as
9 contemplated in the 2019 Opinion.

10 7. The 2019 Opinion analyzed a proposed action with three components relating to
11 domestic implementation of the 2019-2028 Pacific Salmon Treaty Agreement. The first
12 component of the proposed action was the delegation of management authority over the
13 salmon troll fishery and the sport salmon fishery in the Southeast Alaska Exclusive
14 Economic Zone (EEZ) to the State of Alaska. The second component of the proposed
15 action was related to Federal funding that NMFS distributes to the State of Alaska to
16 monitor and manage salmon fisheries and implement the Pacific Salmon Treaty.
17

18 8. The third component of the proposed action was funding of a conservation
19 program for Puget Sound Chinook salmon and SRKW. The third component of the
20 proposed action included three elements of this funding initiative. The first element
21 supports continuation of conservation hatchery programs for the Nooksack, Dungeness
22 and Stillaguamish Chinook salmon populations and develop a new program for the Mid-
23 Hood Canal population. In the 2019 Opinion, these programs were estimated to require
24 \$3.06 million in funding annually and are intended target the weakest populations of
25 Puget Sound Chinook salmon that are considered essential for recovery. The second
26
27
28

1 element improves habitat conditions for these four populations through projects that
2 would cost \$31.2 million and be implemented within the first three years of the 2019
3 Pacific Salmon Treaty Agreement. These two elements, conservation hatchery and
4 habitat programs, are anticipated to improve abundance and productivity for the four
5 critical Puget Sound Chinook populations, as well as increase prey availability for
6 SRKW.
7

8 9. The third funding element was specifically designed to increase the production of
9 hatchery Chinook salmon to provide a meaningful increase in prey availability for SRKW
10 (Hatchery Production Initiative for SRKW). The 2019 Opinion included a preliminary
11 design of the Hatchery Production Initiative for SRKW to use for purposes of the analysis
12 and as a benchmark for evaluating the program. A key objective of the preliminary
13 design was to increase adult prey availability by 4-5% in areas and at times that are most
14 important to SRKW. The program was anticipated to cost \$5.6 million per year which
15 would result in an additional 20 million Chinook salmon smolts produced from hatchery
16 programs.
17
18

19 10. Since implementation of the 2019 Opinion, the non-federal U.S. Pacific Salmon
20 Commissioners (representing native American tribes, and the states of Washington,
21 Oregon, and Alaska) have sought funding from Congress to implement the 2019 Pacific
22 Salmon Treaty Agreement. In federal Fiscal Year (FY) 2020, Congress appropriated
23 these funds to NMFS and other federal agencies to support implementation of the Pacific
24 Salmon Treaty Agreement. The FY2020 funding NMFS received was consistent with the
25 description of the funding initiative in the 2019 Opinion.
26
27
28

Attachment B

- Grants for Chinook Salmon Assessment Letter of Agreement (LOA): \$1.6 million to support Chinook LOA Grants to the states and Pacific Salmon Commission in support of abundance-based management approach for Chinook salmon fisheries in Southeast Alaska

(3) New funding to support implementation of the 2019-2028 Pacific Salmon Treaty Agreement – \$3.0 million

- \$1.5 million in new funding would support new data collection and fishery monitoring, stock assessment and analyses to successfully implement the new 2019-2028 agreement
- \$1.5 million in new hatchery production in Southeast Alaska to mitigate for harvest reductions in Southeast Alaska fisheries agreed to as part of the new 2019-2028 agreement.

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

SCOTT RUMSEY, *et al.*,

Defendants.

And

ALASKA TROLLERS ASSOCIATION,
and STATE OF ALASKA,

Defendant-Intervenors.

Case No. 2:20-cv-00417-RAJ-MLP

DEFENDANT-INTERVENOR ALASKA
TROLLERS ASSOCIATION'S RESPONSE TO
PLAINTIFF WILD FISH CONSERVANCY'S
MOTION FOR RELIEF

Noting Date: October 14, 2022

ORAL ARGUMENT REQUESTED

Army Corps. of Engineers, 466 F. Supp. 3d 1217, 1219 (W.D. Wash. 2020), *aff'd*, 843 Fed. Appx. 77 (9th Cir. 2021). This case—where WFC’s alleged environmental benefit may actually pose environmental harm and the economic consequences are severe—is a prime instance where remand without vacatur is appropriate.

Courts deviate from the ordinary remedy of vacatur when “equity demands.” *Coal. to Protect Puget Sound Habitat*, 843 Fed. Appx. 77, 80 (9th Cir. 2021) (internal quotation marks omitted). In determining whether vacatur is appropriate, a court considers “at least three factors.” *Nat. Res. Def. Council v. U.S. Env’tl. Prot. Agency*, 38 F.4th at 51 (emphasis added). First, a court weighs “the seriousness of the agency’s errors against the disruptive consequences of an interim change that may itself be changed.” *Id.* (internal quotation marks omitted). Second, a court considers “the extent to which either vacating or leaving the decision in place would risk environmental harm.” *Id.* at 51-52 (internal quotation marks omitted). Third, courts “examine whether the agency would likely be able to offer better reasoning and adopt the same rule on remand, or whether such fundamental flaws in the agency’s decision make it unlikely that the same rule would be adopted on remand.” *Id.* at 52 (internal quotation marks and alterations omitted).

WFC views the standard for remand without vacatur too narrowly. WFC argues that courts focus on “environmental disruption, as opposed to economic disruption” when determining whether vacatur is appropriate. Dkt. No. 127 at 20 (quoting *N. Plains Res. Council v. U.S. Army Corps of Eng’rs*, 460 F. Supp. 3d 1030, 1038 (D. Mont. 2020)). As highlighted above, the *Nat. Res. Def. Council v. U.S. Env’tl. Prot. Agency* test is not limited to the above three factors or environmental concerns. 48 F.4th at 51 (courts consider “at least three factors”). When weighing whether vacatur is appropriate, it is commonplace for courts to consider the economic impacts of vacatur. *See e.g., California Communities Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 993-94 (9th Cir. 2012); *In re Clean Water Act Rulemaking*, 568 F. Supp. 3d 1013, 1028 (N.D. Cal. 2021); *Cook Inletkeeper v. Raimondo*, 541 F. Supp. 3d 987, 993 (D. Alaska 2021); *Se.*

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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WILD FISH CONSERVANCY,

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And

ALASKA TROLLERS ASSOCIATION,
and STATE OF ALASKA,

Defendant-Intervenors.

Case No. 2:20-cv-00417-RAJ-MLP

DECLARATION OF PAUL OLSON IN
SUPPORT OF DEFENDANT-INTERVENOR
ALASKA TROLLERS ASSOCIATION'S
RESPONSE TO PLAINTIFF WILD FISH
CONSERVANCY'S MOTION FOR A FINAL
ORDER ON RELIEF

Noting Date: October 14, 2022

ORAL ARGUMENT REQUESTED

I, Paul Olson, declare as follows:

1. I submit this declaration in support of the Alaska Trollers Association's Response to Plaintiff Wild Fish Conservancy's ("WFC") Motion for a Final Order on Relief. I have personal knowledge of the matters stated herein and, if called as a witness, could and would competently testify thereto.

2. I live in Chelan County in Washington State during the winter. My address is: 22901 Morgan Street, Leavenworth, WA 98826. I am a member of the Alaska Trollers Association. I previously lived in Southeast Alaska in the municipalities of Sitka and Wrangell

DECLARATION OF PAUL OLSON IN SUPPORT OF
DEFENDANT-INTERVENOR ALASKA TROLLERS
ASSOCIATION'S RESPONSE TO PLAINTIFF WILD FISH
CONSERVANCY'S MOTION FOR A FINAL ORDER ON
RELIEF -- 1

NORTHWEST RESOURCE LAW PLLC
71 Columbia Street, Suite 325
Seattle, WA 98104
206.971.1564

1 brokers advertising boat/permit packages that vary from \$80,000 to \$165,000. These values
2 depend on access to the Chinook salmon fishery and would be much lower if that access is
3 diminished.

4 43. Commercial fishers and processors also provide substantial direct economic
5 benefits to local communities through landing taxes and fisheries business taxes. Fishery
6 business tax revenues from processors go into Alaska's general fund, and the legislature then
7 appropriates up to fifty percent of the revenue back into the community where the processing
8 occurred. Also, half of the landing tax is returned revenue to municipalities based on landings
9 there.

10 44. In sum, the economic harms to Southeast Alaska fishers and communities vastly
11 exceed the impacts estimated by WFC's declarants. The closure of the summer and winter troll
12 Chinook fisheries will immediately reduce the troll fleet by an unknown but significant amount
13 and reduce the incomes of and economic outputs from the remaining fleet depending on
14 fluctuations in remaining target species, coho and chum, neither of which consistently supports
15 the fishery. Because of this impact, WFC's request for injunctive relief is not "limited" to the
16 winter and summer Chinook fishery. The high proportion of a troller's annual earnings from the
17 Chinook fishery—typically over forty percent—support fishing vessel maintenance, fuel,
18 moorage, gear purchases and numerous other expenses. Many trollers will cease fishing
19 immediately, and those remaining will be unable to withstand downward fluctuations in harvests
20 of other species. This will cause the region to lose its second largest and most widely distributed
21 fishery with the highest levels of resident participation, meaning the loss of millions of dollars in
22 non-fishing jobs, tax revenues, and other benefits.

23 ///

24 ///

25 ///

26 ///

DECLARATION OF PAUL OLSON IN SUPPORT OF
DEFENDANT-INTERVENOR ALASKA TROLLERS
ASSOCIATION'S RESPONSE TO PLAINTIFF WILD FISH
CONSERVANCY'S MOTION FOR A FINAL ORDER ON
RELIEF -- 14

NORTHWEST RESOURCE LAW PLLC
71 Columbia Street, Suite 325
Seattle, WA 98104
206.971.1564

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

SCOTT RUMSEY, *et al.*,

Defendants.

And

ALASKA TROLLERS ASSOCIATION,
and STATE OF ALASKA,

Defendant-Intervenors.

Case No. 2:20-cv-00417-RAJ-MLP

DECLARATION OF PATRICIA PHILLIPS IN
SUPPORT OF DEFENDANT-INTERVENOR
ALASKA TROLLERS ASSOCIATION'S
RESPONSE TO PLAINTIFF WILD FISH
CONSERVANCY'S MOTION FOR A FINAL
ORDER ON RELIEF

Noting Date: October 14, 2022

ORAL ARGUMENT REQUESTED

I, Patricia Phillips, declare as follows:

1. I submit this declaration in support of the Alaska Trollers Association's Response to Plaintiff Wild Fish Conservancy's ("WFC") Motion for a Final Order on Relief. I have personal knowledge of the matters stated herein and, if called as a witness, could and would competently testify thereto.

2. I am the mayor of Pelican, Alaska. The Pelican City Council is comprised of six members; five city council members hold hand-troll or power-troll salmon permits. The population of Pelican ranges from 75 annual residents to over 200 residents during the summer.

3. I am distressed by the relief that WFC is seeking in this case. WFC claims it has “narrowly limited” its requested relief by only requesting to close the winter and summer portions of the southeast Alaska troll fishery. In WFC’s estimation that would result in *only* a \$9.5 million impact that is allegedly less than 2.6 percent of the southeast Alaska seafood industry. In addition to being inaccurate, WFC significantly and adversely undersells the economic impacts of its proposed relief.

4. The City of Pelican depends heavily on the southeast Alaska troll fishery. The winter season extends from October to April and the summer season extends from July to September. The effects of closing those seasons would be anything but “narrow,” and the impacts cannot be explained away as percentages. If WFC receives what it seeks, those of us who live in Pelican year-round will struggle to maintain our way of life with no influx of economic activity from the winter and summer fishing seasons.

5. The City relies on the troll fishery for significant portions of its annual revenue. For the fish caught in those seasons, the City receives 50 percent of the raw fish tax collected by the State of Alaska for fish that are landed and processed at the local seafood plant. In the 2021 fiscal year, the City received \$22,500 from the raw fish tax for the summer season alone. Raw fish taxes represent approximately 10 percent of our annual local revenue. That revenue constitutes a significant portion of the City’s general fund and funds crucial city services including education, water/wastewater, electricity, snowplowing, trash, boardwalk/harbor repairs, and public health and safety.

6. The seasons also benefit our City by bringing an increased presence of fishing vessels into our port. These vessels pay moorage, buy ice, refuel, and visit our local café. Our port employs 10 people in various positions related to those activities. We sell approximately 700 tons of ice each year. Without the troll fishery, our port would struggle to remain viable.

7. Approximately 30% of the Pelican population participates in the troll fishery. Those fishers are already struggling as the charter lodge industry continues to grow. The local

1 seafood processor hires up to 40 individuals to process primarily salmon. The remedy sought by
2 WFC may be the final death knell on their way of life.

3 8. Although these numbers may sound small relative to a large city like the one
4 where WFC is located, these types of impacts would be felt across rural fishing communities in
5 southeast Alaska. The socioeconomic impacts of WFC's requested remedy would adversely
6 impact the way of life in these rural communities that is linked to harvesting Chinook salmon for
7 food security, and in a way that impacts a livelihood that actively participates in protection of
8 fisheries resources, with conservation at the core of its management principles.

9 9. I respectfully request that the Court consider the adverse impacts WFC's request
10 to close our fishery would have on our community, and craft a remedy that preserves our
11 community and is not the death knell for our way of life.

12
13 Sworn to under penalty of perjury of the laws of the United States of America, at Pelican,
14 Hoonah-Angoon County, Alaska, this 23 day of September, 2022.

15
16 Patricia Phillips
Patricia Phillips

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DECLARATION OF PATRICIA PHILLIPS IN SUPPORT OF
DEFENDANT-INTERVENOR ALASKA TROLLERS
ASSOCIATION'S RESPONSE TO PLAINTIFF WILD FISH
CONSERVANCY'S MOTION FOR A FINAL ORDER ON
RELIEF -- 3

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THE HONORABLE MICHELLE L. PETERSON

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STATE OF ALASKA,

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Case No. 2:20-cv-417-RAJ-MLP

THIRD DECLARATION OF
Lynne Barre,
National Marine Fisheries Service,
West Coast Region

1 previous Lacy Declarations. There is no substantial new information provided in
2 the plaintiff's motion or the recent declarations by Dr. Giles and Dr. Lacy that
3 alter my conclusions and opinions in my first two declarations regarding the
4 impacts on SRWKs of closing SEAK fisheries and enjoining the prey increase
5 program.

- 6
- 7 5. As previously stated in the 2019 Opinion and based on our analysis, the prey
8 reductions from the SEAK troll fisheries, particularly in the most important
9 locations and seasons for the whales, are small and, considered in concert with the
10 prey increase program, will not jeopardize their survival or recovery. Closing the
11 SEAK fishery will provide only a small benefit to SRKW. Enjoining the prey
12 increase program will have a significant negative effect on SRKW. The prey
13 increase program, designed to support the prey base for SRKW and as
14 implemented over the last three years, provides a meaningful increase in prey
15 abundance and benefits SRKW. Closing the SEAK troll fisheries and enjoining
16 the prey increase program will likely result in a net reduction in prey available to
17 the whales.

- 18
- 19
- 20 6. As described in my First Declaration, based on scientific review and guidance,
21 uncertainties, and the complexity surrounding the relationship between SRKW
22 and their prey, I find Dr. Lacy's modeled relationship quantifying specific
23 changes in reproduction or survival metrics from specific Chinook salmon
24 abundances to be outdated and not based on the best available science. Although
25 mentioned in Dr. Giles' Declaration, Dr. Lacy did not include the most recent
26 population updates, including two new calves born in early 2022. The primary
27
28

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Defendant-Intervenor.

SECOND DECLARATION OF
Scott Rumsey,
National Marine Fisheries Service,
West Coast Region

App. 27

The 2019 Opinion included a preliminary design of the SRKW prey increase program to use for purposes of the analysis and as a benchmark for evaluating the program. A key objective of the preliminary design was to increase adult prey availability by 4-5% in areas and at times that are most important to SRKW. The program was anticipated to cost \$5.6 million per year.

