

Southeast Alaska Chinook Salmon Treaty Fisheries Under Attack Washington Judge Rules in Favor of Washington-based Conservation Group

— ADF&G Press Release

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Press Release: August 8, 2022

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August 08, 2022 (Juneau) — Yesterday, the Federal Court in the Western District of Washington ruled in favor of the Wild Fish Conservancy in a brief order adopting the Report and Recommendation from a magistrate assigned to hear the case. This case is a challenge to the National Marine Fisheries Service (NMFS) Biological Opinion (BiOp) for the Southeast Alaska salmon fishery – the document that gives Alaska Endangered Species Act (ESA) "incidental take" coverage and allows our Pacific Salmon Treaty salmon fisheries to operate. The State of Alaska and Alaska Trollers Association (ATA) intervened in the case to defend Alaska's fisheries and interests.

The lawsuit was brought by the Wild Fish Conservancy, a conservation organization based in Washington State. The suit specifically attacks Alaska's management of its Chinook salmon fisheries under the Pacific Salmon Treaty. The lawsuit argues that Alaska fisheries threaten the survival of several ESA-listed Chinook salmon stocks in Washington and Oregon, and the endangered Southern Resident Killer Whales that depend on Chinook salmon for food. Judge Jones supported their claims. It does not attack similar fisheries that occur off the coasts of Washington and Oregon, despite similar impacts.

Present Situation

The magistrate has been directed to consider potential remedies to his ruling. This is important as it will determine what happens next for Alaska's fisheries. It is our understanding that the State and ATA will be given an opportunity to provide briefings on the remedy. The best-case scenario would be for the court to give NMFS time to rework their flawed BiOp without vacating the current incidental take coverage. This would allow fisheries to continue while NMFS corrects its mistakes. The worst-case scenario is that the incidental take coverage is determined to be flawed and Alaska loses its ability to prosecute its Treaty salmon fisheries until a new BiOp is prepared.

Viewpoint

Doug Vincent-Lang, Commissioner of the Alaska Department of Fish and Game, issued the following statement: *"We disagree with the ruling and are considering an appeal. We have a responsibility to look out for our fisheries and the Southeast coastal communities and families that rely on them."* Vincent-Lang added, *"The State of Alaska abides by the terms of the Pacific Salmon Treaty and the Biological Opinion that is tied to it and it is troubling that this ruling singles out our fisheries. We will be*

looking at our options in the coming weeks. In the meantime, Southeast Alaska salmon fisheries will proceed as normal."

The Wild Fish Conservancy disputed the provision of the BiOp that required over \$100 million of federal funding be provided for mitigation actions to support Chinook salmon hatchery production to increase prey for killer whales, Puget Sound habitat restoration, and Puget Sound conservation hatcheries. These actions not only allow Alaska fisheries to continue in the face of ESA concerns, but also provide mitigation to allow salmon fisheries in the lower 48 to proceed.

"Alaska should not be expected to be solely responsible for remedy", said Vincent-Lang. "What is good for the goose is good for the gander. If this decision sticks, we will be looking at having all fisheries that affect these salmon being treated equally under the law."

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