
**INDEPENDENT ADJUDICATION IN RESPECT OF OBJECTION TO CERTIFICATION OF
ALASKA SALMON FISHERY**

DECISION

1. The Marine Stewardship Council (“MSC”) received a Notice of Objection to the proposed certification determination by the certification assessment body (“the CAB”), MRAG of the Alaskan Salmon fishery. The objectors are the Raincoast Conservation Foundation and SkeenaWild Conservation Trust (“the objectors”). I am the appointed Independent Adjudicator for this objection for which the oral hearing was held in Seattle, USA on the 17th and 18th September 2014. The hearing was attended by representatives of the objectors, the certification body and the fishery client, South Eastern Alaskan fishery (the “fishery client”).
2. My task under the Disputes Process v1.01 of the MSC, having heard the objection, is to decide whether to confirm the determination or to remand it for reconsideration to the CAB. Taking into account all written and oral submissions and the evidence put before me, my decision is to confirm the determination such that the CAB may proceed to certification. I set out below the reasons for my decision.

Role of the Independent Adjudicator

3. Independent Adjudicators are independent of the MSC and bring a critical eye to the assessment in light of the grounds of objections raised. There are however important limitations to the role, which I set out here.
4. My role in this particular objection consists of reviewing whether there was a serious procedural or other irregularity and whether the certification body has come to an arbitrary or unreasonable decision on the scoring for the Performance Indicators (“PI”) under challenge, which in effect would have, respectively, a material impact on the fairness of or on the outcome of the determination.
5. The objection hearing is not a rehearing or re-assessment of the fishery’s compliance with the MSC Scheme requirements. I may only intervene, as noted above, if the result of an identified flaw would be material to the outcome of the determination. This means that a ground of objection may only be upheld if as a consequence the fishery would fail or a condition would need to be imposed. This means that even where I consider there could be an improvement to the terms of a proposed certification, absent a material difference, I cannot intervene.
6. With regard to the scoring challenges, the basis for this ground has to be that the scores were not justified on account of being so unreasonable or arbitrary *that no reasonable certification body could have reached those conclusions*. I explained at the hearing and repeat here, that

this is a high threshold. There may be a range of possible findings which a certification body may make which, whilst not necessarily the outcome I, or even another assessment team, would have reached, are nonetheless unobjectionable in terms of this Process. It is well understood by the parties to objections that the above ground with regard to reasonableness, means that my role is often to do no more than identify whether there is some evidence before the CAB that could substantiate the score and then to ask whether the view or decision as to scoring taken falls outside the bounds of reasonableness.

7. As is set out in 5.8.6.1 of the Disputes Process, I may not substitute my views or findings of fact for that of the CAB.
8. Further, I may only consider matters/issues raised in the Notice of Objection and, in carrying out this task, I must only consider the information set out in paragraph 5.8.5 of the Disputes Process.
9. I have considered all the detailed points made by the objectors but only respond here to the main arguments and the ones which could, if upheld, lead to a change in the determination.

Background

10. The assessment was carried out further to the Standard version 2.01. The fishery, which is large and complex, has been certified since 2 October 2000. There are 14 units of Certification comprising all salmon fisheries in the state of Alaska, covering up to 5 species of Salmon. The objection is only in relation to the Southern Eastern Alaskan ("SEAK") fishery. Much of the objection related to the provisions concerning Inseparable or Practicably Inseparable ("IPI") Salmon Species. A discussion of IPI catches of non-local and non-target IPI salmon stocks is carried out in section 5.4 of the FDR report. These are Chinook, Sockeye, Coho, Pink and chum Salmon. They are assessed in either the primary or ETP components of P2. For Primary (non ETP) IPI, they are all found to be minor species.
11. At the heart of this objection is the core issue that the Alaska Fishery accounts for a very large share of the harvest of Canadian Salmon, some stocks of which are argued by the objectors to be outside of the biological limits. These are migrating stocks with the inevitable conflicts that arise from the interests of the different regions involved – those where the stocks spawn, the area through which they travel, and where they die. The role of the CAB is to apply the MSC Scheme and any disagreement with that Scheme is beyond the scope of the CAB's role or this objection process.
12. There are multiple procedural and scoring grounds covered by the objection, covering PIs 2.2.2B, 2.3.1C, 2.3.2A and 3.2.3A. The so-called procedural grounds do not in my view raise procedural or other irregularities, they are rather common themes that run through all of the PIs mentioned here.
13. During the course of the objection procedure, the CAB reflected upon the objections and suggested and indeed made a material number of revisions to the Final Draft Report. ("FDR") The assessment team acknowledges that explanations of complex information for IPI salmon

and application of the standard in the FDR were incomplete and sometimes confusing. The CAB's view is that the FDR is substantially improved on the basis of what they themselves characterise as the objectors helpful points. In particular, as a result of these points, the CAB decided to carry out further detailed analysis. The changes are summarised in the revised version of the FDR as:

“This second version of the FDR contains revisions resulting from objections raised by Skeena Wild and Raincoast Conservation Trust, and Birdlife International. Major revisions have been made to the Inseparable or Practicably Inseparable (IPI) Catches (section 5.4), and in Principle 3 sections on international management through the Pacific Salmon Treaty as well as the enforcement section. In Principle 2, revisions have been made regarding scoring of indirect impacts, and management of indirect impacts, of the SEAK Chinook troll fishery on Southern Resident Killer Whales (SRKWs).”

These were however insufficient by way of proposed changes to resolve the objection

14. At the hearing, I dealt with a preliminary argument raised by the CAB that certain of the grounds as developed during the objection process, had not been in the original Notice of Objection (“NOO”) and therefore should be ruled inadmissible. As I explained at the hearing, in my view most of the impugned grounds were sufficiently related to matters expressly raised in the NOO that they were properly within the remit of this process. The only exception to that was the allegation that the certification improperly extended beyond more than one certification period. The objectors pointed out that this issue had arisen from the CAB's response to the objection and that it was odd or put differently inequitable that they should not be able to rely on this point, given it was put before me by the CAB. The restriction however on issues that I may adjudicate upon relates only the grounds of objection set out in the NOO, those being the only ones within my remit. Thus, it is immaterial that the CAB raised this. I would point out however, that their submissions on this point have not in any event been deemed by me to be relevant, hence it is not a situation in which the CAB is receiving advantageous treatment.
15. Finally, by way of introductory comments, this decision does not deal with every point made by the parties given the volume of materials and the extensive nature of the written submissions. However all the written and oral submissions have been carefully considered and I have looked at many of the underlying documents in the bundle. The fact that I have not mentioned an argument or referenced a document does not mean it has not been considered. This decision would have been much longer and less readable if I were required to deal with the detail of every submission made. I have not overlooked the Fishery's written and oral contributions, which were very helpful indeed, but my primary focus in the decision has focused on the CAB's report and the Objector's grounds of challenge.