Funding Since 2019 Pacific Salmon Treaty Agreement

8. Since the 2019 Opinion was signed, the non-federal U.S. Pacific Salmon Commissioners (representing native American tribes, and the states of Washington, Oregon, and Alaska) have sought funding from Congress to implement the 2019 Pacific Salmon Treaty Agreement, including funds for the conservation program that is the third element of the proposed action in the Opinion. For all three fiscal years (FY) since the 2019 Opinion was signed (i.e., FY 2020, FY 2021, and FY2022), Congress has appropriated funds for NOAA's implementation of the Pacific Salmon Treaty. As directed by Congress, NOAA, in consultation with the U.S. Section of the PSC, has developed annual Spend Plans regarding the expenditure of those funds, consistent with the 2019 Opinion. As described in my first declaration, for FY 2020, the Spend Plan allocated a total of \$19.1 million for the conservation activities as follows: \$3.1 million for conservation hatcheries, \$5.6 million through NMFS for the SRKW prey increase program, and \$10.4 million for Puget Sound habitat restoration and protection. First Rumsey Declaration, Att B.

9. For FY 2021, the Spend Plan allocated a total of \$18.8 million for conservation activities as follows: \$2.9 million for conservation hatcheries, \$5.5 million through NMFS and \$1.8 million through U.S. Fish and Wildlife Service ("FWS") for SRKW prey

production (totaling \$7.3 million), and \$10.4 million for Puget Sound habitat restoration and protection.

10. For FY 2022 the Spend Plan allocated a total of \$18.1 million for conservation activities as follows: \$3.2 million for conservation hatcheries, \$4.5 million through NMFS and \$1.8 million through FWS for the SRKW prey increase program (totaling \$6.3 million), and \$10.4 million for Puget Sound habitat restoration and protection.

These Spend Plans guide NMFS' distribution of the funds.

11. NMFS has, through carefully evaluated grants, successfully used these funds as anticipated in the 2019 Opinion and the referenced Spend Plans to contribute to the restoration of Chinook habitat in Puget Sound, implementation and development of conservation hatchery programs to protect and recover four highly vulnerable populations of Puget Sound Chinook, and to strategically increase production of hatchery Chinook to increase prey availability for SRKW. Of particular relevance to Plaintiff's remedy request, NMFS has successfully implemented the prey increase program by awarding funds through FY 2022 while ensuring that increased production does not jeopardize listed fish or adversely modify their critical habitat, and to ensure that production is targeted to maximize the benefits to SRKW. See Third Purcell Declaration.

12. FY 2023 presidential budget and Senate and House reports, if ultimately adopted, would provide funds for Pacific salmon management activities at a similar level to FY 2022. Thus it is likely that the prey increase program would continue in FY 2023 at a similar level to FY 2022 if it is not enjoined or disrupted.

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Defendant-Intervenors.

Case No. C20-417-RAJ-MLP

REPORT AND RECOMMENDATION

I. INTRODUCTION

This matter is before the Court on Plaintiff Wild Fish Conservancy’s (“WFC”) Motion for “Final Order on Relief and for a Temporary Restraining Order and/or a Preliminary Injunction Pending Entry of a Final Order on Relief” (“Plaintiff’s Motion”). (Pl.’s Mot. (dkt.

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Scott Rumsey, the current Acting Regional Administrator for NMFS, was substituted for Barry Thom as a Defendant in this action. (*See* dkt. # 126 at 1 n.1.)

estimates for Chinook salmon populations in areas of the Puget Sound, the Lower Columbia River, and the Washington Coast are “well in excess of levels recommended by the HSRG.”⁵ (First Luikart Decl. at ¶¶ 51-53; *see also* Third Luikart Decl. at ¶¶ 6-7.)

iii. Pacific Salmon Treaty and Salmon Fishery Management Plan

Chinook salmon regularly migrate between the United States and Canadian waters, and therefore, fish originating in one country are often caught or “intercepted” by those fishing in the other country. (R. & R. at 9 (citing AR at 523, 47194-95).) To resolve this issue, the United States and Canada ratified the Pacific Salmon Treaty (“PST”) in 1985, establishing a framework for the management of Pacific salmon fisheries in those waters that fall within the PST’s geographical scope. (*Id.*) The countries entered into the most recent agreement in 2019, which set the current upper harvest limits of Chinook salmon. AR at 47194-95. A “key objective” of the United States in negotiating the 2019 PST was to achieve harvest reductions “to help address ongoing conservation concerns for Puget Sound Chinook salmon and coincidentally provide benefits for SRKWs.” AR at 47201-02.

NMFS has delegated its authority over Southeast Alaska salmon fisheries in federal waters to the State of Alaska. (R. & R. at 10 (citing 50 C.F.R. § 679.3(f); AR at 502).) Under the Magnuson-Stevens Act, the North Pacific Fishery Management Council (“NPFMC”) maintains “authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska.” (*Id.* (citing 16 U.S.C. § 1852(a)(1)(G); AR at 502).) NPFMC first developed a fishery management plan (“FMP”) for salmon fisheries in Alaska in 1979 (“Salmon FMP”) and has since issued several amended plans. (*Id.* (citing Fisheries of the Exclusive Economic Zone Off

⁵ Per Dr. Luikart, mean pHOS estimates for Chinook salmon populations in rivers in Puget Sound, the Lower Columbia River, and the Washington Coast range from a 12 percent mean pHOS for at least one river studied between 2010 and 2020 in the Washington Coast up to a 97 percent mean pHOS in another river studied in the Lower Columbia from 2010 to 2016. (Third Luikart Decl. at ¶¶ 6-7 (citing Table 1).)

Ex. 1.) Government Defendants represent that the prey increase program is “increasing the prey available to SRKW now,” that the “increase in abundance anticipated from the prey increase program will contribute to the overall Chinook abundance, and reduce the potential for [SRKWs] to experience low abundance conditions in general,” and that the prey increase program remains “on track to provide the benefits to SRKWs that were anticipated in the [2019 SEAK BiOp].” (See Third Barre Decl. at ¶¶ 15, 22; Third Purcell Decl. at ¶¶ 3, 9-10.)

III. DISCUSSION

WFC argues that its request for partial vacatur is the most reasonable interim solution because it focuses on the most harmful aspects of NMFS’s unlawful actions and will only affect fisheries that have the most impact on the SRKW and threatened Chinook salmon. (Pl.’s Mot. at 10-11, 21-22.) Specifically, WFC argues its sought partial vacatur is warranted because vacatur is the presumptive remedy, NMFS’s ESA and NEPA violations are serious, and risks to the SRKW and Chinook salmon greatly outweigh any disruptive consequences arising from vacatur. (*Id.* at 22-30.) WFC additionally argues the Court should enjoin NMFS’s implementation of the prey increase program until NMFS remediates its BiOp because the prey increase program will irreparably harm wild salmonids and suppress salmon recovery efforts, which poses long-term threats to SRKW. (*Id.* at 30-33.)

Government Defendants counter that the Court should remand the 2019 SEAK BiOp to NMFS without vacatur to allow NMFS to undertake additional analysis under the ESA and NEPA and that no form of injunctive relief is appropriate. (NMFS’s Resp. at 1, 10-24.) The ATA concurs and argues that WFC’s sought vacatur is not warranted as it would provide “a small hypothetical benefit to the SRKW population, but a guaranteed economic disaster” for the Southeast Alaska troll fishery communities and that WFC’s sought injunction of the prey

Defendants counter that remand without vacatur is the more appropriate solution as WFC misrepresents the “narrow” scope of its sought relief as the Southeast Alaska troll fishery is allocated an average of 73.78 percent of the overall limit for Treaty Chinook salmon in Alaska, and because it underestimates economic impacts on the troll fishery and Southeast Alaska communities. (NMFS’s Resp. at 10-11 (citing Keaton Decl. at ¶¶ 18-19, 36, 40); ATA’s Resp. at 3-4, 7-12; State of AK’s Resp. at 3-7 (citing Evenson Decl. at ¶¶ 12-15, 21, Second Vincent-Lang Decl. at ¶¶ 2, 4).) Defendants further argue that vacatur of the prey increase program would immediately cut off funding aimed at replenishing the SRKW food supply, which remains a critical tool to SRKW recovery. (NMFS’s Resp. at 11 (citing Third Barre Decl. at ¶ 23); ATA’s Resp. at 10, 12; State of AK’s Resp. at 11-13.)

The Court will consider the relevant factors in turn:

1. Seriousness of Agency Error and Disruptive Consequences

First, violations that undermine important congressional objectives of the underlying statute are found to be serious. *See, e.g., W. Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042, 1083 (D. Idaho 2020) (“[T]he seriousness of . . . deficiencies . . . should be measured by the effect the error has in contravening the purposes of the statutes in question”) (citation and internal quotations omitted); *see also Wild Fish Conservancy v. Nat’l Park Serv.*, 2014 WL 3767404, at *3 (W.D. Wash. July 31, 2014) (finding failure to consider viable alternative of reduced hatchery releases a serious NEPA violation). On this aspect, the Court previously determined that NMFS erred due to its reliance on uncertain and indefinite mitigation measures to find no jeopardy to the SRKW, and its failure to address the prey increase program in its jeopardy analysis for the threatened Chinook salmon ESUs. (*See R. & R.* at 27-34.) NMFS

additionally failed to provide the proper NEPA procedures for the issuance of the ITS in the 2019 SEAK BiOp and in adopting the prey increase program. (*See id.* at 34-38.)

Government Defendants argue that the issues identified by the Court are not serious enough errors to warrant vacatur. (NMFS's Resp. at 12-14.) Government Defendants note that courts have chosen to remand without vacatur in similar instances where "not minor" error has been found, and that the seriousness of the errors here with regard to the prey increase program are diluted because every program funded has been subject to subsequent ESA and NEPA compliance.¹⁵ (NMFS's Resp. at 12-13 (citing *Nat'l Fam. Farm Coal. v. U.S. Env't'l Protec. Agency*, 966 F.3d 893, 929 (9th Cir. 2020); *WildEarth Guardians v. Steele*, 545 F. Supp. 3d 855, 884 (D. Mont. 2021).)

Here, the SRKW have been listed as endangered under the ESA since 2005, and remain at a high risk of extinction. *See* 50 C.F.R. § 224.101(h); AR at 15988-89, 47276 ("[T]he [SRKW] population has declined to historically low levels."). The Puget Sound, the Lower Columbia River, the Upper Willamette River, and the Snake River fall-run Chinook salmon ESUs are all also each listed as threatened under the ESA. *See* 50 C.F.R. § 223.102(e). Section 7(a)(2) of the ESA requires federal agencies to ensure their actions do not jeopardize the continued existence of endangered species, and its consultation requirements are purposed to prevent violations of that mandate. *See W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011). NMFS's errors in relying on uncertain and indefinite mitigation measures to find no jeopardy to

¹⁵ Government Defendants additionally argue that the NEPA violations do not rise to the level of serious error because it was procedural, rather than substantive, error and that remand itself will allow NMFS to remedy the violations by releasing new NEPA analyses and determinations. (NMFS's Resp. at 13-14.) However, courts consider NEPA violations, other than "mere technical or procedural formalities," serious. *See Klamath-Siskiyou Wildlands Ctr.*, 109 F. Supp. 3d at 1244-45. Furthermore, this contention ignores that the Court has also found substantive violations of the ESA occurred with regard to both NMFS's no jeopardy finding for the SRKW and failure to address the prey increase program in its jeopardy analysis for the Chinook salmon ESUs. (R. & R. at 33-34.)

the endangered SRKW, failure to address the prey increase program in its jeopardy analysis for the threatened Chinook salmon ESUs, and failure to conduct necessary NEPA analyses are therefore sufficiently serious violations as they clearly undermine central congressional objectives of the ESA and NEPA. *See Zinke*, 441 F. Supp. 3d at 1083, 1086-87; *Nat. Res. Defense Council v. E.P.A.*, 489 F.3d 1364, 1374 (D.C. Cir. 2007) (“The agency’s errors could not be more serious insofar as it acted unlawfully, which is more than sufficient reason to vacate the rules.”).

Moreover, Government Defendants’ cited authority is distinguishable. In *Nat’l Fam. Farm Coal.*, the Ninth Circuit found remand without vacatur was appropriate because the “EPA’s error—failing to consider harm to monarch butterflies caused by killing target milkweed” was not serious “in light of EPA’s full compliance with the ESA and substantial compliance with FIFRA [the “Federal Insecticide, Fungicide, and Rodenticide Act”].” 966 F.3d at 929. And in *WildEarth Guardians*, the district court remanded without vacatur in that case because with “limited exception, the record reflected that Federal Defendants met their statutory obligations” in planning for and implementing a revised forest management plan.¹⁶ 545 F. Supp. 3d at 863, 884. No similar full or substantial compliance with the ESA or NEPA on the noted violations has been demonstrated by Defendants in this case.

As for “disruptive consequences,” the “court largely should focus on potential environmental disruption, as opposed to economic disruption.” *N. Plains Res. Council v. U.S. Army Corps of Eng’rs*, 460 F. Supp. 3d 1030, 1038 (D. Mont. 2020); *see also In re Clean Water Act Rulemaking*, 568 F. Supp. 3d 1013, 1028 (N.D. Cal. 2021) (“[O]ur court of appeals has

¹⁶ In addition, the district court in *WildEarth Guardians* noted the seriousness of the ESA violations in that case did not favor vacatur due to the environmental harm that would result from vacatur of the revised forest management plan, as a previous and less protective forest management plan would assume its place, and because the errors were limited in scope. 545 F. Supp. 3d at 884.

focused more on environmental consequences when considering whether to vacate EPA rules”). “The ESA . . . did not seek to strike a balance between competing interests but rather singled out the prevention of species [extinction] . . . as an overriding federal policy objective.” *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 891 (9th Cir. 2022) (citation and internal quotations omitted). Courts thus “tip” the scale in favor of protecting listed species in considering vacatur. *Klamath-Siskiyou Wildlands Ctr.*, 109 F. Supp. 3d at 1242 (citing *Sierra Club v. Marsh*, 816 F.2d 1376, 1383 (9th Cir. 1987); see also *N. Plains Res. Council*, 460 F. Supp. 3d at 1037-38. Nevertheless, when weighing the appropriateness of vacatur, it also remains common for courts to consider the economic consequences of vacatur. See e.g., *Cal. Cmities. Against Toxics*, 688 F.3d at 993-94; *Cook Inletkeeper v. Raimondo*, 541 F. Supp. 3d 987, 993 (D. Alaska 2021) (“While Plaintiffs contend that the primary consequences to be considered when assessing the disruptive impact of vacatur are environmental harms, the Ninth Circuit has explicitly considered the economic consequences of vacatur”).

First, with regard to disruptive consequences from vacatur of the ITS, there does not appear to be any environmental disruption stemming from disallowing Chinook salmon harvest permitted by the ITS. Instead, closing the troll fisheries in the manner requested would increase prey available to SRKW. (See Third Lacy Decl. at ¶¶ 8, 10.) Though there is uncertainty as to how much prey would ultimately reach the SRKW, the record before the Court suggests that closure of the fisheries meaningfully improves prey available to the SRKW, as well as SRKW population stability and growth, under any scenario. (*Id.* at ¶ 11.)

