

**Alaska Trollers Association**

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September 27, 2023

State of Alaska
Board of Fisheries
c/o ADFG Board Support
P.O. Box 115526
Juneau, Alaska 99811

Re: Comments on ACR 11, ACR 12, and ACR 13

Dear Board of Fisheries Members:

As you are aware, the Alaska Trollers Association (“ATA”) represents the power trollers and hand trollers who fish throughout the waters of Southeast Alaska, up to and including Yakutat. Our more than 450 members including 40% of the power troll fishery. We represent these men and women who compose a fishery which supports thousands of Southeast Alaska jobs.

Our fishery has experienced dramatic declines over the last century, particularly through the reductions mandated by implementation of the Pacific Salmon Treaty (“PST”). Nevertheless, we continue to fight for our livelihoods and our way of life. Most recently, we took the initiative to intervene in costly litigation brought by the Wild Fish Conservancy (“WFC”), a Seattle-based, litigious nonprofit hell-bent on shutting down our fishery. In 2021, we fended off an effort by WFC to shut down our fishery when WFC requested a temporary injunction from the Western District of Washington. Earlier this year, we successfully obtained emergency relief from the Ninth Circuit Court of Appeals that kept our fishery open for the summer season and upcoming winter season.

We will continue to fight, in the court room if necessary, to preserve our fishery and our way of life. It is with that sentiment in mind that we are writing to comment on ACR 11, ACR 12, and ACR 13. Fundamental to our comments on all three ACRs is the 80/20 split between trollers and sport fishers of the annual harvest ceiling established by the Pacific Salmon Commission (“PSC”) after subtracting the amounts allocated to the purse seine, drift gillnet, and set gillnet fisheries. 5 AAC 29.060(b)(1)-(5). Most recently, we worked with the Southeast Alaska Guides Organization (“SEAGO”) and Territorial Sportsmen Incorporated (“TSI”) to agree upon substitute language for Proposal 82 known as RC 178 that was adopted by the Board of Fisheries (“Board”) in March 2022. Central in RC 178 the 80/20 split between troll and sport was retained and provided certainty to all parties.

We are most concerned with the language change that ACR 13 intends to fix, but offer comments on ACR 11 and 12 as well.

1) ATA's Comments in Support of ACR 13.

As outlined above, during the March 2022 Board meeting in Anchorage, the Board required Southeast Alaska Chinook stakeholders to attempt to come to an agreement on allocation. The three stakeholder groups were TSI (representing Juneau resident sport fish harvesters), ATA (commercial hook and line trollers, of which 85% are Alaska residents), and SEAGO (guided sport lodges catering to out-of-state clientele). After much debate, stakeholders agreed to language that was then embodied in RC 178. Board member McKenzie Mitchell sponsored RC 178, and the Board unanimously voted to enter RC 178 unchanged into the record. Sometime after that vote, the language in ACR 178 was changed. That change needs to be undone, and ATA provides these comments on ACR 13 consistent with the requirements of 5 AAC 39.999.

A) ACR 13 Is Necessary for a Fishery Conservation Purpose or Reason.

The new not-agreed-to language creates a conservation issue in allowing out-of-state sports anglers to fish with no in-season management. This is the consequence of eliminating the words "sport fishery" from 5 AAC 47.055(b)(2). Effectively, the change allows for sport fishing to occur uninterrupted throughout a season, even if the sport fishery exceeds the allocation of 20% set forth in 5 AAC 29.060(b)(1)-(5). Notably, this change contradicts the objective of the Southeast Alaska King Salmon Management Plan to "manage the sport fishery to attain an average harvest of 20 percent of the annual harvest ceiling specified by the Pacific Salmon Commission" after subtracting the commercial net allocation from that harvest ceiling. 5 AAC 47.055(b)(1). In-season management is the cornerstone of Alaska's well-respected historic management success, and its elimination is not only contrary to Alaska's sustainable fishing policies, but also ignores the understanding laid out in the Pacific Salmon Treaty, which directs the United States to use "in-season indicators".

The elimination of the words "sport fishery" from 5 AAC 47.055(b)(2), by effectively eliminating in-season management of that fishery, also contradicts the agreement between ATA, SEAGO, and TSI to eliminate the prior objective of managing the Chinook fishery in Southeast Alaska in a way that minimized in-season management of the sport fishery. Specifically, in RC 178, ATA, SEAGO, and TSI agreed to eliminate the language "PROVIDE STABILITY TO THE SPORTS FISHERY BY ELIMINATING INSEASON REGULATORY CHANGES, EXCEPT THOSE NECESSARY FOR CONSERVATION PURPOSES" from 5 AAC 47.055(b)(5). The intent of eliminating this language was to allow statute 5 AAC 47.055 to once again follow Alaska policies and law by allowing for appropriate in-season management of the sport fishery consistent with Alaska's long-standing practice of sustainable management of its fisheries.

B) ACR 13 Is Necessary to Correct an Error in a Regulation.

