

**Alaska Salmon Fishery**  
**MSC Notice of Objection**

*Submitted by*  
**Raincoast Conservation Foundation &  
SkeenaWild Conservation Trust**

April 16, 2024

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# 1. Marine Stewardship Council Notice of Objection

This Notice of Objection references the Alaska Salmon Fishery Final Draft Report, March 22, 2024, prepared by MRAG Americas Inc.

Notice of Objection submitted to Ms. Amanda Stern-Pilot, MRAG Americas, Inc. ([certification@mragamericas.com](mailto:certification@mragamericas.com)) and the MSC Executive ([objections@msc.org](mailto:objections@msc.org)) on April 16th, 2024 by Raincoast Conservation Foundation and SkeenaWild Conservation Trust.

## 1.1. Objectors details

Table 1: Contact 1 details

1	Contact name	
	First*	Last*
	Misty MacDuffee	
2	Title	
	Wild Salmon Program Director	

Table 2: Organisation 1 details

1	Organisation*
	Raincoast Conservation Foundation
2	Department
	Wild Salmon Program
3	Job title*
	Wild Salmon Program Director
4	Description
	<p>The Raincoast Conservation Foundation (“Raincoast”) is a Canadian charity incorporated in British Columbia in 1996. Raincoast team members are empowered by their research to protect the lands, waters and wildlife of coastal British Columbia. They use and produce rigorous, peer-reviewed science and community engagement to further their conservation objectives. Raincoast’s flagship programs include the Wild Salmon Program that strives to protect and recover salmon across their historic range. This program engages in technical aspects of salmon management, fisheries harvest, and recovery planning. Raincoast advocates for alternatives to unsustainable fishing practices, protection of wild salmon from hatcheries, and considering the needs of wildlife in fisheries decisions. Raincoast also works to protect endangered Southern Resident killer whales (SRKW).</p> <p>Raincoast scientists sit as members of the federally led Indigenous and Multi- stakeholder Advisory Group (IMAG) on Southern Resident killer whales that oversees the implementation of threat reduction and recovery measures in Canada. Raincoast scientists also sit as members of four federally led SRKW Technical Working Groups (TWG) that address specific threats to SRKWs. The Prey TWG addresses the impact of Chinook fisheries, the ECHO Technical working group addresses underwater noise of shipping vessels entering the Salish Sea, the Sanctuary TWG addresses small vessels and no-go zones, and the Contaminant TWG addresses exposure and accumulation of chemical toxins in SRKWs.</p>
5	Phone
	+1-250-818-2136 +1-250-629-3001
6	Email*
	misty@raincoast.org


Table 3: Contact 2 details

<b>1</b>	<b>Contact name</b>	
	First*	Last*
	Greg Knox	
<b>2</b>	<b>Title</b>	
	Executive Director	

Table 4: Organisation 2 details

<b>1</b>	<b>Organisation*</b>
	SkeenaWild Conservation Trust
<b>2</b>	<b>Department</b>
	Sustainable Fisheries
<b>3</b>	<b>Job title*</b>
	Executive Director
<b>4</b>	<b>Description</b>
	SkeenaWild Conservation Trust (SkeenaWild) is a science based Canadian charity incorporated in British Columbia in 2007 to carry out science and research initiatives, habitat protection projects, community engagement and education programs. SkeenaWild works with governments, Indigenous Nations, communities and individuals to sustain the long-term health and resilience of the wild salmon ecosystems and local communities in the Skeena River Watershed and Northwest British Columbia. These goals are achieved through the effective use of science, laws and convening to empower communities to protect and strengthen salmon populations, improve management decisions and deepen people's connection with wild salmon. SkeenaWild represents the public interest in salmon conservation at federal salmon fishery planning tables on BC's north coast. This includes processes like Canada's Integrated Harvest Planning Committee and the Northern Panel of the Pacific Salmon Commission.
<b>5</b>	<b>Phone</b>
	+1 250 638 0998 +1 250 615 1990
<b>6</b>	<b>Email*</b>
	gregk@skeenawild.org

Table 5: Assessment details

<b>1</b>	<b>Fishery name*</b>
	Alaska Salmon Fishery
<b>2</b>	<b>CAB*</b>
	MRAG Americas, Inc.
<b>3</b>	<b>The following objection is being lodged on behalf of the above-named organisation(s) and I am authorised to make this submission on their behalf*</b>
	Apr 16, 2024 

\*Required information

## 1.2. Objecting party’s involvement

Table 6: Prior involvement with this assessment

<b>Fishery client (MSC Disputes Process v1.1, 5.4.1.a)</b>	<b>No</b>
<b>Written stakeholder submissions (MSC Disputes Process v1.1, 5.4.1.b)</b>	<b>Yes</b>
<b>Meetings attended (MSC Disputes Process v1.1, 5.4.1.b)</b>	<b>Yes</b>
<b>Participation prevented or impaired (MSC Disputes Process v1.1, 5.4.1.c)</b>	<b>No</b>

