

To: Chairman Wood and fellow Board of Fish members  
From: David Richey, co-author of Proposal 259  
RE: F&G and the two words.

A deal is a deal. Right?

Part of the frustration of making this case on behalf of trollers and resident sports is that it seems simple. Two words were excised by F&G, which made an unsanctioned allocative judgment contrary to a signed agreement, RC 178 -- unanimously approved by BoF in March '22 -- and both ATA and TSI merely ask BoF to restore the original language to RC 178 to correct F&G's brazen and unprecedented behavior. Simple but not easy.

To that end, I wish to establish a pattern of bad faith committed by F&G with respect to RC 178. And here I wish to say: I took no pleasure in delivering my public testimony, nor do I enjoy making this next point. It pains me considerably, because in virtually every other respect, I admire and respect the good work that F&G does. F&G has many excellent persons who work for it, and for that I am both appreciative and thankful. Which is why this aberrance from F&G must be addressed:

On 4.26.2022, Amy Daugherty, Executive Director of ATA, sent an email to SEAGO c/o Russell Thomas and Forrest Braden (first attachment, following). I wish to direct your attention to the paragraph in that letter stating:

*"Remaining in the management plan is this language: 5AAC 47.055 (b)(1) 'manage the sport fishery to attain an average harvest of 20% of the annual harvest ceiling ... And 5AAC 47.055(b)(2) 'allow uninterrupted sport fishing in salt waters for king salmon, while not exceeding the sport fishery harvest ceiling.' Both of these phrases strongly imply that in-season management will be retained to meet these stipulations." [emphasis mine]*

The letter from Amy Daugherty was written to SEAGO representatives in response to SEAGO's request for the implementation of RC 178 by ADF&G for the 2022 season. Carbon-copied (cced) recipients of this ATA communication included: F&G Commissioner Doug Vincent-Lang, Director Sam Rabung, Deputy Director Forrest Bowers.

So in April of 2022, Amy Daugherty reestablished ATA's expectation, per RC 178, that the sport fishery would be managed by F&G as-signed in RC 178, i.e.: "... while not exceeding the sport fishery harvest ceiling," and that in-season management would, of necessity, be implemented to achieve this objective.

Commissioner Lang responded on 4.27.2022, writing: *"The letter differs from my recollection. The intent of the board proposal was made explicit and any clarifying questions spoke directly to the issues in your letter. McKenzie opens up deliberations on the proposal 82/RC 178 at 1:12:09 on 3/20/22 (approx. 4:10 PM)".* Commissioner Lang included an audio link from BoF March '22, in which he and F&G representative Mr. Fowler discuss the "intent" of RC 178, the upshot of which is that Mr. Fowler contended -- in direct violation and contradiction of the language and intent of RC 178 -- that there

would be no in-season management, and that the sport fishery would continue even if its allocative ceiling was exceeded. This version of RC 178 is an imagined fever dream by F&G, and it bears no resemblance (and is antithetical to) RC 178 as signed.

So to recap: Amy Daugherty, in April of '22, reasserted that certain recognized lynchpin sections of RC 178 -- signed by ATA, TSI and SEAGO (with the frequent in-room presence of Mr. Fowler during much of the RC 178 pre-signing process, please note), and unanimously approved by BoF in March of '22 -- needed to be reaffirmed due to contrary claims being made by SEAGO. Commissioner Lang replied to Amy Daugherty (also April '22) by referring her, not to the agreement, RC 178, but to the F&G comments made at BoF in March '22.

Those F&G comments cited by Commissioner Lang at BoF March '22 were conveniently expressed *after* public testimony had closed (i.e. neither ATA nor TSI could object or contradict them), which left BoF members with a wildly inaccurate (in both intent and meaning) depiction of the recently signed RC 178. The inaccurate comments also laid down a marker for future rhetorical justification. It is a peculiar position to assert that F&G comments that do not accord with a signed agreement countervail and countermand what a signed document clearly says otherwise, but we live in weird times. Multiple persons have repeatedly cited in testimony (with great intensity) during this BoF: Neither ATA nor TSI would have signed RC 178 if F&G's radical and wholly unfounded interpretation of RC 178's "intent" had been expressed prior to signing.