Detailed reasons

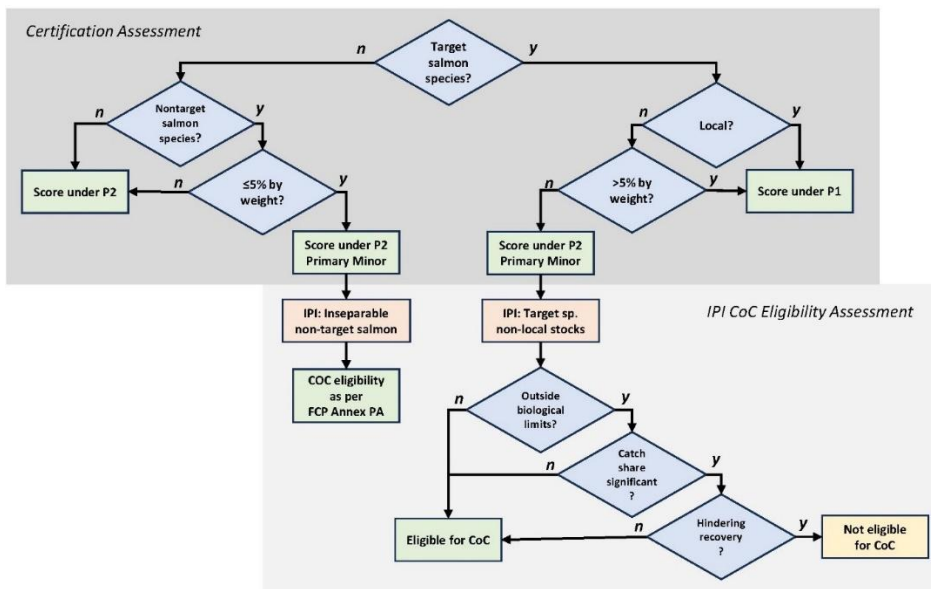
16. Taking all of the grounds of objection together it is clear that there are, as suggested by the objectors themes which run through this matter.

Mischaracterisation of fishery

17. The first thematic issue concerned what was said to be a “mischaracterisation of the fishery on the basis of underestimates” of data giving rise to flawed decisions/scores for PIs. It is argued that the mortality of non-local IPI salmon is significantly underestimated and that therefore IP stocks exceed the 5% limit and that the fishery is likely to hinder recovery. It is also argued that it is a flaw that only stocks for which there is existing information has been assessed. This excludes stocks where there is no information and misrepresents the adequacy of existing information.
18. Underpinning this is the assertion that the non local IPI migrating through the Alaskan waters should receive the same level of protection or care that the Pacific Treaty provides for the Alaskan fish. The argument relates to how non local IPI stocks are calculated and how information is used and scored. Whilst it was accepted that the CAB may have used the best information available, it was argued that this was not sufficient to meet the MSC Standard requirements. Instead the fishery needed to collect this data in order to provide a proper evaluation. This should have been a condition attached to the certification.
19. Thus, by reference to the Standard, this theme raises two essential grounds:
- a) Whether regardless of the decision on certification, the fishery is not eligible to enter the Chain of Custody.
 - b) Whether certain stocks should be classified as main or minor (PI 2.1.2 and 2.1.3).

The Standard and approach to IPIs

20. Before addressing the two sub-themes above, I address the Standard’s approach to IPI. IPI catch is assessed under Principle 2 and separately for eligibility to enter into certified chains of custody (FCP v2.2 section 7.5.10, Annex PA1.2.2). In Principle 2, non-local IPI salmon are assessed in the primary species component as minor species based on their contribution of less than 5% of total catch as per SC6.1.1.2.a. Minor species can score no less than 80 due to no scoring guideposts below the 100 level under the primary species component.
21. Non-local IPI salmon stocks are assessed in Principle 2 under ETP species where so designated under section SA3.1.5 of the Fisheries Standard. Alaska IPI Chinook and Sockeye include ETP stocks identified by the U. S. Endangered Species Act and Canada’s Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as part of the Species at Risk Act.
22. A useful diagram was provided by the CAB to illustrate the correct decision making process for IPI Salmon stocks in relation to the certification and CoC:



Eligibility for Chain of Custody

23. Moving on to the sub-theme, SC 6.1.1.2 relating to Chain of Custody eligibility corresponds to the lower of the two boxes above named “IPI CoC Eligibility Assessment”. This provides:

“Where the proposed IPI stocks are non-local stocks of the same species as the P1 target stock within the UoA:

- a. *The total catches from the IPI stock(s) shall not exceed 5% by weight of the total combined catches of target and IPI stock(s) within the UoA;*
- b. *FCP 7.5.8.1.d shall not apply to these stocks,³ but, if outside biologically based limits, the team shall demonstrate that the fishery:*
 - i. *Does not catch a significant proportion of the total catch of the stock; and*
 - ii. *is highly likely not to significantly hinder its recovery, and practical measures have been implemented to reduce impacts on the stock.”*

24. Further to SC6.1.1.2b a fishery that has IPI stocks that are non-local stocks of the same species as the P1 targeted stock within the UoA can in theory pass the certification assessment, but fail the Chain of Custody Eligibility assessment. The effect is that if certified, but not eligible, whilst you can catch fish under the Scheme, you cannot sell them with the MSC certification logo.

25. In the event, MSC Technical Oversight raised the following point in its response to the PCDR:

SC6.1.1.2.b v.2.01 Its unclear from the rationale that requirement SC6.1.1.2.b.i. is met. For example the relative proportion of stock impact is referenced in Table 22, however its unclear that the team has demonstrated that the fishery "does not catch a significant proportion of. Catch" (as per SC6.1.1.2.b.i)" or on what basis the team determined it is highly likely that the fishery is not hindering recovery (as per SC6.1.1.2.b). 2.1.

26. The answer from the CAB was that:

Substantial additional information was provided to clarify the stocks and impacts of the fisheries on those stocks consistent with the requirements of PA 1.4.2 .

In addition, changes have been made further the additional analysis carried out during this objection process.

SC6.1.1.2a

27. The objectors argue that the CAB cannot rationally conclude that the total catches from the IPI stock(s) do not exceed 5% by weight of the total combined catches of target and IPI stock(s) within the UoA on the basis of the available data.

