

1 adjustment to the allowable impacts for the subsequent year. The
2 recommendation shall be based upon the percentage by which the postseason
3 estimate of impacts exceeded the preseason projection, but may consider other
4 facts such as the predicted abundance or other relevant factors.

(Policy, p. 7 s. 7).

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

5.5 The DFW has acted outside its statutory authority where the Commission imposed
limits on the quantity of food fish and shellfish by policy, rather than regulation as required by RCW
77.04.055 and RCW 77.12.047. The DFW has acted outside its statutory authority where the
Commission may enforce its limitations on the user group that exceeds the impact rate by policy,
rather than regulation as required by RCW 77.04.055 and RCW 77.12.047. As a direct, proximate,
and foreseeable result of the agency action, the WBGA has been aggrieved or adversely affected.

VI. THIRD CLAIM FOR RELIEF THAT THE POLICY IS ARBITRARY AND
CAPRICIOUS PURSUANT TO RCW 34.05.570(4)(c)(iii).

6.1 Petitioner realleges and incorporates herein by this reference the preceding
allegations.

6.2 The DFW's enabling statute mandates that the DFW shall do the following:

Preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and
shellfish in state waters and offshore waters.

The department shall conserve the wildlife and food fish, game fish and shellfish
resources in a manner that does not impair the resource. In a manner consistent with
this goal, the department shall seek to maintain the economic well-being and stability
of the fishing industry in the state. The department shall promote orderly fisheries and
shall enhance and improve recreational and commercial fishing in this state.

...

The commission may authorize the taking of wildlife, food fish, game fish, and shell
fish only at times or places, or in manners or quantities, as in the judgment of the
commission does not impair the supply of these resources.

RCW 77.04.012

PETITION FOR JUDICIAL REVIEW - 5

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1
2 6.3 To achieve these goals, the DFW uses the All H Analyzer ("AHA") Model to predict
3 the number of salmon that will return to Willapa Bay and spawn in the future. The AHA Model
4 analyzes four specific factors: hatchery, harvest, habitat, and hydroelectric. Each factor requires a
5 baseline value.

6 6.4 The generally accepted baseline value for the harvest factor is an average of four to
7 six year harvest rates in Willapa Bay. The DFW used a one year harvest rate for Willapa Bay.
8 Consequently, the AHA Model's output is not a reliable source to predict the quantity of salmon that
9 will return to Willapa Bay and spawn. There is no rational reason to use a one year harvest rate for
10 Willapa Bay as the baseline. The DFW's use of a one year harvest rate renders the AHA Model's
11 output unreliable, arbitrary, and unsupported.

12 6.5 The Policy relies upon the AHA Model to analyze hatchery, harvest, and habitat
13 constraints on Willapa Bay salmon fishing. The Policy is arbitrary and capricious because it is based
14 upon unreliable, arbitrary, and unsupported outputs from the AHA Model. There is no rational
15 relationship between the Policy and scientifically based predictions for salmon returning to Willapa
16 Bay.

17 6.6 The DFW acted in an arbitrary and capricious manner in violation of RCW
18 34.05.570(4)(c)(iii). As a direct, proximate, and foreseeable result of the agency action, the WBGA
19 has been aggrieved or adversely affected.

20 **VII. FOURTH CLAIM FOR RELIEF THAT THE POLICY IS ARBITRARY AND**
CAPRICIOUS PURSUANT TO RCW 34.05.570(4)(c)(iii).

21 7.1 Petitioner realleges and incorporates herein by this reference the preceding
22 allegations.

23 7.2 The DFW's enabling statute requires the DFW to seek to maintain the economic well-

1 being and stability of the fishing industry. RCW 77.04.012. It is the intent of the legislature

2 to ensure that a sustainable level of salmon is made available for harvest for
3 commercial fishers in the state. Maintaining consistent harvest levels has become
4 increasingly difficult with the listing of salmonid species under the federal endangered
species act. Without a stable level of harvest, fishers cannot develop niche markets
that maximize the economic value of the harvest.

5 RCW 77.50.120. According to its mandate, the DFW must analyze the economic impacts of agency
6 actions on the fishing industry.

7 7.3 The DFW does not have expertise in economics to analyze the economic well-being
8 and stability of the fishing industry so it must rely upon the opinions of others.

9 7.4 The DFW analyzed the current economic impacts of commercial and recreational
10 fishing in Willapa Bay by establishing two economic indices. The economic index for commercial
11 fishing is ex-vessel value (i.e. the price received by commercial fishers for fish landed at the dock).
12 The economic index for recreational fishing is angler days. The DFW determined the current
13 economic impact in Willapa Bay based upon a state-wide study published in 2008 of all gear types,
14 all locations, and all species of salmon. The state-wide study is not generally accepted as a reliable
15 basis to determine economic impacts on a particular region because it does not adequately account
16 for local economic impacts of varying gear types, locations, and species of salmon. There is no
17 rational relationship between the economic impacts identified in the state-wide study and the Policy's
18 actual economic impacts on Willapa Bay. Consequently, the Policy is arbitrary and capricious.

19 7.5 The DFW failed to properly apply the economic index when it established the Policy's
20 impact rate for Willapa Bay. The DFW's application of ex-vessel value and angler days is not
21 reasonable. An accurate understanding of local and regional economic impacts is necessary to make
22 reliable conclusions about the economic well-being and stability of the fishing industry in the state.
23 The Policy's impact rate for Willapa Bay does not maintain the economic well-being and stability of