Nonetheless, vacatur of the ITS will result in disruptive economic consequences for the Chinook salmon troll fishery and the economy of Southeast Alaska.¹⁷ WFC estimates an economic impact of around \$9.5 million loss in generated annual income in the winter and summer seasons, which WFC estimates would impact about 2.6 percent of the Southeast Alaska seafood industry. (See First Radtke Decl. at ¶ 31.) Defendants estimate that the annual economic output of the Chinook salmon commercial troll fleet for the winter and summer seasons fishery to be approximately \$29 million. (Keaton Decl. at ¶¶ 40-41.) Several Southeast Alaska communities would also be impacted given their economic reliance on the commercial troll fishery seasons for income, the loss of tax revenue to these communities, and because of existing cost barriers to entry into other salmon fisheries. (See Keaton Decl. at ¶¶ 31, 41; Phillips Decl. at ¶¶ 1-9; Second Vincent-Lang Decl. at ¶¶ 4-5, 7.) Though the Court does not take such economic consequences lightly, in this case, they do not overcome the seriousness of NMFS’s violations given the presumption of vacatur, the harm posed to the SRKW by leaving the ITS in place and the Court’s mandate to protect the endangered species. See *Nat’l Fam. Farm Coal.*, 960 F.3d at 1144-45 (vacating pesticide registrations due to EPA’s FIFRA violations despite economic impact on farmers who would be required to purchase alternative seeds and pesticides); see also *Coal. to Prot. Puget Sound*, 466 F. Supp. 3d at 1225-26.

Next—as to disruptive consequences from vacatur of the prey increase program—there appears to be pronounced environmental and economic disruption. The primary limiting factor for SRKW is prey abundance and availability, and a substantial portion of the SRKW’s diet consists of Chinook salmon. See AR at 47276, 47278, 47282-83, 47286-87, 47434. It is clear

¹⁷ As noted by Government Defendants, vacatur of the ITS in and of itself does not result in a prohibition on fishing, but instead, there is no exemption under Section 9 of the ESA in the event “take” occurs. (NMFS’s Resp. at 19-20 (citing 16 U.S.C. § 1536(o)(2); Keaton Decl. at ¶ 31).)

from the record, including WFC’s own experts, that the SRKW require a rapid increase in the abundance of Chinook salmon. (*See* Third Giles Decl. at ¶ 18 (“SRKW need an immediate increase in the abundance of Chinook available to them to avoid functional extinction, as the current low birth rate, with high early mortality is simply unsustainable”); Third Lacy Decl. at ¶¶ 5-6.) Hatchery produced Chinook salmon benefit the SRKW as they support such needed prey availability and contribute to the salmon stocks consumed by the SRKW. (*See* AR at 47286, 47447; Third Barre Decl. at ¶ 11 (“[T]he whales do not distinguish between hatchery produced or wild fish.”) As such, a certain and definite increase in prey is available to the SRKW from the prey increase program.

The prey increase program—though previously uncertain and indefinite in the 2019 SEAK BiOp—has also now been funded and begun providing prey the past three years.¹⁸ (*See* Third Purcell Decl. at ¶ 3 (“[T]he prey increase program is on track to provide the benefits to SRKWs that were anticipated in the [2019 SEAK BiOp] on the effects of domestic actions associated with implementing the [2019 PST].”); *id.* at ¶¶ 3, 5, Exs. 1-2; Third Barre Decl. at ¶ 13 (“[W]e anticipate increases in prey abundance are near to or being realized as we reach the 3-5 year maturation time frame following each year of implementation.”); Second Rumsey Decl. at ¶¶ 7-11.) Over \$5.4 million of funds were distributed by NMFS in the 2022 fiscal year for the prey increase program, with more than 19 million juvenile Chinook salmon released. (*See* Third Purcell Decl. at ¶ 3.)

A disruption to the prey increase program, or its funding, thus appears primed to result in gaps in prey abundance that would lead to increased risk to the health of the SRKW and threaten

¹⁸ For all three fiscal years since the 2019 SEAK BiOp, Congress has appropriated funds for implementation of the prey increase program. (*See* Second Rumsey Decl. at ¶¶ 8-10.)

helping to restore the SRKW population. (*See* AR at 47276, 47278, 47282-83, 47286-87, 47434; *see also* Third Giles Decl. at ¶ 18; Third Lacy Decl. at ¶¶ 5-6.) Chinook salmon caught in the Southeast Alaska troll fishery are from stocks consumed by the SRKW (*see* Evenson Decl. at ¶ 14, Ex. A), and no party here suggests that there would not be at least some benefit to the SRKW from additional prey availability. The risk of environmental harm to the SRKW from leaving the ITS in place, and by otherwise not allowing for an increased amount of prey to benefit the SRKW, therefore counsels in favor of vacatur of the ITS.

On the contrary, vacatur of the prey increase program would assuredly result in environmental harm to the SRKW by eliminating a targeted source of prey. As considered above, the prey increase program was specifically designed to support the SRKW and has been implemented since the 2019 SEAK BiOp issued to increase SRKW prey abundance. (*See* Third Barre Decl. at ¶ 5 (“The prey increase program . . . provides a meaningful increase in prey abundance and benefits SRKWs.”).) Without the increased prey provided by the prey increase program, there would be risk of environmental harm to the SRKW’s recovery. (*See* Third Barre Decl. at ¶¶ 16 (“In the absence of the intended prey increase, there would be lower overall abundance of Chinook salmon and there could be an elevated risk of Chinook salmon abundance falling to the low abundance levels associated with increased risk to the health of the SRKWs.”), 23 (“Enjoining or disrupting the prey increase program would result in fewer Chinook salmon available to SRKW, and increase the risk for harm to SRKW through behavioral and physiological impacts.”).)

Still, the environmental harm factor is difficult to fully quantify. There is an inherent conflict in this case from the Chinook salmon, a threatened species, serving as priority prey for the endangered SRKW. (*See* Third Barre Decl. at ¶ 22 (“Conservation and recovery of SRKW

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Case No. 2:20-cv-00417-RAJ-MLP

DEFENDANT-INTERVENOR ALASKA
TROLLERS ASSOCIATION’S OBJECTIONS
TO REPORT AND RECOMMENDATION

Noting Date: January 27, 2023

I. INTRODUCTION

The trollers of Southeast Alaska, represented in this matter by the Alaska Trollers Association (“ATA”), are great stewards of the environment. They catch salmon one at a time, cherishing the benefits that the wild fish have provided to their families and communities for generations. The Wild Fish Conservancy (“WFC”)—a Seattle-based organization determined to eliminate hatcheries and the sustainable harvest of salmon, with no ties to the communities of Southeast Alaska—has exploited flaws in environmental analyses performed by the federal government in a quest to decimate that generational way of life of thousands of Alaskans. To

During the merits portion of this case, the Court agreed with WFC’s arguments that NMFS violated the Endangered Species Act (“ESA”) and the National Environmental Policy Act (“NEPA”).¹ Namely, the Court found that NMFS failed to sufficiently explain its prey increase program to demonstrate that benefits from the program would occur with necessary certainty to inform whether the Southeast Alaska fisheries would jeopardize the SRKW population.

Now, at the remedy stage, the Report and Recommendation concludes that in the years following the issuance of the 2019 BiOp, the prey increase program has been implemented with such certainty that the program must continue. With that understanding, the Report and Recommendation illogically concludes that the appropriate remedy for NMFS’s errors is to uphold the prey increase program yet revoke incidental take protection under the ESA afforded to the Southeast Alaska fisheries through the 2019 BiOp.

The Report and Recommendation is not fully informed on the impacts of its proposed decision because it erroneously refused to consider multiple declarations submitted by the ATA. Contrary to the Report and Recommendation’s conclusions, if the prey increase program is maintained, allowing Southeast Alaska fisheries to continue to harvest with incidental take protection will have mitigated impacts that will be far outweighed by the effective closure of the troll fisheries and the resulting catastrophic economic impacts to the communities of Southeast Alaska. Missing the spring and summer seasons will preclude many trollers from maintaining their way of life.

The extraordinary nature of this remedy cannot be overstated. Fisheries along the coasts of Oregon, Washington, and Canada continue to harvest salmon that provide prey for SRKWs. Yet, the Report and Recommendation proposes reaching up to Alaska and removing the least consequential aspect of the 2019 BiOp to the SRKWs—the authorization for Southeast Alaska

¹ The Court adopted Magistrate Peterson’s September 27, 2021 Report and Recommendation on the merits, Dkt. No. 111, in its entirety. Order Adopting Report and Recommendation, Dkt. No. 122. Accordingly, the ATA refers to Dkt. No. 111 for the Court’s holding on the merits.

remedy will close the troll fishery for 10 months of the year, effectively closing the entire fishery because trolling may no longer be economically viable if limited to two months each year. Dkt. No. 128 at 11; Dkt. No. 131 at ¶ 44.

The Report and Recommendation concludes that the economic consequences here “do not overcome the seriousness of NMFS’s violations” or “the harm posed to the SRKW by leaving the ITS in place.” Dkt. No. 144 at 30. Given that the error identified by the Court—the reliance on uncertain mitigation—has become a nonissue with the Report and Recommendation’s recognition of the certainty of the prey increase program, the Report and Recommendation’s conclusion of the balance between economic consequences and environmental harm is wrong. Under the factors that are considered when determining whether to remand without vacatur, the proposed remedy has resolved the environmental harm that could result from the ITS and, as a result, the agency is likely to reach the same conclusion on remand. Accordingly, the drastic economic consequences demonstrate that remand without vacatur of the ITS is demanded by equity.³ See Dkt. No. 128 at 8-9 (discussing relevant factors, including economic harm); *Coal. to Protect Puget Sound Habitat v. United States Army Corps of Engineers*, 843 Fed. Appx. 77, 80 (9th Cir. 2021) (courts deviate from ordinary remedy of vacatur when “equity demands” (internal quotation marks omitted)).

The economic impacts cannot be overstated. Vacating the ITS will have catastrophic economic impacts that far outweigh any impacts to the SRKW that will be mitigated by the prey increase program. The economic impacts of this remedy cannot be reduced to mere numbers that may seem insignificant to an area like Seattle. They will be damning to an entire way of life in Alaska that has existed for generations. To fully understand the generational impacts of this

³ The ATA recognizes that the Court also held that NMFS violated NEPA in issuing the ITS. Dkt. No. 111 at 34-35. As explained, with the prey increase program in place, the 2019 BiOp demonstrates that no jeopardy to the continued existence or recovery of SRKWs will occur. That also suggests that the ITS will be issued on remand after NEPA analysis. Thus, NMFS’s NEPA violations alone do not demand vacatur when the environmental harms are mitigated and the economic harm—as explained in this section—is drastic.

decision, the ATA implores the Court to review the declaration of Eric Jordan in its entirety. Dkt. No. 130. As Mr. Jordan articulated, this remedy does nothing more than cause more suffering; it lacks the particularity that will serve the listed species and the trollers of Southeast Alaska. *See id.* at ¶¶ 8-12.

The impacts will be felt beyond the level of individual families and traditions. As explained by City of Pelican Mayor Patricia Phillips, her entire city will struggle mightily without the influx of economic activity that the troller fishing seasons bring to her community. Dkt. No. 132 at ¶ 4. The State of Alaska also demonstrated that the impacts will be “far-reaching” and impact the “social and economic fabric of coastal communities in Southeast Alaska.” Dkt. No. 134 at 7.

Respectfully, although the Report and Recommendation claims that it “does not take such economic consequences lightly,” Dkt. No. 144 at 30, the proposed remedy does exactly that. The suggested remedy will mitigate any impacts to the SRKW from the trollers in Southeast Alaska, yet the Report and Recommendation still *chooses* to devastate an entire region of Alaska and a way of life that has persisted for generations. There is nothing equitable about this *choice* that mitigates impacts to the SRKWs, gives the Federal Defendants a pass for its faulty analysis, and punishes the ATA and communities of Southeast Alaska.

VI. CONCLUSION

The Report and Recommendation proposes that the Court use its discretion to adopt the “equitable” remedy described therein. However, the proposed remedy punishes the trollers of Southeast Alaska for the mistakes made by NMFS. Any impacts of allowing the ITS to continue to authorize the trollers to fish will be mitigated by the prey increase program. The economic consequences of the proposed remedy, however, will be dire to Southeast Alaska. Given the Report and Recommendation’s reasoning regarding the prey increase program, the Court should also elect to decline to vacate the ITS and continue to allow the trollers in Southeast Alaska to fish.

Honorable Richard A. Jones
Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

SCOTT RUMSEY, in his official capacity as
Acting Regional Administrator for the National
Marine Fisheries Service, *et al.*,

Defendants,

and

ALASKA TROLLERS ASSOCIATION and
STATE OF ALASKA,

Defendant-Intervenors.

CASE NO: 2:20-cv-00417-RAJ-MLP

**STATE OF ALASKA'S OBJECTIONS TO
THE COURT'S REPORT AND
RECOMMENDATION**

1 leaving the BiOp and ITS in place while on remand.

2 The R&R appropriately recognized that the economic consequences of vacatur should be
3 considered:

4 Nevertheless, when weighing the appropriateness of vacatur, it also remains common
5 for courts to consider the economic consequences of vacatur. *See e.g., Cal. Cmties.*
6 *Against Toxics*, 688 F.3d at 993-94; *Cook Inletkeeper v. Raimondo*, 541 F. Supp. 3d
7 987, 993 (D. Alaska 2021) (“While Plaintiffs contend that the primary consequences
8 to be considered when assessing the disruptive impact of vacatur are environmental
9 harms, the Ninth Circuit has explicitly considered the economic consequences of
10 vacatur . . .”).

11 R&R at 29.

12 In addition, during oral argument on Plaintiff’s remedy motion, the Magistrate Judge agreed with
13 the State that the relief Plaintiff requests is not “a narrow, moderate, or reasonable request,” but
14 rather, is “radical.” Transcript of Motion Hearing at 54. But the R&R goes on to substantially
15 downplay the actual foreseeable disruptive economic consequences for the economy of
16 Southeast Alaska and the communities that rely upon the economic activity generated by the
17 fishery. The R&R details Plaintiff’s estimated “economic impact of around \$9.5 million loss in
18 generated annual income in the winter and summer seasons” and the federal defendant’s
19 “estimate that the annual economic output of the Chinook salmon commercial troll fleet for the
20 winter and summer seasons fishery to be approximately \$29 million.” *Id.* at 30. These dollar
21 amounts might be insignificant in the Lower 48, but in Southeast Alaska they are substantial.
22 The R&R makes the rather sterile observation that “[s]everal Southeast Alaska communities
23 would also be impacted given their economic reliance on the commercial troll fishery seasons for
24 income, the loss of tax revenue to these communities, and because of existing cost barriers to
25 entry into other salmon fisheries.” *Id.* This is a polite way of saying that several communities that
26 are wholly reliant upon the impacted fisheries would see their entire tax base wiped out.

27 This definite impact of the vacatur recommended in the R&R should be given much more
28 weight. The Court should reject the finding in the R&R that the certain economic catastrophe to
Southeast Alaska communities does “not overcome the seriousness of NMFS’s violations.” *Id.*

HONORABLE RICHARD A. JONES

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WILD FISH CONSERVANCY,

Plaintiff,

v.

SCOTT RUMSEY, *et al.*,

Defendants,

and

ALASKA TROLLERS ASSOCIATION,

Defendant-Intervenor,

and

STATE OF ALASKA,

Defendant-Intervenor.

Case No. 2:20-cv-417-RAJ-MLP

DEFENDANTS' OBJECTIONS
TO REPORT AND
RECOMMENDATION

NOTE ON MOTION CALENDAR:
JANUARY 27, 2023

1 least some benefit to the SRKW from additional prey availability.” *Id.* at 34. But the scope of
2 that benefit is small in those times and those areas where prey is most valuable to SRKW, and
3 the benefit assumed by Plaintiff is an “oversimplification and overestimation.” Dkt. # 133-2
4 (Third Barre Decl.) ¶ 9. Viewed from the perspective of the expected prey reduction from
5 SEAK fisheries, NMFS estimated that all the SEAK fisheries would reduce SRKW prey
6 availability by an average of 0.5% in the coastal waters during the winter and an average of
7 1.8% in inland waters during the summer. *Id.*; see AR 47440-41, 47505. The reductions in prey
8 expected from the commercial troll fishery for Chinook salmon during the winter and summer
9 fisheries, which Plaintiff focuses on its remedy request, would be even lower, and thus the
10 benefit would be relatively small. This is especially true in light of the operation of the prey
11 increase program from 2020 to 2022, which represents “a certain and definite increase in prey . .
12 . available to the SRKW.” Dkt. # 144 at 31. That program is expected to provide additional prey
13 for SRKW over the next two years while NMFS completes new analyses responsive to the
14 Court’s merits decision. Thus, the Court can meet the mandate to protect species by allowing
15 fishing and the prey increase program to continue.