28. It is clear to me however, that the CAB had evidence from ADFG on which to base their estimate that all salmon species and stocks identified as IPI in this assessment meet the certification standard of no more than 5% of the total harvest in any UoA. In circumstances where there is evidence on which to make a finding which falls within a broad range of possible rational findings, I am unable to intervene. Thus the CAB finds that non-local IPI stocks of all species comprise 4% in the Southeast UoA for 2018-2021 stating:

Non-local IPI salmon stocks harvested in this UoA include Sockeye, Coho, Pink, and Chum Salmon that spawn in Canada, and Chinook Salmon that spawn in Canada and the U. S. Pacific Northwest. Canada likewise catches stocks of salmon that spawn in Alaska. In total, based on data provided by ADFG we estimate for the period 2018 -2021 stocks that spawn outside of Southeast Alaska comprised 4.4% of the total weight.

SC6.1.1.2b

29. The CAB's position as I understand it is that the biological limits as set down by the PCT, are in relation to a sufficient number of stocks, met. The objectors dispute this and argue that due diligence would lead the CAB to evidence that the Alaska fishery takes a significant proportion of the catch, or total run, for some IPI stocks which are outside biologically based limits. They give as an example, Late-Babine-Wild sockeye salmon, which they argue have been below their biological lower limit in recent years (2020-2022), have a recent (5- year) average exploitation rate of ~26% in the Southeast salmon fishery - with a high of 51% of the total run in 2021 when escapement was its lowest on record (based on Fisheries and Oceans Canada run reconstruction data). It is said that the Southeast proportion of the total catch is much greater;

near 100% of the total commercial catch in 2021 as Canada closed the commercial Skeena sockeye fishery that year.

30. Again, given my limited role, I have concluded that I do not have sufficient before me to depart from the assertions of the Fishery that the evidence that this component has consistently been below the biological lower limit in the past five years, was “based on [the objectors’] own scientifically indefensible data”. They point out that the “*model-generated limit was never adopted as a fishery management threshold by the responsible agencies. It is crucial to note that neither the Canadian Department of Fisheries and Oceans nor the Treaty itself sets specific limits for individual sub-stocks in the management of Area 4 fisheries*”.
31. This focus on a single sub-stock is said to overlook the broader context where fishery management is oriented towards the overall health and sustainability of regional stocks. I accept that according to the regional management authorities, the sub-stock is currently healthy and operating within biological limits prescribed by the management system. It was said to me that “*The Canadian Department of Fisheries and Oceans currently categorizes the Skeena Sockeye SMU as healthy based on escapements near average levels and above yield-based upper stock reference points. A poorly-performing stock component within a healthy stock complex is indicative of more-local problems than low levels of Alaska fishery interception.*”
32. It was further argued by the objectors that the IPI assessment was flawed due to lack of information on every single individual stock component that might be subject to harvest in the Alaska fishery including in relation to ETP stocks of Chinook salmon, Fraser Summer Sockeye, Skeena Sockeye (wild component), Area 4 Chum, Area 5 Chum.
33. On this point, I accept the CAB’s argument that it is not unreasonable not to evaluate every possible stock that may be caught in the fishery. This is on the basis that the assessment is, under the Standard, according to the Stock Management Unit eg: Northern coast S, or Fraser river. As I understand it therefore, for the purposes of the assessment, the Stock Management Unit prevails as importantly it is an aggregate approach, not one that needs to be viewed component by component.
34. The CAB went on to say, as noted above, that even if wrong on this, it has carried out additional analyses to further consider the significance of Alaska fishery catch and exploitation rates relative to the “does not hinder” requirement. While previous analyses established, the CAB said, that the fishery was not operating outside applicable biologically- based limits established by the Treaty, the additional analyses considered how effectively Treaty provisions have been for limiting interception of Canadian stocks relative to the point of reproductive impairment and hindrance of recovery as defined in the MSC standard.
35. The CAB reported that “*the additional analyses determined that Alaska catch shares and exploitation rates of all IPI salmon species are sufficiently low as to satisfy certification requirements even under a more conservative biological reference based on stock-specific spawning escapement objectives. While data were not available for every individual Canadian stock component, data were available for a sufficient number of representative stocks of each*

species to conduct a robust quantitative assessment at the Stock Management Unit level required of the MSC Standard.”

36. For instance, it was said that “14 of 20 IPI Chinook stocks are within biologically-based limits for spawning escapements based on point of reproductive impairment benchmarks. Alaska commercial salmon fisheries account for less than 30% of the total harvest of four of the other six stocks. Alaska fishery exploitation rates did not exceed 11% for any IPI Chinook stock which provides a high level of certainty that the fishery does not hinder recovery of these stocks. Measures are in place to limit fishery impacts on all IPI Chinook stocks.”
37. Similar conclusions are documented in the FDR report for other IPI salmon species - see Section 4.4.3 of the Final Draft Report on related fishery certification requirements, application to non-local species and summary assessments for each salmon species.
38. Thus, I have accepted that it was rational for the CAB to in effect have double checked its findings that Alaska fisheries are managed consistent with Treaty provisions and therefore, within established biologically-based limits applicable to these fisheries, based on the additional analyses. Additional analyses determined that Alaska catch shares and exploitation rates of all IPI salmon species are sufficiently low as to satisfy certification requirements even under a more conservative biological reference based on stock-specific spawning escapement objectives.
39. On the evidence before me, I can see that the CAB considered the best available data relative to the Standard and rationally, concluded that the available data were sufficient for evaluation purposes. While data are not available for every individual Canadian stock component, data were available for a sufficient number of representative stocks of each species to conduct a robust quantitative assessment at the Stock Management Unit level required by the MSC Standard.

Question of significance of catch and whether likely to hinder

40. Given the findings above, it is not strictly necessary to go on to reach conclusions on SC 6.1.1.2b. However, as the objectors developed their argument on the basis that, assuming that biological based- limits are not met (which I have dealt with above), SC 6.1.1.2b applies, it is necessary to meet each limb of this test in order to meet the Chain of Custody eligibility requirements. I address this briefly here.
41. It is argued that the Alaska fishery as a whole (not just the UofA under objection) accounts for a very large share of the recent harvest, and hinders recovery. Importantly, the objectors interpret SC 6.1.1.2bi and ii as additional requirements, both of which must be met. The CAB treats this as an “or”. It is of course the case that the word used in the provision is “and” and not “or”. This would mean on a literal basis that if the catch is a significant proportion as here, it does not matter whether the second limb is met ie: whether likely to hinder. In my experience, this list formulation including an “and” and not an “or”, is a common drafting mistake and often leads to a lack of clarity in legislation and contracts. The Standard is not legislation as such, but does set down normative rules which must be adhered to. As such, it is arguable that it is appropriate to

take a strict approach, but I am concerned this should not be where it flies in the face of commonsense and taking into account the MSC purpose. Thus, for these purposes I have treated the two requirements as alternatives.