But: As soon as the ink was dry on a signed copy of RC 178, which included "sport fishery" in it, F&G began acting, weirdly, like the two words "sport fishery" were not in it. In other words: It felt (and feels) like we are all being gaslit here. What's going on?

ATA and TSI and SEAGO all signed RC 178 in good faith, and -- virtually the instant it was out of the participants' hands and into those of F&G -- F&G immediately began a (seemingly) systematic process of bad faith, starting with its shockingly misleading depiction to the BoF once public testimony closed, and F&G's bad faith re: RC 178 continues to this day with its present baffling opposition to Proposal 259.

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Fast forward to August 24, 2023. In a letter written by F&G rep Mr. Fowler to Sitka AC member John Murray (second attachment). Mr. Murray was earnestly trying to determine, like many, how F&G missed the mark so badly as to allow charter/sports to exceed its allocation by 17,000+ kings that were mostly going to be stripped from trollers' quota share. In it, Mr. Fowler states:

*"The one change to regulatory language that was made from the signed copy in RC 178 addressed the contradiction you referenced in 5 AAC 47.055(b)(2) '... while not exceeding the sport fishery harvest ceiling.' **the removal of the words 'sport fishery' was changed administratively immediately after the board meeting and before advancing the regulatory language to be signed by the Lt. Gov.** [additional emphasis mine] The reason it was changed is this was a simple oversight in the draft regulatory language and does not reflect the verbal record or align with the other provisions of the plan. By removing 'sport fishery' the intent was to reduce the confusion that might be caused by keeping the contradictory language as written in the RC."*

Apart from that, how'd you like the play, Mrs. Lincoln?

Oversight how? By whom? And of course there's a producible paper trail for this, right? Because there wasn't any oversight by the signatories, which is what actually matters here. The language in RC 178 is hard-won and intentional by its signatories. Interestingly, in August '23, Mr. Fowler, nearly a year-and-a-half on from BoF March '22, cites an "oversight in the draft regulatory language." Mr. Fowler was directly involved in the RC 178 pre-signing process, and then, once the ink was dry a very, very short time later, suddenly it was an "oversight" that he and everyone else missed? Is that the story you're all going with?

And re: reflect the verbal record? Well, no, it doesn't "reflect the verbal record" of the staff comments from Mr. Fowler in March '22 about RC 178 before an audience of silenced critics while answering questions from Commissioner Lang, that's very true. But that says more about F&G than it does about RC 178. Because the agreement, RC 178, and its language is what matters, not the radical interpretations of F&G that cannot be made to accord with RC 178 unless critical language is surgically lopped off to make it "align with the other provisions of the plan". The two words "sport fishery" were quite intentionally included by the signatories of RC 178. Delete "sport fishery" and immediately "the other provisions of the plan" is not RC 178 -- it's a sockpuppet for F&G.

And when Amy Daugherty reasserted the lynchpin language in RC 178 to SEAGO and F&G in April of '22, and then received a reply from F&G Commissioner Lang (also April of '22), can anyone explain: Why was it not deemed timely and meaningful and pressing by Commissioner Lang (or anyone) to tell Amy Daugherty or Larry Edfelt or Ron Sommerville or Matt Donohoe or anyone at all that F&G had arbitrarily and in secret decided to abrogate the RC 178 agreement? F&G codifies and enforces signed agreements approved by the BoF -- it's not supposed to radically alter them according to its whims or desires.