ATA does not understand the exact reasons why RC 178's language was changed between the time it was adopted by the Board and the time it was published in Register 244. Sometime after the March Board meeting, critical language in the signed Agreement was unilaterally

changed and was then entered incorrectly into Alaska's Administrative Code. This action was either unintentional and therefore needing correction, or intentional, in which case it was unlawful under the Board's process for adopting regulations because it contains a material change from what was approved by the Board when it voted on RC 178. This change, however, has serious consequences. This change permits out-of-state (in 2019, 75% of all SEAK sport harvest, Alaska Department of Fish and Game) sport anglers unlimited access to the all-gear SEAK king salmon quota. It contradicts the sport fishery harvest limits in 5 AAC 47.055 laid out in (c), (d), (e), (f), (g), and (h). These sport harvest limits were introduced in an out-of-cycle Board Meeting (January 2019) because of the language change in the PST that occurred in 2018. The 2018 PST change introduced a SEAK all-gear hard cap on Chinook harvest with a pay-back clause, but no allowed savings of underages. Therefore, Chinook harvest in Southeast Alaska can no longer be managed on an average, as had been the case.

The elimination of "sport fishery" from 5 AAC 47.055(b)(2) also creates internal conflicts with other parts of the Alaska Administrative Code. 5 AAC 29.060, "Allocation of King Salmon in the Southeast Alaska-Yakutat Area," states that (b) "...the annual harvest allocation of the annual harvest ceiling for each fishery is as follows" (5), "sport fishery: 20%, after the net fishery allocations in (1)-(3) of this subsection are subtracted from the annual harvest ceiling." Now, without reference to the sport fishery harvest ceiling, 5 AAC 47.055(b)(2) as published nullifies the allocation of 20% of the annual harvest to the sport fishery.

C) ACR 13 Is Necessary to Correct an Effect of a Fishery That Was Unforeseen When Regulation Was Adapted.

The calculation of the quota by the PST (Spring 2023) and subsequently low harvest allocations also suffered from an unforeseen situation. After 2018, the new CPUE seven-tier PST model over calculated the abundance (AI) of Chinook three out of four years. A new 17-tier three-part formula was introduced this spring by the PSC. It now appears that SEAK Chinook abundance (AI) was significantly under calculated for 2023. In reality, the 2023 Chinook season had a very high CPUE for both sport fishers and trollers. With high availability, no in-season management, and an artificially low SEAK king quota, out-of-state sport anglers went well over their allocation (ATA believes that 20,000 Chinook over the sport fishery's 37,200 Chinook allocation have been harvested). To ensure Alaska would not be out of compliance with the United States obligations under the PST, the troll allocation was reduced by this same amount. Effectively, this transferred an important Alaska resource to out-of-state sport fishers because 85% of the troll fishers are Alaskan residents, while the majority of sport fishers are out-of-state harvesters. This unforeseen effect continues for as long as the sport fishery remains open.

D) ATA's Concluding Remarks Regarding ACR 13.

ATA invested in a significant legal effort to keep the Southeast Alaska troll fishery open, fending off an attack by a Seattle-based organization that is determined to shut down the fishery. ATA intervened in that lawsuit because it understands that sometimes litigation is necessary to preserve its members' way of life. The unilateral language change to 5 AAC 47.055(b)(1) undermines the Board's process and its relationship with the Alaska Department of Fish and Game. It undermines the Alaska Department of Fish and Game's ability to sustainably manage SEAK Chinook fisheries. ATA is confident that the Board will adopt ACR 13 and correct this error, but reserves all rights to pursue other avenues, including legal challenges, if the Board does not adopt ACR 13.

2) ATA's Comments on ACR 12.

ATA supports ACR 12 as it also attempts to maintain the 20-80 split between sport and commercial troll fishers. Maintaining this split has been the management objective since 1996. Again, due to the recent changes in the PST Agreement from a seven-tier system to a 17-tier system, new caps for each of the 17 tiers need to be calculated.

3) ATA's Comments on ACR 11.

For trollers, there is a problematic phrase in ACR 11: "This ACR is intended to create a more stable management plan which will continue to implement sport fish management actions based on the Alaska all-gear catch limit, and the resulting allocation to the sport fishery, regardless of the methodology used by the Pacific Salmon Commission (PSC) to calculate it." What does this mean, exactly? Is the Alaska Department of Fish and Game talking about an all-gear harvest ceiling or a sport fish harvest ceiling? Does this phrase mean sport fisheries will not have a specific harvest cap, but will have the all-gear harvest cap? This phrase is similar to what happened to 5 AAC 47.055 (b)(2) and seems to contradict itself, because in ACR 11 the Alaska Department of Fish and Game also states it wants to be in compliance with 5 AAC 29.060, which specifies that sport fishing has a harvest ceiling of 20%. ATA respectfully requests that the Board provide clarification that this ACR is being considered in a manner that would be in compliance with 5 AAC 29.060 and the intended language of 5 AAC 47.055(b)(2), specifically that the sport fishery is managed in reference to the 20% harvest ceiling prescribed for that fishery.

ATA continues to appreciate the Board's continued dedication to the preservation and promotion of the Southeast Alaska troll fishery, a priority the ATA shares with the Board.

Sincerely,



Amy Daugherty
Executive Director
Alaska Trollers Association

Cc: Alaska Attorney General Treg Taylor
Sen Gary Stevens, Senate President
Representative Cathy Tilton, House Speaker
Sen Bert Stedman, Chair Senate Finance
Rep Rebecca Himschoot
Rep Dan Ortiz
Doug Steding, Esq.