42. The CAB explain that the proportion of total catch of a salmon stock that was caught by the Alaska commercial salmon fishery was estimated in order to assess the significance of the fishery with respect to IPI requirements in SC6.1.1.2b. Certain stocks triggered this provision. For instance, Alaska commercial salmon fisheries have been harvesting significant proportions of the total catch in of non-local Canadian-origin Sockeye in recent years as Canada has substantially reduced their commercial harvest in years of low abundance. Recent Alaska commercial salmon fishery catches have been more than 30% of the total catch of six of eight non-local IPI Sockeye stocks where information is available.

43. The CAB took me to the definition of *Does not hinder* FS v2.01 Table SA8 : “*The impact of the UoA is low enough that if the species is capable of improving its status, the UoA will not hinder that improvement. It does not require evidence that the status of the species is actually improving*”. Guidance in GSA3.2.2 on general requirements for outcome PIs, notes that if the component status is low, for whatever reason, then the assessment of hindering recovery is based on the ‘marginal contribution’ that the UoA makes to the status or recovery of the component under consideration. If the UoA is not the root cause of human impacts on the component then actions of the UoA cannot redress the situation.

44. The CAB argued that “Significant proportion of the total catch may be interpreted as 30% or more of the total removal of the stock” according to GSC6.1.1.2. However, the CAB argue that GSC6.1.1.2 also notes that the intention of SC6.1.1.2 and subclauses is to demonstrate that the UoA is not hindering recovery of the IPI stocks and rationale should be consistent with GSA3.4.6. GSA3.4.6 provides further guidance on interpretations of catch shares with respect to whether they hinder recovery: MSC allows that the UoA’s catch in proportion to the total catch of a stock may be used as a reasonable proxy of whether that UoA on its own or cumulatively with other UoAs, could be considered to be hindering recovery.

“To illustrate this approach, even if the total catch of a species is clearly hindering recovery, UoA catches of less than 30% of the total catch of a species may not normally be influential in hindering a recovery in a marginal sense, i.e., nothing the UoA does would be likely to change the situation. On the other hand, catches of more than 30% might be influential, such that if the UoA took action to reduce its catches, the stock might well start to recover. A judgement on whether the UoA is hindering recovery will depend not only on the proportion of catch, but on the overall level of mortality that is causing the problem. “

45. The CAB’s assessment was based on exploitation rate estimates which were said to be sufficiently low (15% or less) so as to have a marginal contribution to the status or recovery of the component under consideration as per GSA3.2.2. The objectors called into question the exploitation rate being considered sufficient if 15% or lower and argued that the data did not support that. They drew my attention to a table that indicated widely different exploitation figures

by stock component. The CAB's response was that their estimates were based on many different sources and a great deal of personal experience. This was, of course, impossible for me to assess for rationality – however, as explained above, this was not a question I needed to determine given the finding on biological limits. Overall, I am satisfied that, whatever the interpretation and applicability of SC 6.1.1.2b that the CAB acted within the broad ranges of permitted conclusions on the evidence before it.

Over-reliance on management regimes prescribed by the Pacific Salmon Treaty

46. Besides the mischaracterization of the fishery, the objectors generally argue that the CAB over-relies on this fishery's compliance with the management framework, as established by the Pacific Salmon Treaty to estimate non-target species bycatch. It is said in so many words, that PCT is a lower standard than MSC – a CAB should not therefore say that just because managed to PCT standards, a fishery is sustainable. The objectors do not contest the CAB has used the best available data (as provided under the Pacific Salmon Treaty regime); however, it is argued that the "best available data" is insufficient to accurately assess the fishery under the MSC Standard.

47. For example, in the Southeast UoA, the management framework estimates the abundance of 'treaty chinook' during the spring troll fishery, leading to a harvest cap for this species. The cap, plus the estimate of incidental mortality, plus the estimated percentage of IPI stock content is what the CAB uses to determine the total impact that the fishery has on non-target, endangered, recovering or non-local stocks. This was said to be insufficient.

48. On page 442 in response to stakeholder concerns about mortality estimates, the CAB states that: *"the mortality caused by non-retention of Chinook in the purse seine fishery is estimated by the Pacific Salmon Chinook Technical Committee and that mortality is accounted for when evaluating compliance with the Treaty. Estimates of incidental mortality caused by non-retention of Chinook in the seine fishery and from the other sources (such as troll fishery non-retention of sublegal sized Chinook) can be found in the Chinook Technical Committee's (CTC) annual report."*

49. I have determined therefore that there is evidence upon which the CAB may rationally have reached its findings and that there is insufficient before me to fundamentally call into question the reliability and applicability of the PCT limits. The CAB explained that:

"technical information produced by the PSC CTC on Alaska commercial fishery harvest provides a comprehensive and rigorous basis for certification assessments of IPI stocks of Canadian Chinook, in the expert judgement of the assessment team based on more than 80 years of collective experience in salmon assessment, management and conservation. The CAB and assessment team have applied the PSC CTC information as the best available."

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The PSC CTC membership includes over 30 scientists from Canadian and U.S. federal, state, tribal and first nations fishery management agencies. The CTC reports annually on catches,

harvest rate indices, estimates of incidental mortality, and exploitation rates for all Chinook fisheries and stocks harvested within the Treaty area; and on the escapement of naturally spawning Chinook stocks in relation to agreed escapement objectives. Estimates and methodology are subject to regular and intensive peer review by CTC scientists and fishery interests.

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The PSC CTC estimates that annual exploitation rates average between zero and 10% for Canadian Chinook index stocks in the Alaska commercial salmon fishery. Even if incidental fishery mortality in the net fishery is substantially underestimated, total exploitation rates do not rise to the level of significant concern relative to the certification standard definition of “does not hinder.” There is not a requirement in the certification standard for live release of bycatch species.”.

Main or minor primary species

50. Further to the second sub-theme in this section, the objectors argue that the CAB has incorrectly determined main or minor primary species for the purposes of P2. The benchmark is that the catch threshold for identifying IPI applicability and distinguishing main/not main species is under the primary species component of Principle 2 (FS v2.01 SA3.4.2) Scoring guideposts in P2 distinguish main and minor species (FS v2.01 Figure GSA3). Main primary and secondary species are those which comprise at least 5% of the total catch, or at least 2% of the total catch for “more vulnerable/less resilient” species. The CAB explained that Non-local IPI salmon stocks in the Alaska assessment are minor stocks because by definition in SC6.1.1.2.a, they comprise less than 5% of the total combined catches of target and IPI stock(s) within the unit of assessment. Salmon are not more vulnerable/less resilient species because their life history characteristics do not make them more prone to overexploitation. Thus, non-local IPI salmon stocks are scored under PI 2.1.1 only under scoring issue (b) for minor species. Because PI 2.1.1.b has scoring guideposts only at the 100 level, the lowest score that can be assigned to the non-local IPI salmon stock scoring element in PI 2.1.1 will be 80.

