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PACIFIC COUNTY, WA

BY  DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PACIFIC

WILLAPA BAY GILLNETTERS  
ASSOCIATION, a Washington nonprofit  
corporation,

Petitioner;

v.

WASHINGTON DEPARTMENT OF FISH  
AND WILDLIFE,

Respondent.

No. 15 2 00168 4

PETITION FOR JUDICIAL REVIEW OF  
AGENCY ACTION UNDER RCW  
34.05.570(4)

COMES NOW Petitioner Willapa Bay Gillnetters Association, by and through its attorneys of record Ryen L. Godwin and Gregory A. Jacoby of McGavick Graves, P.S., and submits this Petition for Review as follows:

**I. PARTIES**

1.1 Petitioner Willapa Bay Gillnetters Association ("WBGA") is a Washington nonprofit corporation. The WBGA's principal place of business is Pacific County, Washington. The members of the WBGA are commercial gillnet fisherman with licenses to engage in commercial gillnet fishing in Willapa Bay and regularly engage in commercial gillnet fishing in Willapa Bay. The WBGA has

1 an interest in promoting, advancing, and conducting commercial gillnet fishing in Willapa Bay. The  
2 WBGA has standing to petition for judicial review.

3 1.2 The WBGA's mailing address is P.O. Box 26, Grayland, WA 98547.

4 1.3 Respondent Department of Fish and Wildlife ("DFW") is a Washington state agency  
5 created and organized pursuant to Chapter 77.04 RCW. The DFW consists of the state fish and  
6 wildlife commission ("Commission") and the director. RCW 77.04.020

7 **II. JURISDICTION AND VENUE**

8 2.1 Venue is proper in Pacific County pursuant to RCW 34.05.514(1) as the WBGA's  
9 principal place of business is in Pacific County.

10 2.2 This Court has jurisdiction to adjudicate this matter pursuant to Chapter 34.05 RCW.

11 **III. AGENCY ACTION**

12 3.1 Petitioner realleges and incorporates herein by this reference the preceding  
13 allegations.

14 3.2 The agency action at issue is the Willapa Bay Salmon Management Policy C-3622  
15 ("Policy"). A copy of the Policy is attached hereto as Exhibit "A" and incorporated herein by this  
16 reference. The Policy was adopted by the Commission on June 13, 2015.

17 3.3 The WBGA is aggrieved or adversely affected as a direct, proximate, and foreseeable  
18 result of the agency action because the Policy will negatively impact the WBGA's interests. The  
19 WBGA is aggrieved or adversely affected as a direct, proximate, and foreseeable result of the agency  
20 action because the Policy will negatively impact the WBGA's members' ability to engage in  
21 commercial gillnet fishing in Willapa Bay.

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1       **IV.    FIRST CLAIM FOR RELIEF THAT THE POLICY IS OUTSIDE STATUTORY**  
2                               **AUTHORITY PURSUANT TO RCW 34.05.570(4)(c)(ii)**

3           4.1    Petitioner realleges and incorporates herein by this reference the preceding  
4           allegations.

5           4.2    In establishing policies, the Commission has authority to prescribe basic goals and  
6           objectives related to those policies. RCW 77.04.055(1)(a). The Commission shall establish  
7           provisions regulating food fish and shellfish as provided by RCW 77.12.047. RCW 77.04.055. Time,  
8           place, manner, and method restrictions for food fish are only authorized by rule, not policy. RCW  
9           77.12.047.

10          4.3    The Policy here prescribes time, place, manner, and method restrictions for Willapa  
11          Bay gillnet fishing for food fish. The Policy states:

12               c.    No commercial Chinook fisheries shall occur in areas 2T and 2U prior to  
                September 16.

13               d.    No commercial Chinook fisheries shall occur in areas 2M, 2N, 2P and 2R until  
14               after Labor day.

15          (Policy, p. 5 s. 5.c.-d.).

16               b.    No commercial fisheries shall occur within areas 2T and 2U prior to  
                September 16.

17               c.    No commercial Chinook fisheries shall occur in areas 2M, 2N, 2P, and 2R  
18               until after September 7.

19          (Policy, p. 6 s. 6.b.-c.).

20               Until the spawner goal is achieved 2 consecutive years, the maximum fishery impact  
21               shall not exceed a 10% impact rate and no commercial fisheries will occur in the  
                period from October 15-31.

22          (Policy, p. 8 s. 3).

23          4.4    The Policy's restrictions for Willapa Bay gillnet fishing are mandatory, not  
discretionary. The DFW staff lack discretion to alter or contravene the restrictions contained in the

1 Commission's Policy. The DFW staff lack discretion to alter or contravene the restrictions even if  
2 such restrictions are contrary to information produced in any subsequent rule-making process.

3 4.5 The Policy in this regard has the force and effect of law.

4 4.6 The DFW has acted outside of its statutory authority where the Commission  
5 prescribed time, place, manner, and method restrictions for commercial gillnet fishing for food fish  
6 in violation of RCW 77.04.055 and RCW 77.12.047. As a direct, proximate, and foreseeable result of  
7 the agency action, the WBGA has been aggrieved or adversely affected.

8 **V. SECOND CLAIM FOR RELIEF THAT THE POLICY IS OUTSIDE STATUTORY**  
9 **AUTHORITY PURSUANT TO RCW 34.05.570(4)(c)(ii).**

10 5.1 Petitioner realleges and incorporates herein by this reference the preceding  
11 allegations.

12 5.2 In establishing policies, the Commission has authority to provide basic goals and  
13 objectives. RCW 77.04.055(1)(a). The Commission shall establish provisions regulating food fish  
14 and shellfish as provided by RCW 77.12.047. RCW 77.04.055. Limits on the quantity of food fish  
15 and shellfish shall be implemented by regulation. RCW 77.12.047. The enforcement of the same  
16 must also be implemented by regulation. RCW 77.12.047.

17 5.3 The Policy here prescribes limits on the quantity of naturally spawning Chinook that  
18 may be impacted by commercial and recreational fishing. The Policy states:

19 a. The impact rate on Willapa and Naselle river natural-origin fall Chinook in  
20 Willapa Bay fisheries shall not exceed 20%.

21 (Policy, p. 5 s. 5.a.). The Policy enforces the impact rate and penalizes the user group that exceeds  
22 the impact rate as follows:

23 7) Maintaining Rebuilding Trajectory. If the postseason estimate (as presented  
at the annual Commission review) of aggregated natural-origin Chinook  
salmon mortality (impacts) exceeds the preseason projection, the Department  
staff shall make a recommendation to the Commission regarding an