Table 7: Evidence

<b>1</b>	<b>Supporting evidence of prior involvement in the assessment</b>
<p>SkeenaWild and Raincoast participated in the December 2022 stakeholder meeting, jointly submitted a letter outlining concerns in January 2023, and submitted formal feedback on the Public Comment Draft Report, as evidenced by its documentation in the Final Draft Report (Section 8.4.2, pages 402-437).</p>	
<b>2</b>	<b>Background</b>
<p>SkeenaWild Conservation Trust and Raincoast Conservation Foundation are Canadian NGOs dedicated to the conservation of wild Pacific salmon. SkeenaWild works with governments, Indigenous Nations, communities and individuals to sustain the long-term health and resilience of the wild salmon ecosystems and local communities in the Skeena River Watershed and Northwest British Columbia. By intercepting and indiscriminately harvesting unknown-stock origin migrating salmon in unselective net fisheries in Districts 104 and 101, the Southeast Alaska salmon fishery is preventing the recovery of vulnerable Canadian chinook, chum, sockeye, coho, and steelhead.</p> <p>Raincoast has been active in the recovery of Southern Resident killer whales (SRKW) and the protection of their critical habitat since they were first listed as Endangered under Canada’s Species at Risk Act (SARA) in 2002. They have been a litigant before Canadian and American courts in cases concerning the application of SARA to the Southern Residents, including the legal protection of critical habitat. Since 2015, Raincoast has also worked with an international team of scientists to examine effective recovery measures for Southern Resident killer whales. The most recent <a href="#">modelling by this team</a> (2024) shows that increased abundance of prey can improve survival of Southern Residents to the point of either stabilizing or slowly growing their population.</p> <p>Chinook harvest in the SEAK troll fishery is unlawful because the Incidental take statement in NOAA’s 2019 biological opinion is in contravention of the US Endangered Species Act and the National Environmental Policy Act. The fishery is depriving ESA listed Southern Resident Killer Whales of the prey they need to prevent their extinction.</p>	

### 1.3. Objection Categories

Table 8: Objection category

Are you objecting on the basis that, in your opinion: (please select any that apply)	
There was a serious <b>procedural</b> or other irregularity in the fishery assessment <b>process</b> that was material to the fairness of the assessment (MSC Disputes Process v1.1, 5.9.2.a). <a href="#">Complete Section 1.4.</a>	<b>Yes</b>
The <b>CAB review of the Client Action Plan</b> cannot be justified because the conditions fundamentally cannot be fulfilled within the allocated time frame (MSC Disputes Process v1.1, 5.9.2.b). <a href="#">Complete Section 1.5.</a>	<b>No</b>
The <b>score</b> given by the certifier (CAB) in relation to one or more of the Performance Indicators cannot be justified, and the effect of the <b>score</b> in relation to one or more of the particular Performance Indicators in question was material to the determination (MSC Disputes Process v1.1, 5.9.2.c). <a href="#">Complete Section 1.6.</a>	<b>Yes</b>
<b>Additional information</b> not forming part of the record (MSC Disputes Process v1.1, 5.8.5.a) that is relevant to the circumstances at the date of determination has not been considered (MSC Disputes Process v1.1, 5.9.3). <a href="#">Complete Section 1.7.</a>	<b>Yes</b>