51. The objector’s argument was illustrated by the assessment’s treatment of Chinook Salmon and the incidental catch of steelhead trout.

52. With respect to Chinook salmon, the CAB’s July 5, 2024 written representations stated “*Chinook are not considered bycatch in the purse seine fishery and are generally landed, sold and reported by regulation in the management system.*” However the objectors pointed out, Chinook retention is generally not permitted in Southeast Alaska’s net fisheries (with some exceptions) and the fishery is not required to report non-target catch, meaning adequate data does not exist to

support the CAB's conclusions. In this regard, I was shown a table showing the non retention of Chinook over multiple weeks of the year.

53. In reply the CAB stated:

“Contrary to assertions by the objector, the PSC CTC does estimate both direct harvest and incidental mortality of Chinook in all Southeast Alaska commercial salmon fisheries

- *Direct harvest accounts for by far the largest proportion of the fishery-related mortality as Chinook are generally not considered bycatch in Alaska commercial salmon fisheries and thus landed, sold and subject to obligatory reporting in the management system.*
- *Incidental mortality occurs in the Southeast purse seine fishery under certain circumstances when Chinook are required to be released after annual harvest caps are reached (particularly during recent years of low Chinook abundance). Estimates are based on encounter rates derived from historical observer data and assumptions of high mortality rates for encountered fish (generally 90%). Incidental mortality of Chinook occurs in the Southeast Alaska commercial salmon troll fishery as a result of required releases of sublegal Chinook, required releases of all Chinook after harvest allocation caps are achieved and “drop-off” mortality of Chinook which are temporarily-hooked in the troll gear but not landed. Estimates are based on ongoing observer and logbook programs.*
- *Incidental mortality of Chinook is estimated to be very low in the Southeast Alaska gillnet fishery where all catches can be landed with no size restrictions and all landed catch is reported”.*

54. The objectors' further raise the categorisation of steelhead as a main secondary species. It is argued that the information available suggests the potential impact on steelhead is significant given the relative sizes of the catch by the UoA. For instance, *“the recent annual average escapement for Skeena steelhead for 2018-2021 was 20,500 fish. Total annual catch in the Southeast UoA for those years averaged 30.8 million salmon. On this basis, the entire run of Skeena steelhead could be caught incidentally and killed each year without constituting 2% of the total catch by the UoA. More significantly, information collection in the UoA is inadequate for assessing the impact on steelhead. Namely, the only information collected relates to steelhead retained for personal use. No information is collected for incidental mortality and the information that exists is based on estimates or is outdated. As such, until best practices for information collection are implemented, as are used commonly for Canadian fisheries and are provided for under UN FAO guidelines,² a more precautionary approach should be used for characterizing steelhead. This conclusion is supported by Box GSA1, where it is stated: “Where limited information is available, teams should be more precautionary in their assessment of information adequacy to support an Outcome PI score.”*

55. The CAB on the other hand argued that it was a minor species and rely on the evidence set out in the FDR – see pages 177-179 in support. The CAB explained that *“Steelhead are categorized as a minor species in the Southeast Alaska commercial salmon fishery because they comprise much less than 2% or 5% of the total catch and are not considered to be less resilient having similar life history characteristics as salmon. Recent 10-year average harvest of 400 steelhead per year from 2012-2022 is far less than 2% of the catch for the same period in the Southeast Alaska purse seine fishery (34.4 million per year) or the drift gillnet fishery (4.3 million per year). Steelhead catches would need to be 690,000 in the purse seine fishery and 86,000 in the drift gillnet fishery to reach a 2% threshold.”*
56. In response to the objection, the certification conducted additional review of the available information on steelhead harvest including historical catch estimates and more recent exploitation rate estimates. These estimates considered both observed and unobserved mortality. Results of this review are detailed in the objection response and incorporated in the assessment report. The CAB argued that the assessment review of Alaska steelhead harvest data and published estimates by Canadian scientists both indicate that fishery mortality rates are sufficiently low as to not hinder recovery consistent with the certification standard definition. Nor were the primary Skeena Steelhead stock of interest below the biologically-based limits based in information available at the time of assessment.
57. Whilst the objector does raise uncertainties on this point, there is some evidence before the CAB to substantiate the conclusion that steelhead is a minor secondary species. In circumstances where there is evidence on which to make a finding which falls within a broad range of possible rational findings, I am unable to intervene. I note moreover that this was a new matter raised subsequent to the Notice of Objection – I decided to include this head of objection regardless, during the course of the hearing, but in retrospect consider that the CAB was entitled to argue this.

Performance Indicators

58. The first PI objected to is PI 2.2.2 - Secondary Species Management. This provides at SGb 80:

“There is a strategy in place for managing secondary species that is designed to maintain or to not hinder rebuilding of secondary species and the UoA regularly reviews and implements measures, as appropriate, to minimise the mortality of unwanted catch.”

The assessment scored 80 for this PI as there are in the CAB’s view, and agreed with by me as above, no main secondary species relevant to this objection. A score of less than 80 can only be assigned under PI 2.2.2.a for main secondary species. As noted above, Steelhead are categorized as a minor species in the Southeast Alaska commercial salmon fishery because they comprise less than 2% or 5% of the total catch and are not considered to be less resilient having similar life history

characteristics as salmon.⁷ Therefore, steelhead cannot be scored below the SG80 level under PI 2.2.2.a based on whether measures or a partial strategy are expected to maintain or not hinder their status. The assessment determined that scoring issue 2.2.2.a was not met at the SG100 level for the Southeast Alaska UoA with respect to steelhead.

The objection questioned scoring of management strategy evaluation in PI 2.2.2.b. Corresponding scoring guideposts are:

SG60: The measures are considered likely to work, based on plausible argument (e.g., general experience, theory or comparison with similar UoAs/species).

SG80: There is some objective basis for confidence that the measures/partial strategy will work, based on some information directly about the UoA and/or species involved.

SG100: Testing supports high confidence that the partial strategy/strategy will work, based on information directly about the UoA and/or species involved.

Guidance in FS v2.01 Table SA8 defines *does not hinder* as: The impact of the UoA is low enough that if the species is capable of improving its status, the UoA will not hinder that improvement. It does not require evidence that the status of the species is actually improving. Further guidance in Table GSA3 directs that does not hinder should be interpreted as not materially impeding recovery or rebuilding, and relates to the potential impact of the UoA rather than an observed change in the absolute status of the component. If there is no formally planned recovery then the UoA(s) would permit recovery in a timeframe consistent with the natural dynamics of the species.

59. It is argued by the objectors that:

2.2.2.b (Management strategy evaluation) does not meet SG80 as related to incidental catch of steelhead trout; score should be reduced to maximum SG60, which would reduce overall score for PI 2.2.2 to <80, resulting in a condition imposed on the fishery.

