



Wild Fish Conservancy

N O R T H W E S T

S C I E N C E E D U C A T I O N A D V O C A C Y



A Southern Resident killer whale preys on a salmon. (Candice Emmons/NOAA Fisheries, NMFS permit number 16163)

Federal Court Finds NOAA's Harvest Mitigation Proposal Violated Endangered Species Act Protections for Wild Chinook and Southern Resident Killer Whales

For immediate release

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September 29, 2021— A groundbreaking new ruling from the federal court in Seattle is calling into question the continuation of decades of unsustainable commercial salmon harvest in Southeast Alaska, a decision that may lead to increased available prey for starving Southern Resident killer whales and allow protected Chinook populations to rebuild in rivers throughout the coast.

On Monday, in response to [a lawsuit filed](#) by Wild Fish Conservancy, U.S. Magistrate Judge Michelle Peterson issued a [report and recommendation](#) finding the National Oceanic and Atmospheric Administration (NOAA) is in violation of the Endangered Species Act (ESA) by relying on undeveloped and uncertain future mitigation to authorize commercial salmon harvest at levels that NOAA admits are pushing federally-protected Southern Resident orcas and wild Chinook closer to extinction.

In March 2020, the Conservancy filed suit to challenge NOAA's authorization under the ESA of the Southeast Alaska Chinook troll fishery. The lawsuit challenges NOAA's decision to approve the fishery to continue relying on speculative and unproven mitigation measures in the form of new hatchery production, which will itself impede recovery of wild Chinook salmon populations.

In the lengthy report filed this week, the Magistrate Judge overwhelmingly agreed with Wild Fish Conservancy's claims against NOAA, while denying motions from the State of Alaska and the Alaska Troller's Association to dismiss parts of the case. Among the findings, the report found that NOAA violated section 7 of the ESA by improperly relying on uncertain mitigation measures that "lack specific and binding plans, lack specific deadlines or otherwise-enforceable obligations, and are not subject to agency control or otherwise reasonably certain to occur." The Court further found that NOAA violated the National Environmental Policy Act (NEPA) by commencing massive new hatchery programs using federal tax dollars to offset commercial salmon harvests in Southeast Alaska without any public process or other procedures required by NEPA.

"The Court's report will be celebrated widely by orca and wild salmon advocates in coastal communities throughout the Pacific Northwest", says Kurt Beardslee, Executive Director of Wild Fish Conservancy. "If these prudent recommendations are adopted by the District Judge, the decision should lead to considerably more Chinook migrating through Southern Resident killer whale foraging areas, and far more wild Chinook returning to their home rivers in British Columbia, Washington, and Oregon, rebuilding dwindling populations and maximizing the benefits of local restoration efforts."

Currently, there are only 73 Southern Resident killer whales, down alarmingly from nearly 100 only 25-years ago. Reduced prey availability, specifically large Chinook, has been identified by killer whale experts and NOAA's analysis as the primary cause of their decline.

In the Southeast Alaska Chinook troll fishery at issue, only 3% of all Chinook harvested originate from Alaskan rivers, while the remaining 97% originate from rivers throughout British Columbia, Washington, and Oregon. If given the opportunity, these Chinook will migrate back down the coast serving as the primary prey for the Southern Resident killer whales as the Chinook pass through the whale's key forage areas. Instead, these Chinook are being harvested outside of the range of the whales, regardless of their status under the ESA, and at levels that federal fishery managers acknowledge are unsustainable for the long-term survival and reproductive success of both wild Chinook and the Southern Resident population.

"NOAA has failed fishers, salmon, and orcas for decades," emphasized Beardslee. "Alaskan fishers who follow the rules are not to blame here, the fault lies with fisheries managers and NOAA for consistently approving unsustainable harvest plans," said Beardslee. "The Court's findings are finally holding NOAA accountable for following the law and adhering to best available science, a win-win for wild salmon, orcas, and coastal communities alike."

In the coming months, the Magistrate Judge's report and recommendation and any objections from the defendants will be considered by the District Judge presiding over the case for a final ruling.

"We are encouraged by the Court's thoughtful and thorough decision after reviewing the facts and the law surrounding this significant case. We now look forward to the District Judge's decision in coming months and the precedent-setting environmental benefits that may come from it", says Beardslee.

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Wild Fish Conservancy is a conservation ecology organization dedicated to conservation, protection, and restoration of wild fish ecosystems in the Pacific Northwest. wildfishconservancy.org

Wild Fish Conservancy is represented in this matter by Kampmeier & Knutsen, PLLC, of Portland, Oregon and Seattle, Washington and by Corr Cronin, LLP of Seattle, Washington.

Further Reading:

[Report and Recommendation filed 9/27/2021](#)

[Complaint Filed 3/18/2020](#)

[NOAA's Analysis of the Fishery \(Biological Opinion\)](#)

[Previous Coverage](#)