16 On the other side of the scale is a substantial economic impact that cannot be
17 overlooked. Vacating the ITS for the winter and summer commercial troll fisheries could lead
18 to the loss of \$29 million each year in an industry that employs hundreds of people. *See* Keaton
19 Decl. ¶¶ 31-40. This economic impact includes ex-vessel prices, which represents the value of
20 the commercial landings of fish, as well as other economic factors, such as skipper and crew
21 income and the secondary spending of that income. *Id.* Where the economic impact is severe,
22 courts have found that vacatur is not warranted. For example, in *California Communities*
23 *Against Toxics v. U.S. EPA*, 688 F.3d 989, 993-94 (9th Cir. 2012) (per curiam), the Ninth
24 Circuit determined that although the agency’s rule was invalid, remand without vacatur was
25 warranted in part because of the economic impacts of stopping a “billion-dollar venture
26 employing 350 workers.” Harking back to *Idaho Farm Bureau Federation v. Babbitt*, 58 F.3d
27 1392 (9th Cir. 1995), the court stated: “While we have only ordered remand without vacatur in
28 limited circumstances, if saving a snail warrants judicial restraint, *see Idaho Farm Bureau*, 58

STATE OF ALASKA THE LEGISLATURE

2023

Source
CSHJR 5(FSH)

**Legislative
Resolve No.**
3



Urging the United States Secretary of Commerce, the National Marine Fisheries Service, the Alaska Department of Fish and Game, and other federal and state agencies to defend the state's fisheries, including the Southeast Alaska troll fishery.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS commercial fishing is a mainstay of the state's economy and the largest private sector employer in the state; and

WHEREAS, in Southeast Alaska alone, the seafood industry directly employed 11,300 workers and provided \$653,000,000 in total economic output in 2019; and

WHEREAS the troll fleet is one of the largest fleets in the state and the largest fleet in Southeast Alaska, and, in 2019, approximately 1,450 fishers earned income directly from the fishery; and

WHEREAS state residents comprise 85 percent of the state's commercial troll permit holders, making it the highest level of local ownership of any major fishery in the state; and

WHEREAS commercial salmon trolling contributes to the economy of Southeast Alaska year-round, with winter, spring, and summer troll seasons sustaining employment in fishing, seafood processing, and fisheries-related industries; and

WHEREAS, when accounting for multiplier effects of the fishing, seafood processing, and fisheries-related industries, commercial trolling is one of the three most valuable commercial fisheries in Southeast Alaska and has a total annual economic impact of approximately \$85,000,000, as measured in terms of total output; and

WHEREAS, as compared to the costs of entry to other state fisheries, the affordability of the troll fishery provides an entry level opportunity for new commercial fishers, and, as a result, there are troll fishery permit holders in nearly all 33 communities in Southeast Alaska, all of which will suffer if the Southeast Alaska chinook troll fishery is closed; and

WHEREAS the Wild Fish Conservancy filed a lawsuit against the United States Secretary of Commerce and the National Marine Fisheries Service alleging that the Southeast Alaska chinook troll fishery authorized by the National Marine Fisheries Service is contributing to the extinction of an endangered population of southern resident killer whales; and

WHEREAS only two to three percent of the total Alaska catch is from the Puget Sound chinook salmon and lower Columbia River fall stocks, which constitute the most important stocks for southern resident killer whales, and the Alaska fishery catch is only a small portion of those stocks' runs; and

WHEREAS numerous studies have identified habitat loss and industrial activities in Puget Sound as factors negatively affecting southern resident killer whales; and

WHEREAS, while the population of southern resident killer whales has struggled, most of the northern and Alaska resident killer whale populations have at least doubled over the last 40 years; and

WHEREAS the Wild Fish Conservancy lawsuit has the potential to result in the closure of the Southeast Alaska troll fishery, despite the improbability of the closure resulting in meaningful benefits to southern resident killer whales; and

WHEREAS, if successful, the Wild Fish Conservancy lawsuit could affect other state fisheries by rescinding the state's delegated authority to manage and implement salmon fisheries in state water and in the exclusive economic zone off the shores of the state, requiring changes in the allocation of salmon under the Pacific Salmon Treaty and implementing new restrictions and closures in the state's fisheries;

BE IT RESOLVED that the Alaska State Legislature urges the National Marine

Fisheries Service to find a way to hold the Southeast Alaska troll fishery harmless and prioritize preparation of the necessary documents and processes to support the continuation of the Southeast Alaska winter and summer troll fisheries while the National Marine Fisheries Service prepares a new biological opinion; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the National Marine Fisheries Service and the Alaska Department of Fish and Game to commit the necessary resources to effectively defend the state's fisheries in present and future lawsuits, including the Wild Fish Conservancy lawsuit; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the state to work with the Alaska Congressional delegation to keep the Southeast Alaska troll fishery open should the court adopt the magistrate judge's recommendation that the troll fishery be closed.

COPIES of this resolution shall be sent to the Honorable Joseph R. Biden, President of the United States; the Honorable Kamala D. Harris, Vice President of the United States and President of the U.S. Senate; the Honorable Gina Raimondo, United States Secretary of Commerce; the Honorable Richard W. Spinrad, Ph.D., United States Under Secretary of Commerce for Oceans and Atmosphere and National Oceanic and Atmospheric Administration Administrator; Janet Coit, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration; the Honorable Doug Vincent-Lang, Commissioner, Alaska Department of Fish and Game; and the Honorable Lisa Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the Honorable Mary Peltola, U.S. Representative, members of the Alaska delegation in Congress.



SSRAA

Southern Southeast Regional Aquaculture Association, Inc.
14 Borch Street, Ketchikan, Alaska 99901
P: 907.225.9605 F: 907.225.1348

SSRAA Resolution on the Wild Fish Conservancy Lawsuit

Whereas the Southern Southeast Regional Aquaculture Association's mission is to enhance and rehabilitate salmon production in southern Southeast Alaska to the optimum social and economic benefit of salmon users; and

Whereas commercial fishing is a mainstay of Alaska's economy and the largest private sector employer in the state; and

Whereas the troll fleet is the second largest fleet in Alaska; and

Whereas 44% of the fishing income to trollers is derived from their Chinook catch; and

Whereas commercial salmon trolling is a year-round contributor to Southeast Alaska economy and sustains year-round employment in the fishing, processing, and support sector industries; and

Whereas including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the whole of Southeast annually, as measured in terms of total output; and

Whereas the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and,

Whereas the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries; and

Whereas the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries through effects on the Pacific Salmon Treaty, a new Biological opinion and the Section 7 take permit.

Whereas the communities of Southeast will suffer severe economic hardship if the Southeast troll fishery is closed.

Therefore, be it resolved that the Southern Southeast Regional Aquaculture Association urges in the strongest possible terms that:

NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and,

NMFS and ADFG commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and

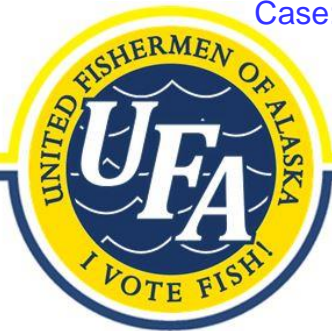
All necessary and available state, federal and private resources be made available to support lawsuit defendants and intervenors through all possible appeals; and

The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.


Susan Doherty

General Manager SSRAA

Approved: January 7, 2023



UNITED FISHERMEN OF ALASKA

Mailing Address: P.O. Box 20229, Juneau AK 99802-0229

Phone: (907) 586-2820

E-mail: ufa@ufa-fish.org **Website:** www.ufa-fish.org

UFA Resolution on the Wild Fish Conservancy Lawsuit

Whereas the United Fishermen of Alaska's mission is to promote and protect the common interest of Alaska's commercial fishing industry, as a vital component of Alaska's social and economic well-being; and

Whereas commercial fishing is a mainstay of Alaska's economy and the largest private sector employer in the state; and

Whereas the troll fleet is the second largest fleet in Alaska; and

Whereas 44% of the fishing income to trollers is derived from their Chinook harvest; and

Whereas commercial salmon trolling is a year-round contributor to Southeast Alaska economy and sustains year-round employment in the fishing, processing, and support sector industries; and

Whereas including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the Southeast economy annually, as measured in terms of total output; and

Whereas the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast winter and summer troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and,

Whereas the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries; and

Whereas the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries thru effects on the Pacific Salmon Treaty, a new Biological opinion and the Section 7 take permit; and

Whereas the communities of Southeast will suffer severe economic hardship if the Southeast troll fishery is closed.

Therefore, be it resolved that the United Fishermen of Alaska urges in the strongest possible terms that:

NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and,

NMFS and ADFG commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and

All necessary and available state, federal and private resources be made available to support lawsuit defendants and intervenors through all possible appeals; and

The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

Matt Alward

President, United Fishermen of Alaska

Approved: January 12, 2023

**CITY AND BOROUGH OF SITKA
RESOLUTION NO. 2023-02**

**A RESOLUTION OF THE CITY AND BOROUGH OF SITKA SUPPORTING THE
SOUTHEAST ALASKA TROLL FISHERY**

WHEREAS, commercial fishing is a mainstay of Sitka's economy and the largest private sector employer in the state; and

WHEREAS, the Southeast Alaska troll fleet is the second largest fleet in Alaska and the largest fleet in Southeast Alaska; and

WHEREAS, approximately 30% of the troll fleet is based in Sitka; and

WHEREAS, 60% of the winter chinook troll fishery catch and approximately 40% of the total Southeast troll catch is landed in Sitka; and

WHEREAS, commercial salmon trolling is a year-round contributor to Sitka's economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact in Sitka of approximately \$34 million annually, as measured in terms of total output; and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service (NMFS) threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

WHEREAS, the community of Sitka will suffer severe economic hardship if the Southeast troll fishery is closed.

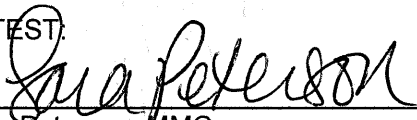
NOW, THEREFORE, BE IT RESOLVED that the Assembly of the City and Borough of Sitka urges in the strongest possible terms that:

1. NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and
2. NMFS and Alaska Department of Fish and Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular all the way to the highest court in the land; and
3. All necessary and available state, federal or private resources be made available to support lawsuit defendants and intervenors; and
4. The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska on this 24th day of January, 2023.


Kevin Mosher, Deputy Mayor

ATTEST:


Sara Peterson, MMC
Municipal Clerk

1st and final reading: 1/24/2023

Sponsors: Christianson / Ystad



Box 2196, Petersburg AK 99833 * (253) 279-0707 * usag.alaska@gmail.com * akgillnet.org

USAG'S MAIN PURPOSE IS TO PROTECT, SERVE AND ENHANCE SOUTHEAST ALASKA'S COMMERCIAL GILLNET FISHERY

January 24, 2023

Senator Dan Sullivan

302 Hart Senate Office Building

Washington, DC 20510

Dear Senator Sullivan,

United southeast Gillnetters are writing today to voice our support of the SEAK troll fleet in their efforts to counter the Wild Fish Conservancy lawsuit, which could result in the closure of the SEAK commercial troll fishery. The success of this lawsuit would set a precedence that could open the door to a plethora of lawsuits that could affect numerous Alaska fisheries. The extra-territorial aspects, and the fact that it would take precedent over the Pacific Salmon Commission Treaty is alarming.

The loss of the troll fishery would be a devastating blow to the economy of the region. Most of these troll dollars stay in state, as approximately 85% are Alaska residents and there are trollers in nearly every SE community. In 2022, commercial troll had an ex-vessel value of approximately \$35M and an average of \$85M in total SE economic output over the last several years. The region, and the state, will struggle mightily should this lawsuit move forward. The people here know it. Communities are considering donating public money to finance the defense fund. They realize the draconian impact this represents.

The State of Alaska has committed to fighting this lawsuit. At this time, it is unclear to us if NMFS intends to.

It's our ask today that you encourage NMFS to continue to:

- a) Appeal any decision that does not protect Alaska's sustainable troll fishery,
- b) Commit all necessary resources to timely National Marine Fisheries Service 2019 Biological Opinion (BiOp) revisions,
- c) Provide interim Endangered Species Act coverage to the Southeast Alaska troll fishery, if needed, while the BiOp is revised.

Please take the necessary steps to advise the NMFS it is of the utmost importance to do whatever is necessary to implement a temporary Incidental Take Statement that allows the troll fishery to remain open, while this lawsuit courses through the legal system. Our understanding is that this will allow them to fish until NMFS can produce a revised Biological Opinion.

United Southeast Alaska Gillnetters represents the interest of 474 SEAK permit holders, and is committed to preserving the economics of our fishery, the region, and the fishing industry in general. Our organization is community based throughout the region, with chapters in Ketchikan, Wrangell, Petersburg, Sitka, Juneau, and Haines. Thank you for your consideration of our request.

Sincerely,



Max Worhatch, Executive Director, USAG

Cc: Senator Lisa Murkowski
Representative Mary Peltola
Doug Vincent-Lang
Alaska Trollers Association

CITY OF PORT ALEXANDER

PO BOX 8068
PORT ALEXANDER, ALASKA 99836
907-568-2211
cityofportalexander@yahoo.com

RESOLUTION 23-02

A Resolution to support the Southeast Alaska Troll Fisheries

Whereas Southeast Alaska salmon trolling has historically been one of the main sources of Port Alexander's economic existence;

Whereas the community of Port Alexander will suffer severe economic hardship if the Southeast Alaska troll fishery is closed;

Whereas the Wild Fish Conservancy (WFC), a Seattle-based organization, has singled out the Southeast Alaska troll fishery in a lawsuit against National Marine Fisheries Service (NMFS) threatening to close the Southeast Alaska troll fishery despite that closure providing no meaningful benefit to the Southern Resident Killer Whales (SRKW);

Whereas the WFC lawsuit challenges NMFS's Biological Opinion regarding Southeast Alaska troll fishery and the impact of Washington's Chinook and Southern Resident Killer Whales (SRKW);

Whereas the Magistrate for the US Western Washington District Court recommendations in this lawsuit contradicts NMFS conclusion that the Incidental Take Permit (ITP) that allows Southeast Alaska's troll fishery to harvest Chinook year-round would not appreciably reduce the likelihood of both survival and recovery of the SRKW or destroy or adversely modify their designated critical habitat;

Whereas science tells us that cutting harvest is not going to be enough to restore Washington local Chinook populations and will do nothing to help SRKW;

Whereas SRKW are threatened by urbanization, toxic water pollutants and noise disturbance in their critical habitat and

Whereas fish managers recognize that continued disturbance and degradation

of habitat, not fisheries, are the primary problem limiting the viability of the Puget Sound Chinook; and, therefore be it

Resolved: That the City of Port Alexander urges the Magistrate take a hard look at the facts that Alaska Trollers Association has provided;

In the strongest possible terms consider the devastating economic impacts shutting down the Southeast Alaska troll fishery would have on many small Southeast Alaska communities; and, therefore be it further

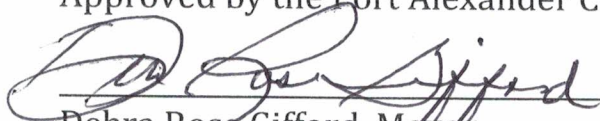
Resolved: That the City of Port Alexander urges the NMFS to prioritize preparations of the necessary documents and processes to support the continuation of the Southeast Alaska troll fishery;

That NMFS and Alaska Department of Fish and Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast Alaska troll fishery in particular;

That the State of Alaska and Federal resources be made available to support lawsuit defendants and intervenors through all possible appeals and

The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

Approved by the Port Alexander City Council on January 25, 2023


Debra Rose Gifford, Mayor


Shanna Smith, City Clerk

The Honorable Rick Larsen
 Wall Street Building
 2930 Wetmore Avenue, Suite 9F
 Everett, WA 98201

January 30, 2023

Dear Representative Larsen,

We are writing on behalf of the Working Waterfront Coalition of Whatcom County (the Coalition) in reference to the Wild Fish Conservancy's misguided lawsuit against NMFS and Alaska's small boat hook-and-line troll fishery. This lawsuit could have a devastating effect on Southeast Alaska's fishing fleet, processors, support sector, and the health of these economies. The Coalition urges you to encourage and support NOAA Fisheries (NMFS) as it may:

1. Appeal any decision that does not protect Alaska's sustainable troll fishery,
2. Commit all necessary resources to timely BiOp revisions,
3. Provide interim ESA coverage to the SE troll fishery, if needed, while the BiOp is revised.