## 1.4. Procedural Issues

Table 9: Procedural Issues

1	Procedural issues
	<p data-bbox="108 320 568 353"><b>1) Mischaracterization of the fishery</b></p> <p data-bbox="108 383 1485 595">Salmon species harvested in many fisheries in the Southeast Alaska Unit of Assessment (UoA) include inseparable or practically inseparable (IPI) stocks originating in British Columbia, Washington, and Oregon. In District 104, purse seine fisheries <a href="#">primarily target other species and harvest sockeye salmon incidentally</a>. Most of the sockeye harvested originate from non-Alaskan rivers, and many populations are at levels of low abundance. In the Southeast, drift gillnet, seine and troll fisheries encounter <a href="#">ESA listed species</a>, and the troll fisheries' <a href="#">impact on prey availability for ESA listed species like Southern Resident Killer Whales</a> is known. Further, the fishery is subject to conditions created by the Pacific Salmon Treaty.</p> <p data-bbox="108 629 1477 748">The above realities place the highest burden of care on the Conformity Assessment Body (CAB) to fully comprehend the fishery, as well as the MSC Fisheries Standard, in order to ensure that: the MSC harvest threshold on non-local IPI stocks is not exceeded; and that the fishery does not catch a significant portion of the total catch or hinder recovery of any stocks outside biologically based limits.</p> <p data-bbox="108 781 1445 842">The CAB describes purse seine fishing, the method which harvests the most salmon in the Southeast UoA and a key method contributing to the catch of IPI stocks, as follows:</p> <p data-bbox="204 875 1362 1178">“Encircling nets that are deployed around schools of fish. A key feature of their design is a rope (called a 'purse line') that can be drawn in to close the bottom of the net to prevent fish from swimming down and escaping. To set a purse seine, a small boat or 'skiff' is used to draw the net around an identified fish school, before returning the end of the net to the purse seine vessel to complete the encirclement. The top of the net is kept at the surface by buoys or corks, while a weighted lead line is used to quickly sink the bottom of the net when being set. After drawing in the purse line, the net is winched in by running it up through a hydraulic block so that it can be stacked on the back deck of the main vessel. <b>Once the net is almost entirely retrieved and the salmon are corralled closely beside the fishing vessel, a small dip net is used to brail the catch in to the fish hold.</b>” (Alaska Salmon Fishery Final Draft Report, page 27).</p> <p data-bbox="108 1211 1469 1451">This is a mischaracterization of purse seining in District 104, where most IPI species in the Southeast UoA are harvested. In District 104, there is no requirement to brail fish from beside the fishing vessel into the hold. Many public videos (<a href="#">example</a>) and personal communication evidence show that the full bag is winched to the vessel, and deposited directly into the hold, leading to a vastly different bycatch mortality profile, discussed below. In consultation with the regulations, there is no requirement for seiners to dip net, or otherwise brail their catch. In fact the word 'brail' is not found once in the <a href="#">2022–2025 Southeast Alaska and Yakutat Commercial Salmon Fishing Regulations</a>. The CAB has provided no evidence to show that brailing or dip-netting occurs, or if it does, that this practice is wide-spread in the fishery.</p> <p data-bbox="108 1485 962 1518"><b>2) CAB misunderstanding and underuse of SC6.1.1.2b requirement</b></p> <p data-bbox="108 1552 1465 1883">Furthermore, the CAB referenced the SC6.1.1.2b requirement; to demonstrate that the fishery does not catch a significant portion of the total catch of the stock and is highly likely not to significantly hinder its recovery, with respect only to stocks listed under the Endangered Species Act or Canada's Species at Risk Act. The MSC technical oversight feedback on the PCDR identified this mistake and stated that SC6.1.1.2b applies to any stock outside of biologically based limits, not only ETP species (Final Draft report, page 445). In response, the CAB removed the reference relating SC6.1.1.2b to SARA-listed species for Coho Salmon but has not removed the reference to it for Sockeye Salmon (page 152), Pink Salmon (page 155), or Chum Salmon (page 156). This demonstrates a lack of understanding of the Fisheries Standard and the CAB's responsibility to identify IPI stocks outside of biologically based limits. Simply removing the reference to SC6.1.1.2b from the text does not solve the issue; rather it is the responsibility of the CAB to identify any stocks outside of biologically based limits and provide evidence to demonstrate that the fishery does not catch a significant portion or hinder its recovery.</p> <p data-bbox="108 1917 1449 2007">The CAB states (under rationale for PI 2.1.1, page 191, Final Draft Report) that “for those few [salmon] stocks for which escapements are likely below biologically based limits, the Alaska fishery takes a small portion of the total runs and the catch will not hinder recovery when environmental conditions improve.”</p>

The SC6.1.1.2b i requirement is that the fishery “does not catch a significant proportion of the total **catch** of the stock,” not of the **total run**; and there is no clause that states environmental conditions must be favourable for it to be met. The CAB has not demonstrated the ability to apply this requirement according to the MSC Standard.

Lastly, 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. For example, Late-Babine-Wild sockeye salmon, which 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). 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. It is the responsibility of the CAB to seek out evidence to support its determination of the fishery and include all relevant information.

## 2 Other

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

Besides the mischaracterization of the fishery, the CAB relies on this fishery’s compliance with the management framework, as established by the Pacific Salmon Treaty to estimate non-target species bycatch.

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.

On page 414 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.*”

Because Alaska does not require bycatch reporting in the Southeast, the CAB defers to mortality estimates established by a treaty committee. These mortality estimates are widely debated within fishery stakeholder groups. The CAB further extrapolates what is actually a gross estimate to determine the impact on IPI stocks, which varies widely depending on fishing methods and fish handling. As brailing does not occur in the Southeast purse seine fisheries, like those staged in District 104, there is no evidence to suggest that mortality of non-target species in the seine fishery, where the full bag is deposited directly into the hold, is any less than 100%. This is a compounding procedural error the CAB makes in its fishery assessment process.

### 4) Conditions imposed during previous reassessments, not met by deadline, carried forward

Conditions imposed during the previous assessment (2017) with deadlines “by the end of 2023” have not yet been met and have been carried forward for the current assessment (Final Draft Report, page 19).

In particular, no exceptional circumstances have been given for Condition 5; “Meet the SG 80 scoring requirements for PI 3.2.2c by demonstrating that decision-making processes use the precautionary approach and are based on best available information as applied [to] the Pink and Chum Salmon hatchery enhancement programs (by the end of 2023),” applicable to all UoAs.