Is it F&G's radical interpretation that it has the latitude to secretly (then openly and now brazenly) nullify signed agreements that have received unanimous approval by the BoF? Is the tail wagging the dog here? And now we must fight like hell and spend money we don't have merely to claw back what was already ours? And debate whether it's allocative to restore what was allocative prize away? The two words that assured that the sport harvest would be managed not to exceed its allocation, "sport fishery," were arbitrarily and secretly removed from a signed RC 178, and the first anyone heard of this shocking news was ... nearly a year and a half later? And it had to be forced out by public pressure? These are not encouraging signs.

By the August 24th, 2023 date of Mr. Fowler's reply to Mr. Murray, something had happened to bestir F&G to make free with the until-then unknown fact of F&G's unfair, unjust and perhaps unlawful contravention of the signed agreement RC 178.

ACR 13 (to become Proposal 259) had been submitted in response to the inflaming news that upwards of 15,000+ kings were coming out of trollers' quota share -- because the charter/sports had exceeded their allocation by at least 17,000 kings. Trollers were shocked, bewildered and alarmed. Mr. Murray, among a great many, was trying to figure out: How did this happen? And what can we do?

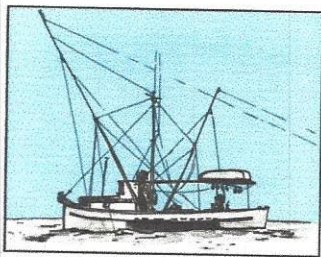
But note: Never once, until August of '23, and only under the duress of public pressure, did F&G ever tell anyone that the words "sport fishery" had been excised. Why is that? Despite repeated inquiries and implorings to explain what the hell they were up to. Big, big secret, apparently. (Not ATA, not TSI, not SEAGO, not anyone -- many were asked the same question this BoF, "Were you aware of the deletion of the two words and did you have any part in it?" and all answered in the negative.) That seems ... odd, right?

From Mr. Fowler's gross mischaracterization of the "intent" of RC 178 before the March '22 BoF (and its squelched audience of silenced enraged objectors) till post-ACR 13 in August '23, no one could figure out how F&G was squaring its inscrutable circle of illogic. Precisely because: RC 178, assigned, did not lawfully permit F&G to conduct their harvest management in the way that they wished.

So, esteemed members of the Board of Fish: Is a deal a deal? Is a signed agreement sacrosanct for the BoF, or is it not? Can BoF participants trust that, once an agreement is made between contesting parties and approved by BoF, that it will be honored and enforced by F&G?

I very much hope these answers are affirmative. Thanks for your time and consideration.

David Richey, ATA, SPC board member



**Alaska Trollers Association**

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April 26, 2022

SEAGO  
via email

Hi Russell and Forrest,

ATA is writing belatedly in response to your recent emails. I have had some family matters to attend to.

In your emails you continue to rely on comments made by area management biologist Patrick Fowler that there will not be in-season management for the nonresident fishery. It is not clear that Mr. Fowler had the authority to speak for the department, and he certainly wasn't speaking for the board. Comments in the record made by staff are not "regulations", and we are both governed by formally adopted regulations, not "comments" or "understandings" or "the spirit of the deal". Your emails mix these concepts with regulations and we think that explains your inability to understand our position. The only language that applies to us both is the finally adopted version of RC 178.

We did discuss averaging in our negotiations at the recent BOF but were unable to come to an agreement on what averaging meant. Further, it was your suggestion that "averaging" was dropped from the negotiation conversation in favor of a "bank" concept which

ATA has no desire to harvest surplus sport kings this year (or any other year) unless the Department asks us to. Just as Jeff indicated to you, ATA is not in support of lending you fish in the low end and getting paid back on the high end. All users should share in a conservation burden. Non-residents should not be prioritized over resident fisheries, particularly in low abundance years.

Any concept of re-allocation between user sectors must include legitimate reciprocity. You consistently try to raid our allocation and have yet to address internally or even admit the ever-increasing demands of your non-resident sub-sector. Containment of your allocation cap internally would indicate responsibility and foster goodwill. While your problems are not our problems, we would assist you in your efforts politically if requested, in this endeavor. We will not assist you by perpetually handing over our historical catch of king salmon.