The Coalition, a 501c6 non-profit, promotes the vitality and economic benefits of our working waterfronts for the people of Whatcom County, Washington State. With over 130 member companies, organizations, fishing vessels, and individuals from the local maritime economy, we are working hard to accomplish this mission. See: www.whatcomworkingwaterfront.org. Coalition members include:

- a number of trollers homeported in Bellingham and fishing in the SE Alaska fishery
- processors including [Seafood Producers Cooperative](#) and [Icy Strait Seafoods](#) who process much of this troll-caught salmon.
- tender vessels that transport the catch from fishing grounds to processing plants
- a myriad of marine service companies that supply, build, repair, and service these hook-and-line boats.

The **economic impact** of the troll fleet to Southeast Alaska is undisputed. The troll fleet has an annual economic impact on Southeast Alaska of approximately \$85 million, as measured in total output. Trolling is a pillar in Southeast Alaska's economy, is vital to the region's economy, and to the vitality of these small rural communities.

Additionally, the troll fleet has advocated continuously for **salmon habitat protection** and **sustainable fisheries management**. This lawsuit actually detracts from the real threats the orcas face: industrial toxins, water pollution, vessel traffic, and noise disturbance. Granted these threats require many years of concentrated and dedicated mitigation efforts before realizing a clear Return-on-Investment (ROI). In contrast, the misguided Wild Fish Conservancy lawsuit employs sensational public attention and further detracts from the real hard work of addressing the major issues.

Additionally, the recreational fisheries in BC and Washington State that catch king salmon in the area also play a significant role in the health of these king salmon runs. Focusing solely on the commercial

Continued -

troll fleet is not helpful to solving the issue. The Southeast Alaska troll fishery, which operates hundreds of miles away from the orca's habitat, is a very small factor in the orca's plight.

To reiterate: Closing Alaska's troll fishery would be disastrous for both Alaskan and Washington fishing families, as well as countless extended local businesses – yet provides no meaningful benefit to the Southern Resident orcas.

We ask that you support a NMFS appeal of any decision that does not protect Alaska's sustainable troll fishery, commit all necessary resources to timely Biological Opinion revisions, and support the provision of interim ESA coverage to the Southeast Alaska troll fishery, if needed, while NMFS's Biological Opinion is revised, to ensure that the 2023 salmon season operates uninterrupted and with its historical opening date.

Please feel free to contact us with any questions or concerns. We thank you for your concerted attention to remaining attuned to this issue and its implications for both Washington and Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pete Granger". The signature is fluid and cursive, with the first name "Pete" and last name "Granger" clearly distinguishable.

Pete Granger
Government Relations Committee Chair
Board of Directors
Working Waterfront Coalition of Whatcom County
360-223-3995

RESOLUTION 23-18**A Resolution of the Klawock Cooperative Association opposing The Wild Fish Conservancy Lawsuit to close 2023 winter/summer commercial troll fishery in Southeast Alaska**

WHEREAS, the Klawock Cooperative Association is a federally recognized Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) and May 1, 1936 (49 Stat. 1250); and

WHEREAS, the Klawock Cooperative Association (hereinafter "KCA" is governed by a Council of elected representatives comprised of a Tribal President and 650 members who act in accordance with the powers granted to it by its Constitution and By-Laws (Ratified on October 04, 1938); and

WHEREAS, the Klawock Cooperative Association opposes the Wild Fish Conservancy's lawsuit that challenges the National Marine Fisheries Service (NMFS) *Biological Opinion* regarding Southeast Alaska's fisheries and the impact of the fisheries on the state of Washington's Chinook and Southern Resident Killer whales (SRKW), and

WHEREAS, the commercial fishing industry is a mainstay of Alaska's economy and the largest private sector employer in the state of Alaska; and

WHEREAS, the troll fleet is the second largest fleet in Alaska with Chinook harvest being 44% of their fishing income, and

WHEREAS, commercial salmon trolling is a year-round contributor to Southeast Alaska economy and sustains year-round employment in the fishing, processing, and support sector industries, and

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$ 85 million for the Southeast Alaska economy annually, as measured in terms of total output, and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast winter and summer troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales, and

WHEREAS, the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries, and

The Klawock Cooperative Association, ("the Tribe"), is a duly constituted Indian Tribe organized pursuant to the authority of Section 16 of the Act of Congress of June 18, 1934 (48 Stat. 984), amended May, 1 1936 (49 Stat. 1250) The Klawock Cooperative Association Tribal Council is a duly elected governing body of the Tribe, authorized to act by and on the behalf of its members.

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries through effects on the Pacific Salmon Treaty, a new Biological opinion and the Section 7 take permit, and

WHEREAS, the communities of Southeast Alaska will suffer severe economic hardship if the Southeast troll fishery is closed.

WHEREAS, Klawock Cooperative Association urges that:

- National Marine Fisheries Service prioritize preparation of the necessary documents and processes to support prosecution of the Southeast Alaska winter and summer troll fisheries, and
- National Marine Fisheries Service and Alaska Department of Fish & Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast Alaska troll fishery, and
- All necessary and available state, federal, and private resources be made available to support lawsuit defendants and intervenors through all possible appeals, and
- The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misguided lawsuits, and

NOW THEREFORE BE IT RESOLVED, that the **Klawock Cooperative Association** opposes the Wild Fish Conservancy lawsuit to close the 2023 winter and summer troll fishery in Southeast Alaska.

CERTIFICATION

The forgoing Resolution 23-18 was duly adopted at a Regular council meeting held this 31st day of January 2023, by the Klawock Cooperative Association by a quorum vote

8 Yes

0 No

1 Abstain

Patricia Cottle

Patricia Cottle, President Date

Patricia Rowan 2/3/23

Patricia Rowan, Secretary Date

The Klawock Cooperative Association ("the Tribe"), is a duly constituted Indian Tribe organized pursuant to the authority of Section 16 of the Act of Congress of June 18, 1934 (48 Stat. 984), amended May, 1 1936 (49 Stat. 1250) The Klawock Cooperative Association Tribal Council is a duly elected governing body of the Tribe, authorized to act by and on the behalf of its members.

Become a Member Today!
<https://www.seiners.net/membership/>

**Southeast Alaska Seiners
Association
PO Box 6238
Ketchikan, AK 99901**



January 31, 2023

Senator Lisa Murkowski
522 Hart Senate Office Building
Washington, DC 20510

Senator Dan Sullivan
302 Hart Senate Office Building
Washington, DC 20510

Representative Mary Peltola
153 Cannon HOB
Washington, DC 20515

Dear Senator Murkowski, Senator Sullivan, and Representative Peltola,

The Southeast Alaska Seiners Association (SEAS) is writing to voice our support of the Southeast Alaska troll fleet in their efforts to counter the lawsuit brought by the Wild Fish Conservancy (a conservation organization based in Washington State) against the National Marine Fisheries Service (NMFS).

This lawsuit specifically attacks Alaska's management of its Chinook salmon fisheries under the Pacific Salmon Treaty and could result in the closure of the winter and summer Southeast Alaska commercial troll fishery.

The lawsuit argues that Alaska fisheries threaten the survival of several ESA-listed Chinook salmon stocks in Washington and Oregon, and thus, the endangered Southern Resident Killer Whales that depend on Chinook salmon for food. Judge Jones supported their claims. This

lawsuit does not attack similar fisheries that occur off the coasts of Washington and Oregon despite similar impacts.

Wild Fish Conservancy's statements also make no mention of challenges currently faced by Chinook salmon and Southern Resident Killer Whales on the West Coast. These challenges range from warming and acidification of ocean waters, chemical pollution, acoustic and physical disturbance from vessels and other noise sources, and dams blocking salmon's return to natal streams to spawn.

SEAS is asking our Washington D.C. delegation and State officials to strongly advise NMFS to quickly implement a Temporary Incidental Take Statement that allows the Alaska troll fishery to remain open while this lawsuit progresses through the legal system. This will allow trollers to fish until NMFS can produce a revised Biological Opinion.

SEAS believes in the continued harvest of salmon which has been responsibly and sustainably managed by the Alaska Department of Fish and Game (ADFG) since 1959.

Sincerely,

Phil Doherty – Executive Director SEAS

Cc: Alaska Governor Mike Dunleavy

ADF&G Commissioner Doug Vincent-Lang

ADF&G Extended Jurisdiction Manager Dani Evenson

Alaska Trollers Association Amy Daugherty, Executive Director

**CITY AND BOROUGH OF YAKUTAT, ALASKA
RESOLUTION 23-392**

**A RESOLUTION OF THE CITY AND BOROUGH OF YAKUTAT, ALASKA ASSEMBLY
SUPPORTING THE ALASKA TROLL FISHERY**

WHEREAS, Commercial fishing is a mainstay of the Yakutat economy and the largest private sector employer in the state, and

WHEREAS, Yakutat \$15.9 Million in commercial fish landing in 2021 made it the 68th highest ranking port in the United States, and

WHEREAS, Yakutat residents hold 74 hand and power troll permits, and

WHEREAS, Commercial salmon trolling is a year-round contributor to the Yakutat's economy and sustains year-round employment in the fishing and support sector industries, and

WHEREAS, 44% of the fishing income to trollers is derived from their Chinook catch, and

WHEREAS, Approximately 15% of Alaska's winter troll Chinook catch occurs in or near Yakutat, and

WHEREAS, Including fishing, processing and all related multiplier effects, the troll fleet has a total economic impact in Yakutat of approximately \$1.3 million annually, and

WHEREAS, The Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries, and


WHEREAS, The community of Yakutat will suffer severe hardship if the Alaska Troll Fishery is closed, now

THEREFORE BE IT RESOLVED, That the Assembly of the City and Borough of Yakutat urges in the strongest possible terms that:

- 1) The National Marine Fisheries Service (NMFS) prioritize preparation of the necessary documents to support preservation of the winter and summer troll fisheries, and
- 2) NMFS and the Alaska Department of Fish and Game commit the necessary resources to effectively defend Alaska's fisheries and particularly the troll fishery, and
- 3) All Necessary and available state, federal, and private resources be made available to support lawsuit defenders and intervenors, and
- 4) The State of Alaska works with the Alaska Congressional Delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

**PASSED AND APPROVED BY THE CITY AND BOROUGH OF YAKUTAT THIS 2nd DAY
OF February, 2023.**

ATTEST:


TINA RYMAN, CLERK




CINDY BREMNER, MAYOR

**PETERSBURG BOROUGH
RESOLUTION #2023-02**

**A RESOLUTION SUPPORTING THE SOUTHEAST ALASKA TROLL FISHERY AND
URGING THE NATIONAL MARINE FISHERIES SERVICE AND THE ALASKA
DEPARTMENT OF FISH & GAME TO COMMIT THE NECESSARY RESOURCES TO
DEFEND ALASKA'S FISHERIES**

WHEREAS, commercial fishing is a mainstay of Petersburg's economy and the largest private sector employer in the State of Alaska; and

WHEREAS, the Southeast Alaska troll fleet is the second largest fleet in Alaska with 44% of fishing income to trollers being derived from their Chinook catch; and

WHEREAS, approximately 22% of the Southeast Alaska troll fleet permits are home-ported in Petersburg; and

WHEREAS, 133 unique troll permits reported Petersburg as port of landing in the 2021 troll fish ticket records; and

WHEREAS, 14% of the total 2021 winter chinook troll fishery catch was landed in Petersburg; and

WHEREAS, commercial salmon trolling is a year-round contributor to Petersburg's economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact in Petersburg of approximately \$4.25 million annually, as measured in terms of total output; and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service (NMFS) threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast fisheries; and

WHEREAS, the community of Petersburg will suffer severe economic hardship if the Southeast troll fishery is closed.

THEREFORE BE IT RESOLVED that the Assembly for the Petersburg Borough strongly urges that:

1. NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and
2. NMFS and Alaska Department of Fish & Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and
3. All necessary and available state, federal or private resources be made available to support lawsuit defendants and intervenors; and

4. The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

PASSED AND APPROVED by the Petersburg Borough Assembly on February 6, 2023..

ATTEST:


Debra K. Thompson, Borough Clerk


Mark Jensen, Mayor



“Resolution on the Wild Fish Conservancy Lawsuit”

WHEREAS commercial fishing is a mainstay of Alaska’s economy and the largest private sector employer in the state; and

WHEREAS the troll fleet is the second largest fleet in Alaska with 44% of the fishing income to trollers being derived from their Chinook catch; and

WHEREAS commercial salmon trolling is a year-round contributor to Southeast Alaska economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the whole of Southeast annually, as measured in terms of total output; and

WHEREAS the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and,

WHEREAS the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries; and

WHEREAS the communities of Southeast will suffer severe economic hardship if the Southeast troll fishery is closed.

WHEREAS Southeast Conference recognizes the importance of subsistence use of the Chinook fisheries for all Alaskans; and

WHEREAS the cultural, traditional and ongoing importance of marine uses of the indigenous people of Alaska; and

Therefore, be it resolved that Southeast Conference urges in the strongest possible terms that:

NMFS prioritize preparation of the necessary documents and processes to support defense of the Southeast winter and summer troll fisheries; and,

NMFS and ADFG commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and

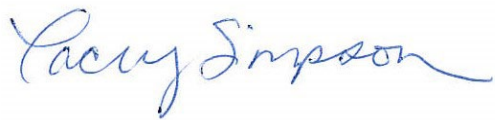
All necessary and available state, federal and private resources be made available to support lawsuit defendants and intervenors through all possible appeals; and

Therefore, be it further resolved, that:

Southeast Conference encourages the State of Alaska to work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

Adopted by the Southeast Conference on

Witness by:



Lacey Simpson
President

Attest:



Robert Venables
Executive Director



Armstrong-Keta, Inc.
PO Box 1075, Sitka, AK, 99835
Phone: (907)586-3443
Email: aki@ak.net

AKI Resolution on the Wild Fish Conservancy Lawsuit

Whereas Armstrong-Keta, Inc.'s mission is to enhance and support the commercial and sport fishing fleets, the rural communities, and the fishing-related businesses of southeast Alaska with research into salmon enhancement and the production of additional salmon; and

Whereas commercial fishing is a mainstay of Alaska's economy and the largest private sector employer in the state; and

Whereas the troll fleet is the second largest fleet in Alaska; and

Whereas 44% of the fishing income to trollers is derived from their Chinook catch; and

Whereas commercial salmon trolling is a year-round contributor to Southeast Alaska economy and sustains year-round employment in the fishing, processing, and support sector industries; and

Whereas including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the whole of Southeast annually, as measured in terms of total output; and

Whereas the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

Whereas the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries; and

Whereas the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries thru effects on the Pacific Salmon Treaty, a new Biological opinion and the Section 7 take permit; and

Whereas the communities of Southeast will suffer severe economic hardship if the Southeast troll fishery is closed.