Conditions which have not been met by the stated deadline, which have not been affected by exceptional circumstances, should result in the suspension of certification until the condition has been met.

## 3 Effect on the determination

By failing to accurately describe and understand fishing methods used in the Southeast UoA, and by relying on unreasonable mortality estimates, the CAB significantly underestimates the total mortality inflicted on IPI stocks. All IPI stocks must be considered with sufficient evidence to accurately estimate mortality. This underestimation of mortality in fisheries like the District 104 seine fishery means the CAB cannot credibly say that IPI stocks constitute < 5% of the overall catch, nor that the fishery is highly unlikely to hinder the recovery of any depleted stocks, which are present in this fishery. Properly characterising and assessing fishing methods and incidental mortality would affect scoring for many Performance Indicators, with the possibility that some would not meet SG60 and would fail certification.



At a minimum, the CAB should apply conditions requiring monitoring and reporting of bycatch, as is standard in other MSC-certified fisheries. Instead of providing evidence demonstrating that the fishery does not catch a significant portion of non-local stocks, it mischaracterizes the nature of the fishery, and relies on outdated and incomplete estimates of incidental mortality – downplaying the proportion of non-local IPI stocks harvested and significantly underestimating its impact on endangered and recovering stocks.

If SC6.1.1.2 is applied correctly and information related to IPI stocks outside of biologically based limits is considered, scoring for multiple Performance Indicators (under 2.1, 2.2) would likely lower and conditions be imposed on the fishery to collect and provide updated information on impacts to IPI stocks.

Lastly, certification should be suspended until conditions imposed during previous reassessments with overdue deadlines have been met.

## **1.5. CAB review of Client Action Plan**

Not applicable.

## 1.6. Scoring

Table 10: Scoring PI 2.2.2

<b>1</b>	<b>Performance Indicator</b>
<p>PI 2.2.2 - Secondary Species Management</p> <p>“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.”</p>	
<b>2</b>	<b>Reason</b>
<p>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 &lt;80, resulting in a condition imposed on the fishery.</p> <p>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.</p> <p>We appreciate that the CAB has considered and incorporated additional evidence we presented during PCDR feedback relating to the catch of steelhead in the Southeast UoA, affecting scoring for PIs 2.2.2B and 2.2.2C (as well as others under 2.2). However, for 2.2.2.B, the non-sale provision alone does not constitute “<b>some objective basis for confidence</b> 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).</p>	
<b>3</b>	<b>Supporting rationale and or evidence</b>
<p>The rationale states that “the very low incidence of secondary species in the catch, based on information directly about the fishery and the species involved, provides a strong objective basis that this strategy is effective.” However, 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. The CAB has acknowledged that there is very limited data available on steelhead catch and stock composition under rationale for 2.2.1.B and 2.2.3.B, and that many stocks (in B.C.) are experiencing low abundance, some likely below PRI (page 203).</p> <p>The guiding post to meet SG60 for 2.2.2.B states “the [management] measures are considered <b>likely</b> to work, based on plausible argument (e.g., general experience, theory or comparison with similar UoAs/species).” Given that there is no record of steelhead caught and released, no requirement to release fish with the least possible harm, and high mortality rates of released fish for both gill net and seine fisheries, the non-sale provisions cannot be considered <b>likely</b> to minimise the mortality of unwanted catch, nor maintain or not hinder rebuilding of steelhead populations (in particular Skeena steelhead) based on plausible argument and therefore do not meet SG60. There is certainly no objective basis for confidence that the measures are working, so at an absolute maximum 2.2.2.B could score 60.</p> <p>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: Non target catches, including discards, of stocks other than the “stock under consideration” are monitored and should not threaten these non-target stocks with serious risk of extinction; if serious risks of extinction arise, effective remedial action should be taken.  <a href="https://www.fao.org/3/i1119t/i1119t.pdf">https://www.fao.org/3/i1119t/i1119t.pdf</a></p> <p>Furthermore, while we recognize that this information may not have been publicly available at the time of the site visit, recent estimates for Southeast Alaska incidental mortality of steelhead suggest that the fishery may be hindering recovery of Skeena summer-run steelhead. Skeena steelhead have experienced low escapement, below the threshold for Conservation Concern, for the past five years (2019-2023), with estimated catch in Southeast</p>	

Alaska reducing the return in 2021 to below the level for Extreme Conservation Concern identified by the Province of British Columbia (Figure 1). Southeast recent (5-year) average exploitation rate of Skeena steelhead is estimated at ~26%. These recent estimates follow the methods used in this report: <https://www.mccpacific.org/wp-content/uploads/2022/01/10Jan2022-SEAK-Catch-of-BC-Salmon-Technical-Report-Part-7-Steelhead-Trout-V1.pdf>,