We also agreed to sunset language in RC 178 in 3 years. And we agreed to providing for resident sport in 5 AAC 47.055 (l); "the department shall manage the resident sport fishery so that there are no closures for residents, unless determined by the commissioner that additional harvest reduction to the resident bag limit is necessary to comply with the Pacific Salmon Treaty".

We have 3 years to live with the agreement as written and signed. ATA sincerely hopes your organization can come up with more constructive ways to live within the limited constraints of the resource we all rely on in that time, such as self-governance, so we can work together more constructively on the hardships affecting all Southeast Alaskan Chinook harvesters.

Sincerely,



Amy Daugherty  
Executive Director

Cc: Commissioner Doug Vincent-Lange  
Director Sam Rabung  
Deputy Director Forrest Bowers

----- Forwarded message -----

From: **Fowler, Patrick A (DFG)** <[patrick.fowler@alaska.gov](mailto:patrick.fowler@alaska.gov)>

Date: Thu, Aug 24, 2023 at 11:33 AM

Subject: RE: 5AAC 47.055

To: John Murray <[jmfish3@gmail.com](mailto:jmfish3@gmail.com)>

Cc: Hagerman, Grant T (DFG) <[grant.hagerman@alaska.gov](mailto:grant.hagerman@alaska.gov)>, Tydingco, Troy A (DFG) <[troy.tydingco@alaska.gov](mailto:troy.tydingco@alaska.gov)>

Hi John,

Thanks for reaching out with your questions. You aptly noticed an error in 5 AAC 29.060 (b)(4) and (5) that references how the allocation by fishery is calculated. The troll and sport allocation split of 80/20 is calculated after the net fisheries are subtracted off the top of the “annual harvest ceiling” which is a reference to the Alaska all-gear catch limit. The current published regulatory language in 29.060(b)(4) and (5) incorrectly only references section (1), the purse seine fishery, as coming off the top of the annual harvest ceiling. This was an error that occurred by the publishing company of the regulations as the Board did not modify 29.060 (b) (1)-(5) during the March 2022 Southeast meeting. The published language “sport fishery: 20 percent, after the net fisheries allocations in (1);” actually should read “sport fishery: 20 percent, after the net fisheries allocations in (1)-(3). This error is currently being addressed but the king salmon allocation has been allocated as the board intended with net fisheries coming off the top of the annual harvest ceiling and the remaining allocation split 80/20 troll/sport.

One of the fundamental changes the board made to the king salmon management plan in 5 AAC 47.055 is that the management provisions for the sport fishery are established at the beginning of the season and inseason changes are not made to keep the sport fishery within allocation or opportunity increased to achieve the allocation. The troll fishery is the benefactor of any underage in the sport fishery but also absorbs any overage in order to keep Alaskan fisheries within the all-gear catch limit. The intent remains that the sport fishery will obtain an average of 20% allocation over time and the Board will need to review how the plan is working during the 2025 Southeast cycle due to the sunset clause that was incorporated into the management plan. Several agenda change requests regarding the king salmon management plan have been submitted to the Board for review during the October work session so we may see changes sooner rather than later.

The one change to regulatory language that was made from the signed copy in RC 178 addressed the contradiction you referenced in 5 AAC 47.055(b)(2)” ...while not exceeding the sport fishery harvest ceiling;” the removal of the words “sport fishery” was changed administratively immediately after the board meeting and before advancing the regulatory language to be signed by the Lt. Gov. The reason it was changed is this was a simple oversight in the draft regulatory language and does not reflect the verbal record or align with the other provisions of the plan. By removing “sport fishery” the intent was

to reduce the confusion that might be caused by keeping the contradictory language as written in the RC.