Therefore, be it resolved Armstrong-Keta, Inc. urges in the strongest possible terms that:

NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and

NMFS and ADFG commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and

All necessary and available state, federal and private resources be made available to support lawsuit defendants and intervenors through all possible appeals; and

The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

Bryanna Torgeson
General Manager AKI

Approved: February 8, 2023

Killer Whale Lawsuit Against SE Trollers

Whereas commercial fishing is a mainstay of Alaska's economy and the largest private sector employer in the state; and

Whereas the troll fleet is the second largest commercial fleet in Alaska; and

Whereas between 2000-2018, the troll fleet landed on average 3.02 million pounds of Chinook salmon each year at an average value of \$11.7 million; and

Whereas between 2000-2018, Chinook accounted for 44% of the troll fleet's annual ex-vessel earnings on average and in 2015 made up 58% of the fleet's income; and

Whereas approximately 1,450 fishermen/women earn income directly from the troll fishery, including skippers (permit holders) and crew, with total direct, indirect and induced labor income estimated at \$28.5 million; and

Whereas, in 2018, the residents of the Prince of Wales Island-Hyder Census Area (Craig, Klawock, Thorne Bay, Coffman Cove, Hydaburg, Metlakatla, Kake and other communities) landed 17% of the Alaska resident troll Chinook harvest and 15% of the total troll Chinook harvest value; and

Whereas in 2021, Craig ranked 30th in the nation for commercial seafood landings (21 million pounds) and 52nd in value (\$22.7 million), out of 137 of the nation's top fishing ports; and

Whereas commercial salmon trolling is a year-round contributor to the Southeast Alaska economy and sustains year-round employment in the fishing processing and support sector industries; and

Whereas including fishing, processing and all retailer multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the whole of Southeast annually, as measured in terms of total output; and

Whereas the lawsuit files by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Alaska winter and summer troll fisheries despite those closures providing no meaningful benefits to Southern Resident Killer Whales; and

Whereas the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries; and

Whereas the communities of Southeast will suffer severe economic hardship if the troll fishery is closed; then

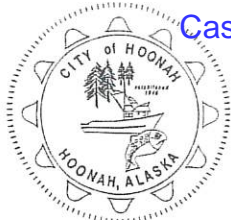
Therefore, be it resolved that the ADFG Klawock Advisory Committee urge in the strongest possible terms that:

NMFS and ADFG commit the necessary resources to effectively defend Alaska's fisheries and the troll fishery in particular; and

All necessary and available state, federal or private resources be made available to support lawsuit defendants and intervenors; and

The State of Alaska work with Alaska's Department of Law and the Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

ADFG Klawock Advisory Committee



City of Hoonah | P.O. Box 360 | 300 Front Street | Hoonah, AK 99829
Phone: (907) 945-3663 Fax: (907) 945-3445

RESOLUTION No. 23-02-02

A RESOLUTION SUPPORTING THE SOUTHEAST ALASKA TROLL FISHERY AND URGING THE NATIONAL MARINE FISHERIES SERVICE AND THE ALASKA DEPARTMENT OF FISH & GAME TO COMMIT THE NECESSARY RESOURCES TO DEFEND ALASKA'S FISHERIES

WHEREAS, commercial fishing is a mainstay of Hoonah's economy and the largest private sector employer in the State of Alaska; and

WHEREAS, the Southeast Alaska troll fleet is the second largest fleet in Alaska with 44% of fishing income to trollers being derived from their Chinook catch; and

WHEREAS, commercial salmon trolling is a year-round contributor to Hoonah's economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service (NMFS) threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast fisheries; and

WHEREAS, the community of Hoonah will suffer severe economic hardship if the Southeast troll fishery is closed.

THEREFORE BE IT RESOLVED that the City Council for the City of Hoonah strongly urges that:

1. NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and
2. NMFS and Alaska Department of Fish & Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and
3. All necessary and available state, federal or private resources be made available to support lawsuit defendants and intervenors; and


Mayor Gerald Byers



SIGNED AND ATTESTED TO THIS 14TH DAY OF FEBRUARY 2023.


City Clerk Jennifer Bidiman

ATTEST

**CITY OF CRAIG
RESOLUTION 23-03**

A RESOLUTION ADVOCATING ON THE WILD FISH CONSERVANCY LAWSUIT

WHEREAS, commercial fishing is a mainstay of Alaska's economy and the largest private sector employer in the state; and,

WHEREAS, commercial fishing has significant historical and economic significance in Craig; and,

WHEREAS, the troll fleet is the second largest commercial fleet in Alaska; and,

WHEREAS, between 2000 – 2018, the troll fleet land on average 3.02 million pounds of Chinook salmon each year at an average value of \$11.7 million; and,

WHEREAS, approximately 1,450 fishermen earn income from the troll fishery, including skippers, (permit holders) and crew with a total direct, indirect, and labor income estimated at \$28.5 million; and,

WHEREAS, in 2018, the residents of the Prince of Wales-Hyder Census Area (Craig, Klawock, Thorne Bay, Coffman Cove, Hydaburg, Metlakatla, Kake, and other communities) landed 17% of the Alaska resident troll Chinook harvest and 15% of the total troll Chinook harvest value; and,

WHEREAS, in 2021 Craig ranked 30th in the nation for commercial seafood landings (21 million pounds) and 52nd in value (\$22.7 million), out of 137 of the nation's top fishing ports; and,

WHEREAS, commercial salmon trolling is a year-round contributor to Southeast Alaska and Craig's economy and sustains year-round employment in the fishing, processing, and support sector industries; and,

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the whole of Southeast annually, as measured in terms of total output; and,

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close Alaska's winter and summer troll fisheries despite those closure providing no meaningful benefits to Southern Resident Killer Whales; and,

WHEREAS, the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries; and,

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries; and,

City of Craig
Resolution 23-03
Page 2

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to have catastrophic impacts to the economy and quality of life in Craig; and,

NOW, THEREFORE, BE IT RESOLVED that the City of Craig, Alaska urges in the strongest possible terms that:

1. NMFS prioritize preparation of the necessary documents and processes to support Alaska's troll fisheries.
2. NMFS and the Alaska Department of Fish and Game commit the necessary resources to effectively defend Alaska's fisheries and the troll fishery in particular.
3. All necessary available state, federal and private resources be made available to support lawsuit defendants and intervenors through all possible appeals.

BE IT FURTHER RESOLVED the City of Craig, Alaska encourages the State of Alaska to work with Alaska's Department of Law and Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits

This resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by a duly constituted quorum of the city council this 15th day of February 2023.


MAYOR TIM O'CONNOR


KECIA WEATHERWAX, CITY CLERK



CITY OF KETCHIKAN, ALASKA**RESOLUTION NO. 23-2874****A RESOLUTION OF THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA OPPOSING THE WILD FISH CONSERVANCY LAWSUIT AND PROTECTING THE SOUTHEAST ALASKA CHINOOK SALMON TROLL FISHERY FROM CLOSURE; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the Ketchikan City Council and community of Ketchikan recognize that commercial fishing has long provided an economic backbone for Alaska and is the largest private sector employer in the state providing year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplier effects, the salmon troll fleet has a total economic impact of approximately \$85 million for the Southeast region annually, as measured in terms of total output; and

WHEREAS, the troll fishing fleet is the second largest fleet in Alaska with 44% of the fishing income to trollers derived from Chinook salmon catches; and

WHEREAS, recognize the importance of the hatchery systems throughout Southeast Alaska including the Southern Southeast Regional Aquaculture Association (SSRAA) in their efforts to enhance and rehabilitate salmon production in the region; and

WHEREAS, a pending lawsuit filed by the Wild Fish Conservancy in the Federal District Court in Washington state (Docket No. C20-417-RAJ, WAWD) challenges the National Marine Fisheries Service fishery management plan and seeks the closure of the Southeast troll fishery in a claimed effort to provide measurable ecological relief to the endangered Southern Resident Killer Whales located off the Washington and Oregon coasts; and

WHEREAS, the Wild Fish Conservancy has pledged to work to eliminate mixed stock fisheries and to eliminate hatcheries throughout Southeast Alaska, and the pending litigation has the potential to impact other Southeast fisheries through impacts on the Pacific Salmon Treaty, and the Section 7 troll take permit; and

WHEREAS, the communities of Southeast will suffer severe economic hardship and threatens subsistence use of Chinook fisheries if the pending litigation results in the wholesale closure of the Southeast troll fishery.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Ketchikan, Alaska as follows:

Section 1: The City of Ketchikan urges the National Marine Fisheries Service (NMFS) to commit all necessary resources to defend its troll fishery management efforts in Alaska and to strenuously oppose any effort toward a wholesale closure of the Southeast Alaska winter and summer troll fisheries.

Section 2: The City of Ketchikan supports the (NMFS) and Alaska Department of Fish and Game (ADF&G) commitment to provide necessary resources to defend Southeast Alaska's hatchery system and troll fisheries.

Section 3: The City of Ketchikan urges all state and local governmental bodies to work with Alaska's congressional delegation to protect fisheries from lawsuits that threaten the region's economic, cultural, and social livelihood.

Section 4: This resolution shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the City Council for the City of Ketchikan on this 16th day of February, 2023.



Dave Kiffer, Mayor

ATTEST:



Kim Stanker, City Clerk



City of Pelican

BOX 737 - PELICAN, ALASKA 99832 - PHONE: 735-2202/2203 - FAX: 735-2258 - EMAIL: cityhall@pelican-city.org - WEBSITE: www.pelican.net

EQUAL OPPORTUNITY EMPLOYER

CITY OF PELICAN

RESOLUTION NO. 2023-3

A RESOLUTION OF THE CITY OF PELICAN SUPPORTING THE SOUTHEAST ALASKA TROLL FISHERY AND ASKING FOR IMMEDIATE ACTION AGAINST THE WILD FISH CONSERVANCY LAWSUIT

WHEREAS, commercial fishing is a mainstay of Pelican's economy and the largest private sector employer in the state; and

WHEREAS, the Southeast Alaska troll fleet is the second largest fleet in Alaska and the largest fleet in Southeast Alaska; and

WHEREAS, 44% of the fishing income to trollers is derived from Chinook catch; and

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$85 million for the whole of Southeast annually, as measured in terms of total output; and,

WHEREAS, commercial salmon trolling is a year-round contributor to Pelican's economy; and

WHEREAS, Shared Fisheries Business Tax contributions to the City of Pelican have been steadily increasing to over \$36,000 for the last fiscal year; and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service (NMFS) threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast fisheries through effects on the Pacific Salmon Treaty, a new Biological opinion and the Section 7 take permit; and

WHEREAS, the community of Pelican will suffer severe significant adverse economic hardship if the Southeast troll fishery is closed.

NOW, THEREFORE, BE IT RESOLVED that the City of Pelican urges in the strongest possible terms that:

1. NMFS prioritize preparation of the necessary documents and processes to support prosecution of the Southeast winter and summer troll fisheries; and
2. NMFS and Alaska Department of Fish and Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular all the way to the highest court in the land; and
3. All necessary and available state, federal or private resources be made available to support lawsuit defendants and intervenors; and
4. The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

PASSED, APPROVED AND ADOPTED THIS ___16th___ DAY OF FEBRUARY 2023.

Patricia Phillips

Signed:

Patricia Phillips, Mayor

Latieca Stewart

Attest:

Latieca Stewart, City Clerk

CITY AND BOROUGH OF WRANGELL, ALASKA

RESOLUTION No. 02-23-1756

A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, SUPPORTING THE ALASKA TROLLERS ASSOCIATION AGAINST A LAWSUIT TO STOP THE CHINOOK SALMON FISHERY IN SOUTHEAST ALASKA

WHEREAS, Commercial fishing is a mainstay of Wrangell's economy and the largest private sector employer in the state; and

WHEREAS, the troll fleet is the second largest fleet in Alaska; and

WHEREAS, Commercial salmon trolling is a year-round contributor to Wrangell's economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of \$85 million for the whole of Southeast annually, as measured in terms of total output; and

WHEREAS the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

WHEREAS the community of Wrangell will suffer severe economic hardship if the Southeast troll fishery is closed; and

NOW WHEREAS BE IT RESOLVED THAT THE WRANGELL BOROUGH ASSEMBLY URGES IN THE STRONGEST POSSIBLE TERMS THAT:


Section 1. NMFS prioritize preparation of the necessary documents and process to support prosecution of the Southern Southeast winter and summer troll fisheries; and

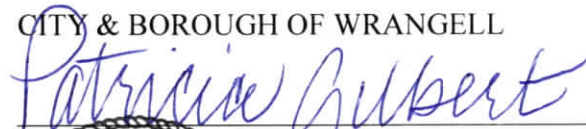
Section 2. NMFS and ADFG commit the necessary resources to effectively defend Alaska's fisheries and the Southeast troll fishery in particular; and

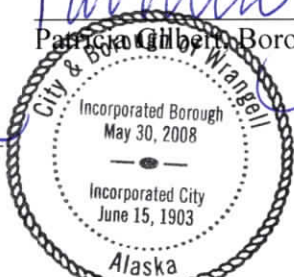
Section 3. All necessary and available state, federal, or private resources be made available to support lawsuit defendants and interveners; and

Section 4. The State of Alaska work with Alaska's Congressional Delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

PASSED AND APPROVED BY THE ASSEMBLY OF THE CITY & BOROUGH OF WRANGELL, ALASKA THIS 17th DAY OF FEBRUARY 2023.

ATTEST: 
Kim Lane, MMC, Borough Clerk


Patricia Gilbert, Borough Mayor



Sitka Fish & Game Advisory Committee

Heather Bauscher, Chair
224 Observatory Street, Sitka, AK 99835

WHEREAS, the Sitka Fish & Game Advisory Committee (Sitka AC) is a group of 17 Sitkans representing a diversity of users of local natural resources including Power Trollers, Hand Trollers, Charter fishermen, Resident Sportfishermen, Fish Processors, Conservationists, Longliners, Seiners, Hunters, Guides, and Trappers, and

WHEREAS the Sitka AC is directed by 5 AAC 96.050 to provide a local forum for fish and wildlife conservation and use, and to cooperate and consult with interested persons and organizations, including government agencies, and

WHEREAS commercial fishing is a mainstay of Sitka's economy and the largest private sector employer in the state; and

WHEREAS, the Alaska troll fishery's 1,500 permit holders includes more Alaskans than any other fishery

WHEREAS, approximately 30% of the troll fleet is based in Sitka; and

WHEREAS, 60% of the winter chinook troll fishery catch and approximately 40% of the total Southeast troll catch is landed in Sitka; and

WHEREAS, commercial salmon trolling is a year-round contributor to Sitka's economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total annual economic impact of approximately \$34 million in Sitka, and more than \$80M statewide as measured in terms of total output; and

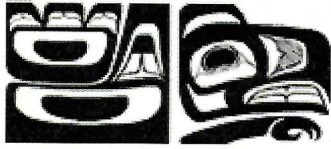
WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service (NMFS) threatens to close the Southeast troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales; and

WHEREAS, the community of Sitka will suffer severe economic hardship if the Southeast troll fishery is closed.

NOW, THEREFORE, BE IT RESOLVED that the Sitka AC urges in the strongest possible terms that:

1. NMFS prioritize preparation of the necessary documents and processes to support prosecution of the winter and summer Alaska troll fisheries; and
2. NMFS and Alaska Department of Fish and Game commit the necessary resources to effectively defend Alaska's fisheries and the troll fishery in particular all the way to the highest court in the land; and
3. All necessary and available state, federal or private resources be made available to support lawsuit defendants and intervenors; and
4. The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misdirected or malicious lawsuits.