In the Southeast UoA, there are undocumented incidental catches of steelhead trout originating from both Southeast Alaska and British Columbia, Canada. The Southeast salmon fishery has a non-sale provision for steelhead, but no requirement to record numbers of steelhead caught and released, no requirement for steelhead to be released with the least possible harm, and no at-sea fishery-independent monitoring to ensure compliance and provide data on steelhead incidental catch.

*However, for 2.2.2.B, the non-sale provision alone does not constitute “**some objective basis for confidence** that the measures/partial strategy will work [to maintain or not hinder rebuilding of secondary species, or minimise the mortality of unwanted catch], based on some information directly about the UoA and/or species involved,” which is the guiding post to meet SG80 (given score by the CAB in the Final Draft Report, page 205).*

There is no information, data, or numbers available on the incidental catch of steelhead in the fishery since 1994 when the no-sale provision was established; therefore, there is no evidence to support a “very low incidence” of steelhead in the catch. T many stocks (in B.C.) are experiencing low abundance, some likely below PRI (page 203).

*The guiding post to meet SG60 for 2.2.2.B states “the [management] measures are considered **likely** to work, based on plausible argument (e.g., general experience, theory or comparison with similar UoAs/species).*

Current measures do not follow international best practices as outlined in UN FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries 31.1:”

60. I have reviewed the evidence before me to see if the conclusions reached could be said to be arbitrary or unreasonable in the sense no CAB could have reached the conclusions on scoring for this PI that they did. I have taken into account that there is evidence that ADF&G enforces a strict non-retention policy for any steelhead harvested in commercial fisheries, and any steelhead retained for personal use must be reported to ADF&G. Harvest data is made available to the public by ADF&G. ADF&G’s management of salmon fisheries in Southeast Alaska is consistent with harvest levels and protocols agreed to by the United States and Canada under the Pacific Salmon Treaty. While there is limited data available regarding interceptions of certain stocks in both Canadian and Alaskan fisheries, both nations – as parties to the Treaty – have agreed to adhere to existing management strategies, harvest levels, and interception levels to ensure sustainable Treaty fisheries.
61. The fishery points out that the objectors state that “recent estimates for Southeast Alaska incidental mortality of steelhead suggest that the fishery may be hindering recovery of Skeena summer-run steelhead.” The estimates cited by the Objectors are found in a January 2022 independent report commissioned by the Objectors that has not they say undergone any peer review.⁴ The authors of the report themselves admit that their estimates are “very coarse.” This report relied on exploitation rates for a sub stock of another Skeena River species – Late Babine-wild sockeye which I address above. It is said, and I have no reason not to accept the proposition that, the approach of using the run-timing of one species to infer run-timing and ocean migratory patterns of another species is not scientifically justifiable.
62. Finally, for additional security in this finding the CAB has carried out further analysis such that the fishery would also meet SG80 requirements even if steelhead would have been subject to main species standard based on expert knowledge and some information for the Southeast Alaska fishery – see additional information now in the assessment report.

The CAB have noted that:

“Expert knowledge and information collected on steelhead escapements and catch in the area of the UoA clearly demonstrate that the measures/partial strategy for limiting incidental steelhead mortality is working as per the SG80 level requirement under PI 2.2.2.b identified in FS v2.01 guidance in Table SA8.

Skeena summer steelhead escapements increased substantially following the Alaska commercial sale prohibition, consistently meeting or exceeding MSY-based escapement targets as reflected in Rosenberger & Taylor (2022) and Figure 1 of the objection. The Alaska Department of Fish and Game also reports that steelhead spawning escapements have been relatively stable around the long-term average since 1997 based on snorkel surveys in Southeast Alaska index streams (Fowler 2018).⁸

The available information also indicates that catch and mortality of steelhead in Alaska commercial fisheries are sufficiently low as to not hinder recovery from periodic low escapements. Following the commercial sale prohibition, fishery impacts were limited to retention for personal use and incidental mortality of steelhead that are released. Total mortality rate of steelhead relative to run size is low due to a low encounter rate in the fishery although mortality rates of released steelhead are likely to be very high.

Steelhead catches prior to the commercial sale prohibition in 1994 provide direct estimates of encounter and likely mortality rates in the Southeast Alaska fisheries. Catches of steelhead in Southeast Alaska Districts 101 -104 ranged from 49-1,116 in 1969-1982; 3,465-9,528 in 1983-1986; and 36-3,017 in 1987- 1993.⁹ Reported harvest in Alaska fisheries is small in relation to the Skeena summer steelhead run sizes averaging 32,000 (range of 17,000-73,000) between 1970 and 1990.⁹ We estimate that Alaska District 101- 104 harvest of steelhead averaged less than 11% of the Skeena summer steelhead in 1981-1990 based on reported numbers.¹⁰ Mandatory reporting requirements for incidental catch enacted in 2015. Since 2016 the number of steelhead retained for personal use has not exceeded 477 fish.

Estimates of steelhead exploitation rates by Rosenberger & Taylor (2022) and in objection Figure 1, generally corroborate our assessment of low to moderate mortality rates of Skeena steelhead in Alaska commercial fisheries. Annual exploitation rates of Skeena summer steelhead in Alaska commercial fisheries were generally estimated to be between 5% to 30% from 1980-2017 using model-based inferences from sockeye harvests (Rosenberger & Taylor 2022). The assessment team reviewed the assumptions of the analysis and identified significant uncertainties in underlying model assumptions as noted in the final draft report. We also note that model-based exploitation rate estimates do not appear consistent with historical data on steelhead catches and escapement as discussed above. However, an average exploitation rate of approximately 15% since the late 1990s estimated by Rosenberger & Taylor still does not represent a high population-level impact.”

Fishery mortality rates of 15% or less are consistent with definition of “does not hinder” in FS v2.01 guidance Table SA8 as an impact of the UoA that is low enough

that the species is capable of improving its status. This effect is apparent in the objection Figure 1 where escapement targets for Skeena summer steelhead would not be achieved even if all purported harvest in the Alaska commercial fisheries was reduced to zero. Therefore, it is clear that observed levels of harvest of steelhead in the Alaska fishery would permit recovery in a timeframe consistent with the natural dynamics of the species as per guidance in Table GSA3.

Finally, if they had been subject to the main species standard, Skeena (British Columbia) summer steelhead would have been determined to be highly likely above biologically based limits based on information available at the time of assessment,¹² Under PI 2.2.1, a high likelihood of being above biologically-based limits consistent with a point of reproductive impairment is interpreted to mean $\geq 70\%$ of the most recent 15 years. Escapements of Skeena River summer steelhead have fluctuated around a maximum sustained yield-based target reference point and met or exceeded minimum conservation targets in 21 of 24 years (88%) from 1998 through 2021 and 73% of the 15 most recent available years (Rosenberger & Taylor 2022).¹³ This provided an objective basis for confidence that the measures/partial strategy for limiting incidental steelhead mortality in the Southeast Alaska commercial salmon fishery were working, based on some information directly about the UoA and/or species involved. Therefore, steelhead would clearly meet the SG80 standard for PI 2.2.2.b.