## Skeena Summer Steelhead Escapement and SEAK Harvest 1960-2023

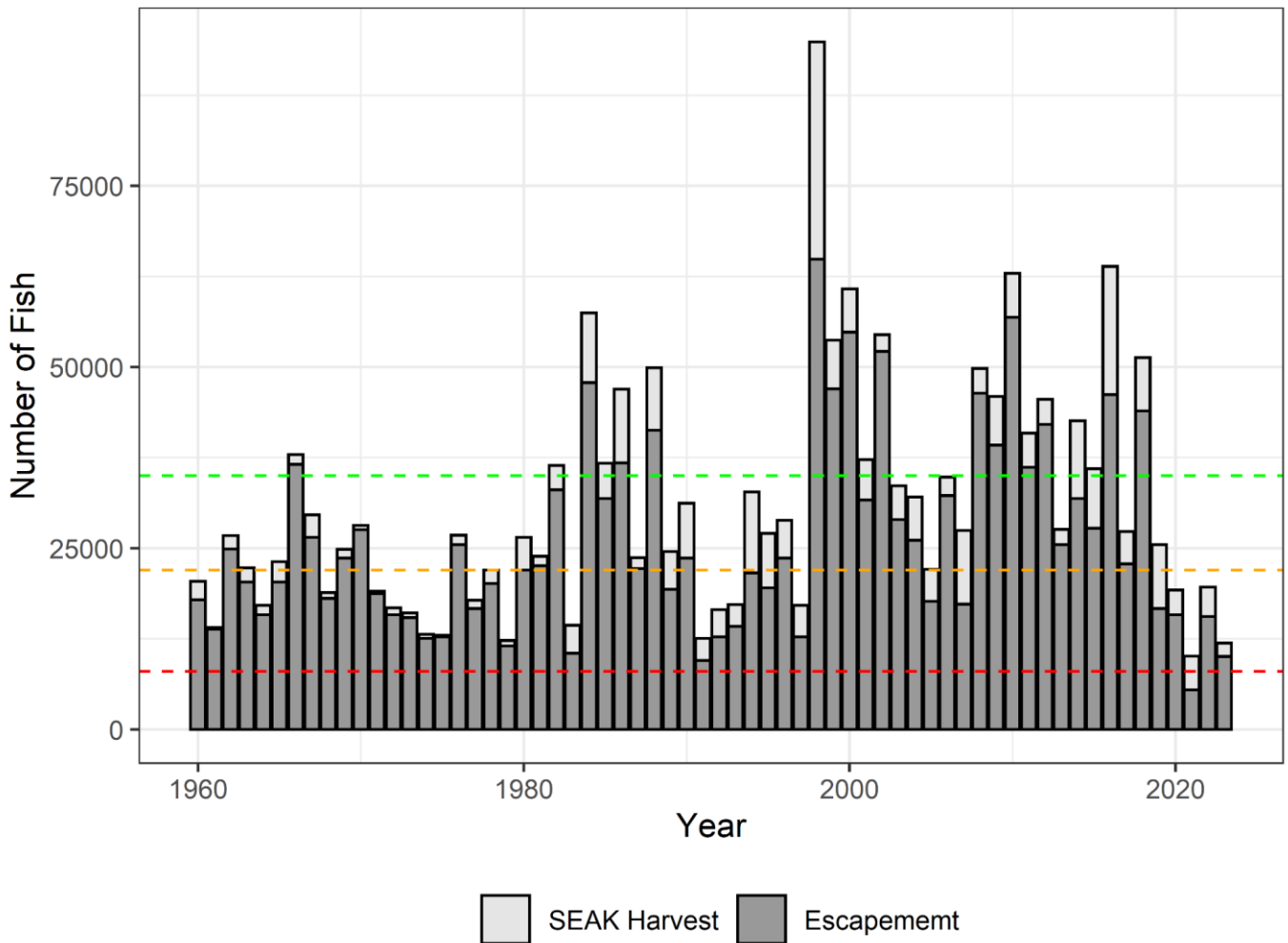


Figure 1: Skeena River summer-run steelhead escapement and estimated harvest in the Southeast Alaska salmon fishery, 1960-2023. Horizontal dashed lines indicate Conservation Zones identified by the Province of British Columbia: green is MSY (35,000); yellow is the threshold for Conservation Concern (< 23,000); red is the threshold for Extreme Conservation Concern (< 8,000). Escapement data extracted from Province of British Columbia in-season Figure (September 2023).