Heather Bauscher, Chair
Sitka Fish & Game Advisory Committee



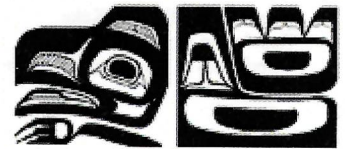
Organized Village of Kake

P.O. Box 316

Kake, Alaska 99830-0316

Telephone 907-785-6471

Fax 907-785-4902/www.kake-nsn.gov



(Federally Recognized Tribal Government serving the Kake, Alaska area)

Resolution No. 2023- 04 - Organized Village of Kake opposing The Wild Fish Conservancy Lawsuit to close 2023 winter/summer commercial troll fishery in Southeast Alaska

- WHEREAS, the Organized Village of Kake(hereinafter OVK) is a federally recognized Indian Tribe under federal law and is empowered under its Constitution and By-Laws to execute agreements and contracts with the United States to benefit its members; and,
- WHEREAS, OVK is organized pursuant to the authority of the Federal Indian Reorganization Acts(hereinafter IRA) of 1934 and 1936 with IRA Council as the duly-elected Governing body formed under its Constitution and By-Laws; and,
- WHEREAS, the OVK opposes the Wild Fish Conservancy's lawsuit that challenges the National Marine Fisheries Service (NMFS) Biological Opinion regarding Southeast Alaska's fisheries and the impact of the fisheries on the state of Washington's Chinook and Southern Resident Killer whales (SRKW), and
- WHEREAS, the commercial fishing industry is a mainstay of Alaska's economy and the largest private sector employer in the state of Alaska; and
- WHEREAS, the troll fleet is the second largest fleet in Alaska with Chinook harvest being 44% of their fishing income, and
- WHEREAS, commercial salmon trolling is a year-round contributor to Southeast Alaska economy and sustains year-round employment in the fishing, processing, and support sector. industries, and
- WHEREAS, including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact of approximately \$ 85 million for the Southeast Alaska economy annually, as measured in terms of total output, and
- WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the National Marine Fisheries Service threatens to close the Southeast winter and summer troll fishery despite that closure providing no meaningful benefits to Southern Resident Killer Whales, and
- WHEREAS, the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries, and
- WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast Fisheries through effects on the Pacific Salmon Treaty, a new biological opinion and the Section 7 take permit, and

Organized Village of Kake
Resolution No. 2023-04:
Opposition to WFC Lawuit re: king salmon
Page 2

WHEREAS, the communities of Southeast Alaska will suffer severe economic hardship if the Southeast troll fishery is closed.

WHEREAS, OVK urges that:

- National Marine Fisheries Service prioritize preparation of the necessary documents and processes to support prosecution of the Southeast Alaska winter and summer troll fisheries, and
- National Marine Fisheries Service and Alaska Department of Fish & Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast Alaska troll fishery, and
- All necessary and available state, federal, and private resources be made available to support lawsuit defendants and intervenors through all possible appeals, and
- The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misguided lawsuits, and

BE IT FURTHER RESOLVED, that OVK opposes the Wild Fish Conservancy lawsuit to close the 2023 winter and summer troll fishery in Southeast Alaska.

CERTIFICATION

This resolution was duly adopted as an IRA Council Meeting this 23rd day of February 2023, by quorum of 7 (includes president as non-voting chairperson except in case of tie vote) with 6 yes votes, 0 no votes, and 0 abstaining.

Joe Jackson
Joe Jackson, President

Rohi Ross
Attested by

Presented by: Triem
Presented: 02/27/2023
Drafted by: R. Palmer III

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 3023(b)

A Resolution of the City and Borough of Juneau Opposing the Wild Fish Conservancy Lawsuit and Protecting the Southeast Alaska Troll Fishery from Closure.

WHEREAS, commercial fishing is a mainstay of Alaska's economy, the largest private sector employer in the state, and sustains year-round employment in the fishing, processing, and support sector industries in Southeast Alaska; and

WHEREAS, the troll fleet is the second largest fleet in Alaska, and trollers derive an estimated 44% of their income from the Chinook catch; and

WHEREAS, commercial salmon trolling is a year-round contributor to the Southeast Alaska economy and sustains year-round employment; and

WHEREAS, there are approximately 581 fishing and seafood processing jobs in Juneau that represent approximately \$27.4 million in wages, which includes commercial salmon trollers and processors that depend on Chinook salmon; and

WHEREAS, the troll fleet, including fishing, processing, and all related multiplier effects, has a total annual economic impact of approximately \$85 million across Southeast Alaska; and

WHEREAS, a lawsuit, *Wild Fish Conservancy v. Rumsey et al.*, in the Western District of Washington State Federal Court (No. C20-417-RAJ-MLP) challenges the National Marine Fisheries Service fishery management plan and seeks the closure of the Southeast troll fishery—except from May 1 through June 30—in an effort to provide more Chinook salmon to the endangered Southern Resident killer whales located in the Pacific Northwest; and

WHEREAS, many communities of Southeast will suffer severe economic hardship if the pending litigation results in the closure of the Southeast troll fishery.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. The City and Borough of Juneau urges the National Marine Fisheries Service (NMFS) to prioritize preparation of the necessary documents and processes to support continuation of the Southeast winter and summer troll fisheries.

Section 2. The City and Borough of Juneau supports the NMFS and the Alaska Department of Fish and Game's commitment to defend Southeast Alaska's hatchery system and troll fishery.

Section 3. The City and Borough of Juneau urges all state and local governmental bodies to work with Alaska's congressional delegation to protect Southeast Alaska's economic, cultural, and social livelihood related to Chinook salmon while also protecting the Southern Resident killer whale population.

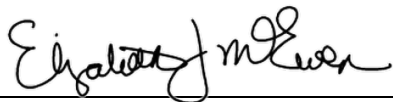
Section 4. This resolution shall be effective immediately after its adoption.

Adopted this 27th day of February 2023.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk



NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, INC.
1308 Sawmill Creek Road
Sitka, Alaska 99835
Office: (907) 747-6850 fax: (907) 747-1470

NSRAA Resolution 3-1-23(B)

A Resolution of the Northern Southeast Regional Aquaculture Association (NSRAA) supporting the Southeast Alaska Troll Fisheries.

WHEREAS fishing is a mainstay of Southeast Alaska's economy and the largest private sector employer in the state of Alaska; and

WHEREAS The mission of NSRAA is in part ... "to assist in the restoration and rehabilitation of Alaska's salmon stocksto all common property users, without adversely affecting wild salmon stocks. NSRAA is committed to...sustainable harvest management, ... high quality fish habitat, and ...the highest scientific standards in carrying out its mission."; and

WHEREAS salmon trolling is a long-term sustainable SE Alaska fishery, an essential contributor to the SE Alaska economy, sustains year- round employment in the fishing, processing, and support sector industries like NSRAA; and

WHEREAS The lawsuit filed by the Wild Fish Conservancy (WFC) against the National Marine Fisheries Service (NMFS) to close the SE Alaska troll fishery for no meaningful benefit to Southern Resident Orcas will adversely affect NSRAA; and

WHEREAS The agenda of the WFC to restrict salmon hatchery programs in Idaho, Washington, and Oregon could threaten SE Alaska's well managed salmon hatchery programs like NSRAA'S; and

WHEREAS The WFC lawsuit could set a precedent for more similarly misguided lawsuits affecting multiple SE Alaska salmon fisheries.

Now, Therefore Be It Resolved that NSRAA requests the State of Alaska, NMFS, and Alaska's Congressional delegation commit to defend SE Alaska's salmon fisheries from this and future lawsuits.

Secretary/Treasurer
NSRAA Board



Sitka Tribe of Alaska
204 Siginaka Way, Suite 300
Sitka, Alaska 99835

Main: 907-747-3207
Fax: 907-747-4915

Tribal Council Resolution 2023-035

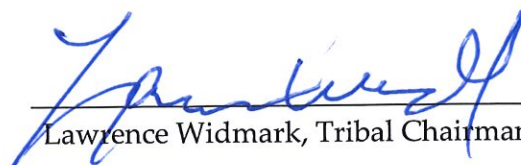
Encouraging State and Federal Action to Protect Commercial Troll Access to Chinook Salmon in Alaska in Waters

- WHEREAS**, Sitka Tribe of Alaska is the federally recognized tribal government for more than 4,534 enrolled tribal citizens in Sitka, Alaska, organized under the Indian Reorganization Act of 1934 as amended; and
- WHEREAS**, Sitka Tribe of Alaska is responsible for the health, safety, welfare, and cultural preservation of its tribal citizens and their use of the Sitka Tribe traditional territory; and
- WHEREAS**, Sitka Tribe of Alaska's traditional territory reflects the lands and waters historically and presently the stewardship responsibility of the Sheet'ka Kwáan and as such are composed of the western side of Baranof Island, the greater reaches of Peril Strait, southwestern portions of Chichagof Island and the myriad of islands as well as the waters between these locations; and
- WHEREAS**, Article VII Section 9(1)(h) of the Constitution of Sitka Tribe of Alaska specifically directs the Sitka Tribal Council "to protect and preserve the Tribal property, wildlife, and natural resources within those areas under the jurisdiction of the Tribe"; and
- WHEREAS**, The cost of living in remote rural Southeast Alaska has increased significantly in recent years; and
- WHEREAS**, The lawsuit filed by the Wild Fish Conservancy has the potential to significantly impact a number of Tribal households that rely on commercial trolling for a living; and
- WHEREAS**, The relief sought by the Wild Fish Conservancy would have an inconsequential affect on the Southern Distinct orca population, but it would have a profound negative impact the Southeast Alaska troll fleet and the economy of Sitka, and
- WHEREAS**, A court ruling in favor of the Wild Fish Conservancy would set a dangerous precedent that threatens the chinook sport fishery in Alaska and the ability of substance harvesters to feed their family's needs, and

NOW THEREFORE BE IT RESOLVED, that the Tribal Council of Sitka Tribe of Alaska hereby encourages the state and federal governments take immediate action to protect Alaska's commercial and sport access to chinook salmon in Alaskan waters.

CERTIFICATION

The foregoing resolution was adopted at a duly convened meeting of the Tribal Council of Sitka Tribe of Alaska, held on March 15, 2023, and at which a quorum was present by a vote of 8 IN FAVOR, 0 AGAINST, 0 ABSTAIN, and 0 ABSENT.


Lawrence Widmark, Tribal Chairman

Attest:


Louise Brady, Tribal Secretary

Executive Council of the Central Council
TLINGIT & HAIDA INDIAN TRIBES OF ALASKA

Resolution EC 23-14

Title: Opposition to the Wild Fish Conservancy Lawsuit to Close the 2023 Winter and Summer Commercial Troll Fishery in Southeast Alaska

WHEREAS, the Central Council of Tlingit & Haida Indian Tribes of Alaska (Tlingit & Haida) is a federally recognized tribe with more than 35,000 citizens; and

WHEREAS, under Article X of the Tlingit & Haida Constitution, the Executive Council is the governing body of Tlingit & Haida when the Tribal Assembly is not in session; and

WHEREAS, the Tribal Assembly is not in session; and

WHEREAS, Tlingit & Haida opposes the Wild Fish Conservancy's lawsuit that challenges the Nation Marine Fisheries Service (NMFS) Biological Opinion regarding Southeast Alaska's fisheries and the impact of the fisheries on the state of Washington's Chinook and Southern Resident Killer Whales; and

WHEREAS, the commercial fishing industry is a mainstay of Alaska's economy and the largest private sector employer in the state of Alaska; and

WHEREAS, the troll fleet is the second largest fleet in Alaska with Chinook harvest being 44% of their fishing income; and

WHEREAS, the commercial salmon trolling is a year-round contributor to Southeast Alaska's economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplied effects, the troll fleet has a total economic impact of approximately \$85 million for the Southeast Alaska economy; and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the NMFS threatens to close the Southeast winter and summer troll fishery despite the fact that the closure would provide no meaningful benefits to the state of Washington's Southern Resident Killer Whales; and

WHEREAS, the Wild Fish Conservancy has pledged to eliminate mixed stock fisheries and eliminate hatcheries; and

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast fisheries through effects on the Pacific Salmon Treaty, a new biological opinion and the Section 7 take permit; and

WHEREAS, the communities of Southeast Alaska will suffer severe economic hardship if the Southeast Alaska troll fishery is closed; and

NOW THEREFORE BE IT RESOLVED, that the Executive Council of the Central Council of Tlingit & Haida Indian Tribes of Alaska hereby opposes the Wild Fish Conservancy lawsuit to close the 2023 winter and summer troll fishery in Southeast Alaska;

BE IT FURTHER RESOLVED, that Tlingit & Haida further requests:

- National Marine Fisheries Service prioritize preparation of necessary documents and processes to support the protection of the Southeast Alaska winter and summer troll fisheries; and
- National Marine Fisheries Services and Alaska Department of Fish & Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast Alaska troll fishery; and
- All necessary and available state, federal, and private resources be made available to support lawsuit defendants and intervenors through all possible appeals; and
- The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future misguided lawsuits.


ADOPTED this 20th day of March 2023, by the Executive Council of the Central Council of Tlingit & Haida Indian Tribes of Alaska, by a vote of 5 yeas, 0 nays, 0 abstentions and 1 absence.

CERTIFY



President Richard J. Peterson

ATTEST



Tribal Secretary Jacqueline L. Pata



Letter of support for SE Alaska Chinook Fishery, May 11, 2023

While Alaska may be more than 1,000 miles away, Washington State is closely connected to our 49th State in many ways, especially in the fishing industry where this relationship runs deep and ripples throughout our economy, communities, & culture.

The Port Townsend Marine Trades Association of Jefferson County, Washington State, represents hundreds of small local businesses that are directly connected with Alaska's troll fleet. PTMTA promotes the vitality and economic benefits of Jefferson County's working waterfront which represents 20% of the total jobs in Jefferson County, including many trollers who homeport in Port Townsend and fish in Alaska's troll fishery each summer. Hundreds of fishing boats come from all over the Pacific Northwest including Alaska, to haul out annually at the Port of Port Townsend's boat yard to access the marine trades businesses that supply, build, repair and service Alaska's troll fishery.

We are seeing the complexities and the nuances of this relationship play out in a lawsuit that the Seattle-based Wild Fish Conservancy has brought against the National Marine Fisheries Service (NMFS) with the goal to shut down Southeast Alaska's small-boat, hook-and-line chinook troll fishery in the misguided name of saving the Southern Resident killer whales (SRKW).

Blaming Alaska's troll fishery for the SRKW's decline might sound like an easy solution, but the reality is not that simple — nor does it follow the well-documented science pointing to the habitat loss and degradation, toxic water pollution and dams here in Washington State & the rest of the Pacific Northwest regions that are harming our local salmon populations — and with them the SRKW. Washington State has played a direct role in decimating the orca population, for example, when it allowed 80 orcas in 1970 to be captured in Penn Cove to sell to marine aquariums, with 5 killed during that process and the remaining (except one) died within 5 years of captivity.

Washington State has just released its [2022 State of Salmon in Watersheds](#) report which provides a sobering snapshot of the status of Washington's salmon populations and the pressures feeding their declines. The report reinforces the major impact that habitat loss (much of it driven by Washington's booming population) is having on Washington's salmon.

Shutting down Alaska's troll fishery will not bring us any closer to addressing the deeper, complex issues that are driving the decline of our local orca and salmon populations. Instead, it will have devastating impacts on hundreds of fishing families and businesses that rely on Alaska's troll fishery for their income and jeopardize the economic stability of Washington and Alaska's coastal communities.

The troll fishery has operated for more than 100 years, which is testament to its sustainable fishery management and Alaska's commitment to the Pacific Salmon Treaty which sets strict annual harvest limits that are carefully managed by Alaska Department of Fish and Game.

The troll fishery provides an entry level opportunity due to its affordability when compared to other fisheries in Alaska. Approximately 1,450 fishermen earn income directly from the fishery, including skippers (permit holders) and crew.