63. It is clear to me that there is evidence before the CAB which renders its decision on scoring for this PI within the broad range of possible rational conclusions.

PI 2.3.1 - ETP species management strategy

64. This head of objection is under the further thematic issue, the so-called “additional information issue”. This arises from the Wild Fish Conservancy (WFC) litigation. In brief, as part of its consultation, National Marine Fisheries Service (“NMFS”) included in its 2019 Biological Opinion (Biop) the analysis of the benefits of a Chinook Salmon hatchery program in Puget Sound that would provide an additional food source for Southern Resident Killer Whales (SRKW). This is relevant to ETP considerations, as the SRKW’s primary food of choice is Chinook Salmon and there are widespread reports and evidence of the decline of SRKW being in part due to a lack of food. The 2019 Biop was challenged as not being in accordance with domestic ETP legislation.

Timeline: Wild Fish Conservancy Litigation

January 2020 – WFC files notice of intent to sue NMFS.

March 18, 2020 – WFC files suit. WFC

April 16, 2020 – WFC files request for injunction to halt summer Chinook troll fishery.

June 9th, 2020 – Magistrate rules that an injunction petition filed by a Washington state environmental organization to protect killer whales circumvents established fisheries law.

March 31st, 2021 – State of Alaska granted intervenor status in the litigation.

March 2022 – WFC files suit against NMFS.

August 8 2022 decision concluded that the 2019 Southeast Alaska Biological Opinion violated section 7(2)(a) of the Endangered Species Act as well as the National Environmental Protection Act. The so-called “merits decision”. This has not been appealed.

December 13th, 2022 – Magistrate files report and recommendation for partial vacatur of the ITS for the Southeast AK troll fishery; leaves prey increase program in place. R&R includes opportunity for parties to object before R&R is considered by court.

January 10th, 2023 – Defendants (NMFS, State of Alaska, ATA) filed objections to Magistrate’s Report and Recommendation judgment issued in December 2022.

January 13th, 2023—information cutoff for MSC reassessment of AK salmon

65. The objectors drew to my attention that the FDR does not reference the merits decision of 8 August 2022 which pre-dates the cut off for admissible information and argues it has not been taken into account. The background to this is that the NMFS' conclusion that these fisheries do not jeopardize ETP species was based on the use of hatcheries (a 'prey increase program') to mitigate the impact on Southern Resident killer whales. The 9th circuit court determined that the “prey increase program” (PiP) (particularly the increased production of Puget Sound hatchery Chinook) used by NOAA Fisheries to justify the impacts associated with the harvest of Chinook in Alaska lacked details, obligations, and certainty regarding the production of Chinook. The court also determined that NOAA failed to evaluate the effectiveness of the prey increase program on ESA-listed Southern Resident killer whales, nor its impact on ESA-listed Chinook salmon. The court remanded that the NOAA address its deficiencies regarding the ESA and NEPA.
66. While the 9th circuit court permitted the SEAK troll fishery to proceed in 2023, the reason for this was to prevent 'undue economic harm' (without the certainty that killer whales would benefit). The ruling of the 9th Circuit did not reverse the finding that NOAA's 'Incidental Take Statement' was in contravention of the ESA and NEPA. As such, as at the cut-off date, NOAA still had to address the fisheries deficiencies regarding its compliance with legislation.
67. The objectors argued that the CAB cannot interpret the court's ruling to allow the SEAK troll fishery to continue based on “undue economic harm without the certainty that killer whales would benefit” as equal to “highly likely to not create unacceptable impacts.”
68. By way of background to this issue, the Fishery explained the disagreements over this Opinion had arisen on account of the funding for the PiP and the timeline of renegotiation for the agreement in 2018. The 2019 Biop focussed on mitigation ITS, through PIP, but the funding of £107 million of this was subject to congressional appropriation over a multiple number of years. Thus, NOAA could not say it had the funding in hand to implement the PIP.
69. In reply to the objection, the CAB explained that at the time of scoring, the information available to the assessment team did extend to the merits decision but it also included the magistrate's recommendation including keeping the PiP in place. The partial vacatur was concerning the ITS,

because it was contingent on the reasonable and prudent mitigation measures, for which the funds were not fully appropriated.

70. With the PiP in place, the CAB concluded that indirect impacts of the AK salmon troll fishery in terms of prey reduction were mitigated. It was said that the PiP was not struck down by the District Court as it expressly recognised the value of the program for increasing prey available to SRKW. The District Court only recommended remand of the Biological Opinion to address ESA and NEPA violations and partial vacatur of the Incidental Take Statement for SEAK summer and winter troll fisheries while NMFS “fixes the flawed documents”, the CAB argued. Importantly, it argued, the Court declined to vacate the prey program itself.

71. The CAB also explained that many other stressors are affecting SRKW such as toxics, vessel noise, vessel strikes, etc. The Alaska troll fishery was separated out from all other Parties to the Treaty, and tied directly to mitigation program. The CAB pointed out that the court denied the plaintiff, Wild Fish Conservancy, their motion to enjoin the killer whale prey increase program. It is still in place and the SRKW are said to be receiving tangible benefits from it. According to the 2019 BiOp: *“Although the effects from the SEAK fisheries include reducing prey available to the whales, the hatchery and habitat mitigation as described in Section 1.3 is anticipated to offset some of the loss from all fisheries managed under the PST, both Canadian and all U.S. salmon fisheries, including the SEAK fisheries.”*

72. The fishery scored 80 at SGa:

“There is a strategy in place for managing the UoA and enhancement activities’ impact on ETP species, including measures to minimize mortality, which is designed to be highly likely to achieve national and international requirements for the protection of ETP species.”

73. The Objectors allege that “the CAB’s conclusion that ‘there is a strategy in place that is sufficient for managing the indirect impacts for ESA listed Southern Resident Killer Whales’ cannot be substantiated,” and for this reason the Southeast UoA salmon fishery should not score SG80 under PI 2.3.2.A. However, I have accepted in light of the reasoning set out more fully below, that it was rational for the CAB to have concluded there is indeed a strategy in place that sufficiently manages indirect impacts to the SRKW.