**Table 11: Scoring PI 2.3.1**

<b>1</b>	<b>Performance Indicator</b>
<p>PI 2.3.1.C- ETP species management strategy</p> <p>“Indirect effects have been considered for the UoA including enhancement activities and are thought to be highly likely to not create unacceptable impacts.”</p>	
<b>2</b>	<b>Reason</b>
<p>2.3.1.C: The Southeast UoA salmon fishery should not score SG 80. This standard is not met.</p> <p>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" (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.</p> <p>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' is in contravention of the ESA and NEPA. As such, NOAA still must address the fisheries deficiencies regarding its compliance with these two pieces of legislation. NOAA began its consultation on the "Incidental Take Statement" in the fall of 2023.</p> <p>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."</p> <p>NOAA's 2019 biological opinion admitted that past and ongoing Chinook harvest in Southeast Alaska's troll fishery is occurring at levels that are unsustainable for the long-term survival and reproductive success of both threatened wild Chinook populations and endangered Southern Resident killer whales. The biological opinion and the courts acknowledged the adverse effects of the troll fishery. The appeal of the original 9th circuit court ruling did not reverse this conclusion. The evidence suggests there are unacceptable impacts from this fishery. It in no way suggests the fishery is "highly likely to not create unacceptable impacts". The SG 80 has not been met. The score should be reduced to maximum SG60.</p>	
<b>3</b>	<b>Supporting rationale and or evidence</b>
<p><b>Case No. C20-417-RAJ-MLP: Wild Fish Conservancy vs Alaska Trollers Association Filed 12/13/22 In United States District Court, Western District Of Washington At Seattle.</b></p> <p><a href="https://wildfishconservancy.org/wp-content/uploads/2023/05/Court-Order-filed-05-02-23_includes-report-and-rec.pdf">https://wildfishconservancy.org/wp-content/uploads/2023/05/Court-Order-filed-05-02-23_includes-report-and-rec.pdf</a></p> <p><b>Case No. 35232 United States court of Appeal</b>  <b>2023.06.21-Order-on-State-of-AK-Mtn-for-Stay-and-WFC-Mtn-for-Injunctive-Relief-Dkt.-No.-48-</b>  <a href="https://wildfishconservancy.org/wp-content/uploads/2023/06/2023.06.21-Order-on-State-of-AK-Mtn-for-Stay-and-WFC-Mtn-for-Injunctive-Relief-Dkt.-No.-48-2.pdf">https://wildfishconservancy.org/wp-content/uploads/2023/06/2023.06.21-Order-on-State-of-AK-Mtn-for-Stay-and-WFC-Mtn-for-Injunctive-Relief-Dkt.-No.-48-2.pdf</a></p>	

**Table 12: Scoring PI 2.3.2**

PI 2.3.2.A ETP species management strategy	
<p>“There is a strategy in place for managing the UoA and enhancement activities’ impact on ETP species, including measures to minimise mortality, which is designed to be highly likely to achieve national and international requirements for the protection of ETP species.”</p>	
<b>2</b>	<b>Reason</b>
<p>2.3.2.A: The Southeast UoA salmon fishery should not score SG 80. This standard is not met. The score should be reduced to maximum SG60.</p> <p>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.</p> <p>As stated for 2.3.1.C, the court determined that NOAA fisheries violated the ESA and NEPA when it permitted Chinook harvest in the Alaskan troll fishery that affected endangered SRKW and threatened Chinook salmon. Analysis has shown that Chinook harvest in SEAK fishery reduces prey for Southern Residents and ultimately jeopardizes their likelihood of recovery (see below affidavit of Robert Lacy).</p> <p>The 2023 appeal of the original 2022 court decision did not reverse this conclusion. The 9th circuit court appeal decision permitted the SEAK troll fishery to proceed in 2023 based on the undue economic harm that closing the fishery would have, without the certainty that killer whales would benefit. The ruling of the 9th Circuit Appeal court did not reverse the finding that NOAA’s Incident Take Statement was in contravention of the ESA and NEPA. As such, it cannot be concluded that there is a strategy in place that is sufficient for managing the indirect impacts of the UoA on SRKW.</p> <p>NOAA’s 2019 Biological Opinion (BiOp) admitted that past and ongoing Chinook harvest in Southeast Alaska’s troll fishery is occurring at levels that are unsustainable for the long-term survival and reproductive success of both threatened wild Chinook populations and endangered Southern Resident killer whales. The court has identified that NOAA’s BiOp is not adequate to meet the standards of the ESA and NEPA. It is equally not adequate to meet the scoring guide at SG 80. The score should be reduced to maximum SG60.</p>	
<b>3</b>	<b>Supporting rationale and or evidence</b>
<p><b>Case No. C20-417-RAJ-MLP: Wild Fish Conservancy vs Alaska Trollers Association Filed 12/13/22 In United States District Court, Western District Of Washington At Seattle.</b></p> <p>Affidavit of Dr. Robert Lacy  <a href="https://wildfishconservancy.org/wp-content/uploads/2022/12/Third-Declaration-by-Dr.-Robert-Lacy.pdf">https://wildfishconservancy.org/wp-content/uploads/2022/12/Third-Declaration-by-Dr.-Robert-Lacy.pdf</a></p> <p><b>Case No. 35232 Wild Fish Conservancy vs Alaska Trollers Association United States court of Appeal 2023.06.21-Order-on-State-of-AK-Mtn-for-Stay-and-WFC-Mtn-for-Injunctive-Relief-Dkt.-No.-48-</b>  <a href="https://wildfishconservancy.org/wp-content/uploads/2023/06/2023.06.21-Order-on-State-of-AK-Mtn-for-Stay-and-WFC-Mtn-for-Injunctive-Relief-Dkt.-No.-48-2.pdf">https://wildfishconservancy.org/wp-content/uploads/2023/06/2023.06.21-Order-on-State-of-AK-Mtn-for-Stay-and-WFC-Mtn-for-Injunctive-Relief-Dkt.-No.-48-2.pdf</a></p>	