Many Southeast Alaska troll fishery permit holders live in Washington State and migrate to Alaska each summer to make their income. In addition, there are many seafood processors, distributors and transportation companies based in Washington that rely on Southeast Alaska's troll fishery as a key source of revenue — not to mention the restaurants, retail stores and fish markets that are committed to sourcing only troll-caught salmon because of its trusted reputation for sustainability and premium quality. Combined, Southeast's troll fishery generates \$148 million annually in economic outputs for all of these different business sectors in the Northwest and beyond (SeaBank 2022).

The Southeast troll fishery is consistently in the top 3 most valuable fisheries in Southeast with a 5-year average ex-vessel value of \$30M. Including fishing, processing, and all related multiplier effects, the troll fleet has a total economic impact in Southeast Alaska of approximately \$85 million annually; 44% of that \$85 million is derived from Chinook harvest.

Maintaining access to this fishery is critical for the well-being and continued diversification in Alaska & Washington state's economy. The troll fishery is a lifeline for rural livelihoods of hundreds of small-boat fishermen who take great pride in the high-quality product they provide to consumers across America. It is critical to many of our Washington State Ports & to the hundreds of local maritime trades businesses that support this fishery.

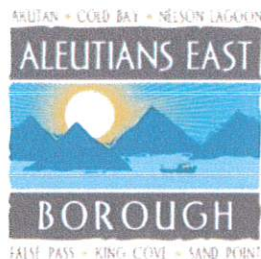
As multigenerational fishing families and businesses that rely on clean and intact waterways, healthy ecosystems and sustainable fisheries, our future is tied to the health of the orcas, wild salmon, and all of our marine environment. It's time to stop passing the blame around and instead realize that we're all in the same boat and start pulling in the same direction. We need collaborative partnerships that promote what's best for the salmon, including doubling-down on restoring critical salmon habitat and addressing the root problems that have gotten us to this point.

PTMTA feels this recent court judgment is arbitrary and capricious at best. It is most heartbreaking & unfair that one judge's ruling could have such a large impact on our communities and so little impact upon our whales. Alaska and Washington's fishing families & businesses will always be a strong voice for wild salmon, our marine environment, and our maritime heritage. We support our troll and long line fishing industry and all of the businesses they sustain.

Sincerely,
Pete Langley, Board President,
Port Townsend Marine Trades Association

The mission of PTMTA is to serve as a unified voice for the marine trades, promoting economic development stability in the community and resolving issues that threaten the livelihood of the marine trades in Jefferson County.

Email: ptmarinetrades@gmail.com, Website: www.ptmta.org



RESOLUTION 23-56

A RESOLUTION OF THE ALEUTIANS EAST BOROUGH ASSEMBLY SUPPORTING SOUTHEAST ALASKA SALMON TROLL FISHERMEN

WHEREAS, the Southeast Alaska Chinook salmon troll fishery is a sustainable fishery that has operated for over one hundred years, much like salmon fisheries of the Aleutians East; and

WHEREAS, Southeast Alaska fishermen and communities are dependent on the troll fishery; and

WHEREAS, on May 2nd, U.S. District Judge Richard Jones remanded the 2019 Southeast Alaska Biological Opinion back to NMFS to remedy ESA and NEPA violations, and vacated portions of the Biological Opinion that authorized the Southeast Alaska Chinook salmon troll fishery; and

WHEREAS, U.S. District Judge Jones ruling attempts to reallocate Chinook salmon from Southeast Alaska salmon trollers to the endangered Southern Resident killer whales, by closing the summer and winter Southeast Alaska Chinook salmon troll fishery; and

WHEREAS, the Southern Resident killer whales spend winters along the West Coast of California, Oregon and Washington and summers in their critical habitat of Puget Sound, the Strait of Juan de Fuca and the San Juan Islands, and generally not in waters off Alaska; and

WHEREAS, threats to the endangered Southern Resident killer whales include vessel traffic noise, disturbances and pollution in their habitat as well as reduced prey availability; and

WHEREAS, the State of Alaska, Governor Mike Dunleavy and the Alaska Congressional Delegation of Senators Dan Sullivan, Lisa Murkowski and Representative Mary Peltola have condemned Judge Jones ruling to close the Southeast Alaska Chinook salmon troll fishery; and

WHEREAS, the Southeast Alaska Chinook salmon troll fishery is integral to Southeast Alaska communities' culture and economies; and

WHEREAS, the Southeast Alaska Chinook salmon troll fishery is not an existential threat to Southern Resident killer whales and closing the Southeast Alaska Chinook salmon troll fishery will not significantly improve conditions for Southern Resident killer whale survival.

NOW THEREFORE BE IT RESOLVED, the Aleutians East Borough Assembly supports Southeast Alaska troll fishermen efforts to continue the historic sustainable Chinook salmon fishery that supports Southeast communities and provides Alaska Chinook salmon to markets; and

BE IT FURTHER RESOLVED, the Aleutians East Borough Assembly supports an appeal to the Ninth District Court of Appeals that would stay U.S District Judge Jones ruling and would allow Southeast Alaska Chinook salmon troll fisheries to commence July 1, and

BE IT FURTHER RESOLVED, the Aleutians East Borough Assembly urges NMFS to expedite issuance of an updated Southeast Alaska Biological Opinion that would include Chinook salmon commercial harvest by the Southeast Alaska troll fleet.

Approved and Adopted this 18th day of May 2023.


Alvin D. Osterback, Mayor


Beverly Rosete, Clerk

Janet Coit, Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Spring, MD 20910

Jon Kurland, Regional Administrator
NOAA Fisheries Alaska Region
PO Box 21668
Juneau, AK 99802

May 23, 2023

Dear Assistant Administrator Coit and Regional Administrator Kurland:

As conservation organizations that are deeply committed to and invested in the future health of our marine and freshwater ecosystems, we stand in support of Southeast Alaska's salmon troll fishery. We urge our state and federal officials as well as elected decision-makers, to protect this fishery and the families and businesses that depend on it from the Wild Fish Conservancy's [misguided lawsuit against the National Marine Fisheries Service](#).

The Wild Fish Conservancy's lawsuit aims to portray Southeast Alaska's troll fishery as a threat to the health and survival of Washington's Southern Resident Killer Whales and endangered Chinook populations. However, it is well-established that chronic habitat problems in Washington and nearby Southern British Columbia are the root cause for the continued decline of the SRKW's primary food source: Chinook salmon.

The State of Washington's latest [State of Salmon in Watersheds 2022 Report](#) reinforces this point, drawing attention to the rapid loss of salmon habitat as well as the impacts of climate change. The report also calls attention to the fact that we're not keeping pace with the habitat restoration work needed to restore Washington's salmon; only \$1.6 billion of a needed \$4.7 billion has been received. Meanwhile, Southeast Alaska's trollers have given up a substantial percentage of their Chinook harvest since the Pacific Salmon Treaty was adopted in 1985, but as the data clearly shows that's not been enough to restore these salmon runs. Putting Alaska fishing families on the beach will solve nothing; in fact, it will only add to the problem.

For decades, Southeast Alaska's trollers have been advocating for wild salmon and their habitat in both Southeast Alaska (e.g., the Tongass National Forest, Transboundary Mines) and the Pacific Northwest (e.g., the Snake River in the Columbia Basin). Time and again Southeast's trollers have shown up to testify on behalf of protecting wild salmon, have signed onto letters to decision-makers, and have even contributed financially to organizations in Alaska and the Northwest working to protect and restore wild salmon. That's in large part because trollers understand that their own survival hinges on healthy wild salmon runs; sustainability is part of their bottom line.

Despite being a small-boat fishery, Southeast Alaska's troll fleet creates tremendous benefit, opportunity, and stability for Alaskans, especially those in Southeast's rural and isolated communities. Approximately 1,450 fishermen earn income directly from the fishery, including skippers (permit holders) and crew. Approximately 85% of troll permit holders reside in Southeast Alaska and the troll fishery provides more jobs for Alaskan residents than any other fishery and is especially important to those who live in smaller, remote communities since it allows for year-round fishing opportunities. Southeast's troll fishery also supports families and businesses based in the Northwest, including more than 100 troll permit holders, seafood processors, distribution and transportation companies.

While we the undersigned support the goals of the Endangered Species Act, we are deeply concerned that the Wild Fish Conservancy's attack on Alaskan fishing families diverts attention from the core challenges facing salmon and divides groups that should be working together for the future of wild salmon all along the Pacific Coast of North America. It also directly threatens the future of Southeast Alaska where hundreds of small-boat fishermen take great pride in the high-quality food product they provide to consumers across America. We urge you to stand with Southeast Alaska's trollers so that they can continue to generate income for our rural communities, contribute to our local food security, and advocate for the health of the orcas and salmon.

Sincerely,

Tim Bristol, Executive Director
SalmonState
www.salmonstate.org

Meredith Trainor, Executive Director
Southeast Alaska Conservation Council
www.seacc.org

Andrew Thoms, Executive Director
Sitka Conservation Society
www.sitkawild.org

Larry Edwards, Secretary
Alaska Rainforest Defenders
www.alaskarainforest.org

Cc: Alaska U.S. Senator Lisa Murkowski
Alaska U.S. Senator Dan Sullivan
Alaska U.S. Representative Mary Peltola
Washington U.S. Senator Maria Cantwell
Washington U.S. Senator Patty Murray
Washington Governor Jay Inslee
Alaska Governor Mike Dunleavy

Yakutat Tlingit Tribe

606 Forest Hwy. 10 * P.O. Box 418 * Yakutat, Alaska 99689
Phone (907) 784-3238 * Fax (907) 784-3595 * www.ytttribe.org



RESOLUTION 2023-14

OPPOSING THE WILD FISH CONSERVANCY LAWSUIT AGAINST NMFS WHICH THREATENS THE ECONOMIC SECURITY OF THE YAKUTAT TRIBAL PEOPLE

WHEREAS, the Yakutat Tlingit Tribe (YTT) is a federally recognized Tribe under federal law; and

WHEREAS, the governing body of the Yakutat Tlingit Tribe is the Yakutat Tlingit Tribal Council (the “Tribal Council”); and

WHEREAS, it is the Mission of the YTT to “preserve, maintain and protect the unique culture, land and resources of Yakutat Tlingit people; to maximize our social, health & well-being while creating economic development benefits to all tribal members.”; and

WHEREAS, the commercial fishing industry is a mainstay of Alaska’s economy and the largest private sector employer in the state of Alaska; and

WHEREAS, the troll fleet is the second largest fleet in Alaska with Chinook harvest being 44% of their fishing income; and

WHEREAS, the commercial salmon trolling is a year-round contributor to Southeast Alaska’s economy and sustains year-round employment in the fishing, processing, and support sector industries; and

WHEREAS, including fishing, processing, and all related multiplied effects, the troll fleet has a total economic impact of approximately \$85 million for the Southeast Alaskan economy; and

WHEREAS, the lawsuit filed by the Wild Fish Conservancy against the NOAA National Marine Fisheries Service (NMFS) threatens to close the Southeast winter and summer troll fishery; and

WHEREAS, the Wild Fish Conservancy lawsuit has the potential to impact other Southeast fisheries through effects on the Pacific Salmon Treaty, a new biological opinion and the Section 7 take permit; and

WHEREAS, the communities of Southeast Alaska, including Yakutat, will suffer severe economic hardship if the Southeast Alaska troll fishery is closed; and

WHEREAS, the Yakutat Tlingit Tribe acknowledges the importance and cultural significance of the endangered Southern Resident Orcas to the Coast Salish and Coastal Tribal communities in Washington State and British Columbia; and

MISSION To preserve, maintain and protect the unique culture, land & resources of Yakutat Tlingit people;
to maximize our social, health & well-being while creating economic development benefits to all tribal members.



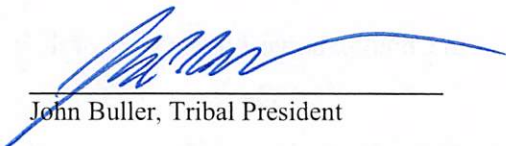
NOW, THEREFORE BE IT RESOLVED, that the Yakutat Tlingit Tribe hereby opposes the Wild Fish Conservancy lawsuit to close the 2023 winter and summer troll fishery in Southeast Alaska.

BE IT FURTHER RESOLVED, that YTT requests that:


- National Marine Fisheries Service prioritize preparation of necessary documents and processes to support the Southeast Alaska winter and summer troll fisheries opening on time and being fully prosecuted; and
- National Marine Fisheries Services and Alaska Department of Fish & Game commit the necessary resources to effectively defend Alaska's fisheries and the Southeast Alaska troll fishery; and
- All necessary and available state, federal, and private resources be made available to support lawsuit defendants and intervenors through all possible appeals; and
- The State of Alaska work with Alaska's Congressional delegation to protect Alaska's fisheries from present and future lawsuits.

CERTIFICATION

Adopted at a duly convened meeting the Yakutat Tlingit Tribe, at which a quorum of members was present, by a vote of 5 for, 0 against, and 0 abstained, this 24th day of May 2023.



John Buller, Tribal President



Victoria Demmert, Tribal Secretary

**DECLARATION OF RICHARD CHALYEE ÉESH PETERSON IN SUPPORT OF
AMICI CURIAE BRIEF OF THE ALASKA CONGRESSIONAL DELEGATION IN
SUPPORT OF INTERVENOR-DEFENDANT STATE OF ALASKA’S
MOTION FOR STAY PENDING APPEAL**

I, Richard Chalyee Éesh Peterson, declare as follows:

1. I submit this declaration in support of the *Amici Curiae* brief of the Alaska Congressional Delegation in support of Defendant-Intervenor State of Alaska’s motion for a stay pending appeal. I have personal knowledge of the matters discussed herein.
2. I am the President of the Central Council of Tlingit & Haida Indian Tribes of Alaska (“Tlingit & Haida”), a federally and state recognized tribe representing over 35,000 tribal citizens. Tlingit & Haida’s ancestral lands and waters encompass Southeast Alaska and extend into the Yukon and British Columbia in Canada.
3. Tlingit and Haida peoples have called Southeast Alaska home since time immemorial. Salmon has been a cultural mainstay for our people as long as we have existed. Our tribal citizens have fished the waters of Southeast for thousands of years and our tribal citizens continue to do so today as permitted troll fisherman. The tradition of “trolling” pre-dates western contact when Tlingit and Haida peoples used a hook-and-line (bone hooks) from their canoes when fishing for Chinook salmon. In some cases, four generations of one family have supported their household and the Southeast economy through a hook-and-line fishery, as did their ancestors before them. Responsible stewardship of our waters is vital to the Tlingit and Haida way of life and is an expression of our sovereignty. Troll fishermen continue our traditional practices by harvesting Chinook salmon sustainably and responsibly.
4. In addition to their cultural role, these fishermen play a crucial economic role in their communities. There are nearly 600 tribal citizens who hold commercial power and hand

troll permits throughout Southeast Alaska communities. These permit holders provide employment and income for many people beyond themselves. According to the Alaska Trollers Association, roughly one in forty people in Southeast Alaska work on a troll boat. This impact extends even further when the industries that support trollers, such as fish processors, are accounted for. The seasonality of the troll fishery means that missing even one opener can cause a troller and their crew to lose a sizeable portion of their annual income. The negative impacts of missing an opener can extend far past the fishing season, it can mean families might not have the money, food, and resources they need to support themselves for the rest of the year.

5. Given the significant cultural and economic importance of the Chinook salmon fishery to our tribal citizens, Tlingit & Haida is in full support of Congress's efforts to fund and maintain both conservation efforts and a sustainable Chinook salmon fishery. The goals of Congress are the same as Tlingit & Haida: to have a healthy and productive fishery for generations to come.
6. If a stay is not granted, the closure of the summer and winter Chinook salmon troll fishery will have a devastating cultural and economic impact on our tribal citizens and their communities which rely on this fishery for their livelihood and their cultural well-being.

Sworn to under penalty of perjury of the laws of the United States of America, at Juneau, Alaska,
this 2nd day of June 2023.



Richard Peterson