74. The assessment concluded, and I accept, that mitigation actions implemented under the 2019 Biop and a 2019 renegotiated annex to the Pacific Salmon Treaty, constitute an effective strategy designed to be highly likely to achieve national requirements for protection of ESA-listed SRKW. Actions include harvest limitations, a prey increase program, Puget Sound habitat restoration, and conservation hatcheries. This program has not been vacated by the Courts, and is recognised as providing benefits to SRKW. The court also denied the Wild Fish Conservancy’s motion for an injunction on the prey increase program.

75. The fishery scored 80 at SGc:

“Indirect effects have been considered for the UoA including enhancement activities and are thought to be highly likely to not create unacceptable impacts.”

There was no score at SGb as there are no direct effects.

76. I should say at the outset that I was concerned that the FDR did not directly the merits decision, to the extent of not including it even in the timeline it provided in the FDR and at the hearing. However, I have taken into account that the PIP was not vacated such that mitigation measures were in place and whilst the court allowing this to go ahead was based on there not being undue economic harm, I do accept that this is only one piece of evidence before the CAB with regard to this Scoring Guidepost and this had to be viewed in light of all the information before the CAB.
77. I have had regard to the fact that they had placed reliance on the fact that there were a range of other serious threats to the Orcas and that the CAB also considered that the potential impact of the hatcheries on Chinook was too remote. I have accepted that the potential impacts of Pacific Northwest hatcheries on the long-term population viability of ESA-listed Chinook outside Alaska are beyond the scope of the assessment – this would have required a judgement of the technical basis for a conclusion by the NMFS for the appropriate suite of remedies to potential harm from fisheries impacting Pacific Northwest Chinook.
78. Taking into account the availability of this evidence, available at the time of scoring, I accept that the CAB acted rationally in determining that the fishery is highly likely not to create unacceptable indirect impacts to SRKWs. As was explained at the hearing, subsequent court decisions and document revisions in response to the partial vacatur will be considered at the next surveillance opportunity.

PI 3.2.3 - Compliance and enforcement

79. The assessment determined that the SGa at 100 was met.

“A comprehensive monitoring, control and surveillance system has been implemented in the fishery and associated enhancement activities and has demonstrated a consistent ability to enforce relevant management measures, strategies and/or rules.”

80. The objectors argue that the Southeast UoA salmon fishery should not even score SG 60 as the monitoring, control, and surveillance mechanisms (MCS) which exist in the fishery cannot be "reasonably expected to be effective". There is no fishery-independent at-sea monitoring of fishery activity to ensure best handling practices with the release of fish and no requirement to release fish with the least possible harm. Fish tickets are inadequate to ensure proper compliance with best practices. It is unreasonable to expect high survival of released bycatch within the current regulations, fishery methods, and lack of monitoring. It is argued that SG 60 criteria is not met for 3.2.3.A; a score reduction was expected and a condition raised.
81. The CAB in response has said that *“all salmon species caught in the Southeast Alaska commercial salmon fisheries are typically retained, delivered to fish processors for sale, documented on fish tickets issued by processors, and reported by regulation to the Alaska*

Department of Fish and Game". This statement, however, the objectors argue is "not true for Chinook salmon and steelhead trout. Without at-sea monitoring, the CAB has yet to explain how incidental handling and release of salmon and steelhead can be determined as "very low" given that reporting of catches and discards of steelhead and Chinook (during Chinook non-retention periods) are not required by the management agency or provided by fishers. With no fishery-independent monitoring programs in place, there is no method or data to evaluate whether these management strategies are effective."

82. Under United Nations Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries and International Guidelines on Bycatch Management and Reduction of Discards (cited in evidence below), non- target catches, including discards, must be monitored and should not threaten the stocks with serious risk of extinction and the scope of observer programs should be sufficient to provide quantitative estimates of total catch, discards and incidental takes of living aquatic resources.

83. The CAB in reply pointed out that the scoring rationale for PI 3.2.3 in the FDR was expanded to clarify the scope of current fishery compliance and enforcement mechanisms in relation to the assigned scores. The assessment determined that additional at-sea monitoring of handling practices beyond that which already occurs is neither informative or necessary because incidental handling is adequately assessed and sufficiently low as to not hinder recovery potential.

84. The CAB further explained that:

"All salmon species caught in the Southeast Alaska commercial salmon fisheries are typically retained, delivered to fish processors for sale, documented on fish tickets issued by processors and reported by regulation to the Alaska Department of Fish and Game. Robust monitoring, control and surveillance mechanisms ensure that management measures under this system meet a high standard of enforcement and compliance.

In order to clarify the scope of current fishery compliance and enforcement mechanisms in relation to the assigned scores, scoring rationale for PI 3.2.3 in the FRD was expanded with additional information. In brief, the primary responsibility for enforcing fish and wildlife-related statutes and regulations in Alaska lies with the Division of Alaska Wildlife Troopers. Biologists and other staff of ADF&G participate in enforcement activities and assist the Wildlife Troopers as needed. Coast Guard vessels also monitor state fishing waters and report illegal activity to Troopers for enforcement. Federal enforcement patrol for4 federally-managed fisheries such as Pacific Halibut, and may likewise report salmon fishery violations to Troopers for enforcement. Additionally, fishermen continually watch activities on the water and would likely report illegal fishing activity given that this would impact their livelihood.

The Alaska Wildlife Troopers track contacts with resource users including commercial salmon fisheries, and the number of citations and warnings issued

to the participants in each of those activities. This information demonstrates a consistently high level of compliance with fishery regulations.

Alaska Statutes section 16.05.440 through 16.05.690, and regulations of the Board of Fisheries or other department governing commercial fishing contain the commercial fishing regulations, and Sections 16.05.710-723 outline the applicable penalties depending on severity and frequency of violation. Penalties include substantial fines (ranging from \$3000-\$15,000), prison time, forfeiture of fish, and suspension or revocation of fishing permits.”

85. Moreover it was explained to me that Fish tickets (catch reports) amount to monitoring of fishery and hatchery harvests, and sampling by biologist of the harvests for length, age, sex and genetics (sometimes) provide for a comprehensive catch monitoring program. Fish tickets must be completed and submitted to the nearest ADF&G office within 7 days of the landing and/or first purchase of the fishery resource. In addition to commercial landings, it is also a requirement to report fish retained for personal use on fish tickets.

86. In these circumstances and building on the findings of the CAB in relation to alleged data deficiency as set out above, I have concluded that there is evidence before me supporting the score for this PI being rational.

Conclusion

87. This objection to this fishery assessment is not upheld. I am extremely grateful to the objectors, the fishery client and the CAB for all of their careful arguments both in writing and at the hearing. This was not an easy objection to decide, particularly in relation to the litigation head of objection. However, as is understood by all parties, the position on this will be examined at the first surveillance audit.

88. After much consideration I have concluded that the assessment should proceed now to certification.

Melanie Carter

Independent Adjudicator

30 October 2024