**Table 13: Scoring PI 3.2.3**

<b>1</b>	<b>Performance Indicator</b>
<p>PI 3.2.3 - Compliance and enforcement</p> <p>“Monitoring, control and surveillance mechanisms ensure the management measures in the fishery and associated enhancement activities are enforced and complied with.”</p>	
<b>2</b>	<b>Reason</b>
<p>3.2.3.A:</p> <p>The Southeast UoA salmon fishery should not 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. SG 60 criteria is not met for 3.2.3.A; score reduction expected and condition raised.</p> <p>The CAB’s response to this feedback in the Final Draft Report does not adequately address concerns. Response is related to the incorporation of estimated mortality of released Chinook salmon in the SEAK purse seine fishery, not the efficacy of the monitoring, control, and surveillance mechanisms that exist within the fishery.</p> <p>Under United Nations <i>Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries</i> and <i>International Guidelines on Bycatch Management and Reduction of Discards</i> (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.</p>	
<b>3</b>	<b>Supporting rationale and or evidence</b>
<p><b>UN FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries 29.5:</b> "An effective legal and administrative framework at the local, national or regional level, as appropriate, is established for the fishery and compliance is ensured through effective mechanisms for monitoring, surveillance, control and enforcement (see paragraph 6).";</p> <p><b>UN FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries 31.1:</b> Non target catches, including discards, of stocks other than the “stock under consideration” are monitored and should not threaten these non-target stocks with serious risk of extinction; if serious risks of extinction arise, effective remedial action should be taken.;</p> <p><b>UN FAP International Guidelines on Bycatch Management and Reduction of Discards 5.1.3:</b> "Where necessary, States and RFMO/As should strive to achieve a level and scope of observer programs sufficient to provide quantitative estimates of total catch, discards and incidental takes of living aquatic resources."; other sources for mortality rates and incidental harvest which have been previously referenced apply</p> <p><a href="https://www.fao.org/3/i1119t/i1119t.pdf">https://www.fao.org/3/i1119t/i1119t.pdf</a>  <a href="https://www.fao.org/3/ba0022t/ba0022t.pdf">https://www.fao.org/3/ba0022t/ba0022t.pdf</a></p>	

## 1.7. Additional information

Table 14: Additional information

<b>1</b>	<b>Information</b>
<p><b>Case No. C20-417-RAJ-MLP: Wild Fish Conservancy vs Alaska Trollers Association Filed 12/13/22 In United States District Court, Western District Of Washington At Seattle.</b></p> <p>On December 13th, 2022, United States Magistrate Judge Michelle L. Peterson recommended to the District Court that the 2019 SEAK Biological Opinion be remanded to the National Marine Fisheries Service to remedy the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) violations previously found by the Court; and that portions of the 2019 SEAK Biological Opinion that allow “take” of SRKW and Chinook salmon resulting from commercial harvests of Chinook salmon during the winter and summer seasons be vacated.</p>	
<b>2</b>	<b>Reason why information was known or should reasonably have been known.</b>
<p>The ruling in the Wild Fish Conservancy vs The Alaska Trollers Association, the State of Alaska, Rumsey et al case was widely published in North American media and commercial fishing industry journals and came early in the MRAG re-assessment of the Alaska Salmon Fishery.</p>	
<b>3</b>	<b>Reason why information could have been material to the determination or the fairness of the assessment.</b>
<p>The Federal Court Judge accepted expert witness testimony showing Chinook harvest in Southeast Alaska violates US Federal law. Neither the State of Alaska, nor the Alaska Trollers Association appealed this final order remanding the National Marine Fisheries Service’s 2019 Southeast Alaska Biological Opinion (SEAK BiOp) to remedy ESA and NEPA violations previously found by the Court. (In 2022, the court found the NMFS failed to conduct necessary NEPA analyses for the issuance of the Incidental Take Statement, allowing “take” associated with the Southeast Alaska salmon fisheries in the 2019 SEAK BiOp.)</p> <p>The court accepted the plaintiff’s request to vacate the 2019 SEAK BiOp’s “take” authorization of Southern Resident killer whale and Chinook salmon from commercial harvests during the winter and summer seasons of the Southeast Alaska troll fisheries.</p> <p>At this moment, any ensuing fishery was operating in violation of federal law. These facts were raised by the Stakeholders. In response, the CAB said “Based on a decision by the 9th Circuit Court of Appeals, the SEAK troll fishery was permitted to occur in 2023 and was/is in compliance with its incidental take permit.” (pg 422 - DRAFT Final Assessment.) However, (1) the ruling of the 9th Circuit did not reverse the vacateur. It allowed the fishery to proceed in order to prevent ‘undue economic harm’. And (2) the 9th circuit ruling occurred after the date at which evidence for this fishery could be considered by the CAB. On page 424, the CAB contradicts its own certainty of the legality of the fishery by stating “to our knowledge the SEAK fishery is in compliance with its incidental take permit.”</p> <p>It is the responsibility of the CAB to use this information, which is material to its determinations of fishery management, performance, and scoring.</p> <p>The CAB’s assessment of the SEAK Chinook harvest is overly-reliant on Pacific Salmon Treaty documents, and its assessment of the management regime for the fishery overly-reliant on whether it complies with the Pacific Salmon Treaty. However, both the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) trump the Pacific Salmon Treaty, and assessments by the National Marine Fisheries Service are more consequential than assessments by the Pacific Salmon Treaty’s Chinook Technical Committee.</p> <p>The CAB must do more than rely on Alaska’s “compliance with the Management Plan specified in the Pacific Salmon Treaty” to determine whether the fishery violates the law.</p> <p>Here, ample legal evidence available during the re-assessment period indicated that the SEAK Chinook troll fishery was operating outside of the law, and no evidence was submitted within the re-assessment period to show that it wasn’t. When these comments were raised by the stakeholders, instead of incorporating the information into the re-assessment, the CAB responded by saying “We are not lawyers. We suggest you take your concerns to NOAA fisheries.” (Page 424.)</p> <p>Court sanctioned evidence about both the legality and sustainability of a fishery central to the CAB’s reassessment is material. The CAB’s contradicting, and flippant responses to concerns raised by the stakeholder, and supported</p>	