Hope this helps explain and feel free to reach out if you have any other questions,

Patrick Fowler

Southeast Alaska Management Coordinator

Division of Sport Fish

(907)772-5231

**From:** John Murray <[jmfish3@gmail.com](mailto:jmfish3@gmail.com)>

**Sent:** Wednesday, August 23, 2023 12:28 PM

**To:** Fowler, Patrick A (DFG) <[patrick.fowler@alaska.gov](mailto:patrick.fowler@alaska.gov)>; Tydingco, Troy A (DFG)

<[troy.tydingco@alaska.gov](mailto:troy.tydingco@alaska.gov)>

**Subject:** 5AAC 47.055

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I guess I missed this in the earlier emails.

5AAC 47.055 Southeast Alaska King Salmon Management Plan .

(b) objectives The objectives of the management plan under this section are to

(1) and (2) seem to be contradictory .( 1) states " attain an average harvest of 20% ..."Where as (2) allow uninterrupted sport fishing in salt waters for king salmon ,while not exceeding the sport fishery harvest ceiling;

After listening to Patrick's testimony to BOF where he speaks of intent at minute 119.16. It wasn't really intended to exceed the sport fishery harvest ceiling to be exceeded by 15,000 to 20,000 chinook on a 2023 Chinook Salmon Target of 37,280 chinook. That is an unheard of overage 40 to 55 percent. The common overages were in the 0 to 5 percent over the 20 % allocation.



I could live with the "average harvest " because it balanced out over time. This is the "Perfect Storm" where intent only goes so far. That along with longterm averages.

One last question . What is the definition of "sport fishery harvest ceiling" ?

Sorry if I come off as a bit harsh . It's been a tough season for many trollers ,now this .  
John Murray

**From:** John Murray <[jmfish3@gmail.com](mailto:jmfish3@gmail.com)>  
**Sent:** Wednesday, August 23, 2023 10:55 AM  
**To:** Fowler, Patrick A (DFG) <[patrick.fowler@alaska.gov](mailto:patrick.fowler@alaska.gov)>; Tydingco, Troy A (DFG) <[troy.tydingco@alaska.gov](mailto:troy.tydingco@alaska.gov)>  
**Subject:** sorry hit send

Can you please explain how things got changed from the signing of RC 178 to the current mess we are in?

From what I understand the sport overage is at 15,000 chinook over on a sport allocation of 37,000

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( sorry don't have the exact figures).. The charters are still fishing kings at one and your done.

Thanks John Murray Sitka

**From:** John Murray <[jmfish3@gmail.com](mailto:jmfish3@gmail.com)>  
**Sent:** Wednesday, August 23, 2023 10:48 AM  
**To:** Fowler, Patrick A (DFG) <[patrick.fowler@alaska.gov](mailto:patrick.fowler@alaska.gov)>; Tydingco, Troy A (DFG) <[troy.tydingco@alaska.gov](mailto:troy.tydingco@alaska.gov)>  
**Subject:** Confused and perplexed

I'm trying to decipher what was signed by troll, charter and Territorial Sportsman up at The BOF in

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ANC March 20 2022. RC 178.

I don't believe any ADFG staff were in the room as it was hammered out , Like wise no BOF members in room. Excuse me if I am wrong about ADFG being in room. I was there and reviewed RC 178 along with ATA ,TSI and I suppose SEAGO.

As stated under 5AAA 29.060 (b) is amended by adding a new paragraph to read:

It looks to me that under (b) something was changed ? After the groups agreed and signed off on RC178. As stated in the last sentence " The annual harvest allocation of the annual harvest ceiling for each fishery is as follows: "

(5) sport fishery : 20 percent after the net fishery allocations in (1) - (3) of this subsection from the annual harvest ceiling

Also it should be pointed out in last page of RC178.(1) the department shall manage the resident sport fishery so that there are no closures for residents, unless determined by the commissioner that sddditional reduction to the resident bag limits is necessary to comply with the Pacific Salmon Treaty.

Can you please educate me on what happened between the parties signing off on