by the court's ruling show the CAB was selectively evaluating both evidence and information. MRAG did not conduct a fair evaluation of the Southeast Alaska Troll Fishery, and their evaluation of the fishery management regime in SE Alaska did not incorporate information material to the assessment.



## 2. Appendix 1 – Costs of the adjudication process (the Fee)

*Objectors should note MSC Disputes Process v1.1 Section 5.11 in relation to the costs of the adjudication process.*

### Fee amount and payment details

*The cost of the adjudication process is £5,000 or such lesser amount fixed by the independent adjudicator under MSC Disputes Process v1.1, 5.11.5.*

*The cost of the adjudication process shall be calculated and paid in Great British Pounds.*

*The MSC will email remittance details for the costs of the adjudication process within 5 days of the date on which the independent adjudicator notifies the parties that the adjudication phase will commence.*

*Please ensure the bank charges imposed by your own bank are not deducted from the Fee.*

*All sums, prices, costs, expenses and revenues referred to under the cost of the adjudication process are inclusive of VAT and any other taxes.*

*As per MSC Disputes Process v1.1, 5.11.3, an objection will not proceed to adjudication unless, within 15 days of the date on which the independent adjudicator notifies the parties that the adjudication phase will commence, the objector(s) has either:*

- *Paid the costs of the adjudication process to the MSC, or*
- *Obtained a waiver from the independent adjudicator in accordance with MSC Disputes Process v1.1, 5.11.4 and 5.11.5. The Notice of Objection Fee Waiver Template will need to be completed – see Appendix 2.*

## 3. Appendix 2 - MSC Notice of Objection Fee Waiver Template

The MSC Notice of Objection Fee Waiver Template can be found [here](#).

## 4. Template information and copyright

The Marine Stewardship Council's 'MSC Notice of Objection Template v3.2.1' and its content is copyright of "Marine Stewardship Council" - © "Marine Stewardship Council" 2024. All rights reserved.

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Table 15: Template version control

Version	Date of publication	Description of amendment
1.0	March 2009	Issued with TAB Directive-023 Revised Fisheries Certification Methodology Objections Procedure
1.1	February 2010	Updated in line with release of TAB Directive-023 Objections Procedure v2
1.2	26 October 2012	Updated in line with release Certification Requirements v1.2
2.0	08 October 2014	Updated in line with release of Fisheries Certification Requirements v2.0
3.0	17 December 2018	Release alongside Fisheries Certification Process v2.1
3.1	25 March 2020	Release alongside Fisheries Certification Process v2.2 and MSC Disputes Process v1.0
3.2	26 October 2022	Release alongside Fisheries Certification Process v2.3 and 3.0 and MSC Disputes Process v1.01.
3.2.1	12 February 2024	Updated in line with release of MSC Disputes Process v1.1

A controlled document list of MSC program documents is available on the MSC website (<https://www.msc.org/for-business/certification-bodies/fisheries-standard-program-documents>).

Marine Stewardship Council

Marine House

1 Snow Hill

London EC1A 2DH

United Kingdom

Phone: + 44 (0) 20 7246 8900

Fax: + 44 (0) 20 7246 8901

Email: [standards@msc.org](mailto:standards@msc.org)