

1 the fishing industry.

2 7.6 The DFW did not provide any explanation for the reason it used the state-wide study
3 for the economic analysis rendering the Policy's impact rate arbitrary and capricious.

4 7.7 The DFW did not conduct an economic impact analysis of the Policy's impact rate on
5 the commercial and recreational fisheries. Without knowing the economic impact of the Policy's
6 impact rate on future commercial and recreational seasons, the DFW cannot seek to maintain the
7 economic well-being and stability of the fishing industry rendering the Policy arbitrary and capricious.

8 7.8 The DFW acted in an arbitrary and capricious manner in violation of RCW
9 34.05.570(4)(c)(iii). As a direct, proximate, and foreseeable result of the agency action, the WBGA
10 has been aggrieved or adversely affected.

11 **VIII. FIFTH CLAIM FOR RELIEF THAT THE POLICY IS ARBITRARY AND**
12 **CAPRICIOUS PURSUANT TO RCW 34.05.570(4)(c)(iii).**

13 8.1 Petitioner realleges and incorporates herein by this reference the preceding
14 allegations.

15 8.2 The DFW's enabling statute requires DFW to maintain the economic well-being and
16 stability of the fishing industry in the state. RCW 77.04.012. The DFW cannot maintain the economic
17 well-being and stability of the fishing industry in the state by reducing the impact rate for naturally
18 spawning Chinook to twenty percent and then fourteen percent as provided by the Policy.

19 8.3 The Policy states:

20 5) Fishery Management in 2015-2018. To facilitate a transition to the Willapa
21 River as the primary Chinook salmon population, fisheries during the
22 transition period will be managed with the following goal:

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

1 6) Fishery Management after 2018. Fisheries in the Willapa Bay Basin will be
2 managed with the goal of:

3 a. Limiting the fishery impact rate on Willapa and Naselle river natural-origin
4 fall Chinook salmon to no more than 14%.

(Policy, pp. 5-6).

5 8.4 Historically, the impact rate for Willapa River and Naselle River naturally spawning
6 Chinook salmon has been at or near thirty percent. These stocks are relatively healthy and none are
7 listed or threatened to be listed under the Endangered Species Act. As recently as 2013, The DFW
8 expressly found that the thirty percent impact rate ensured the protection of natural origin adults and
9 removed hatchery adults that might otherwise have a negative influence on natural counterparts. As
10 a result, the thirty percent impact rate was deemed to satisfy the conservation objective in RCW
11 77.04.012.

12 8.5 An agency that rescinds or reverses a prior course of action is obligated to supply a
13 reasoned analysis for the change. There must be a rational connection between the facts found and
14 the choice made.

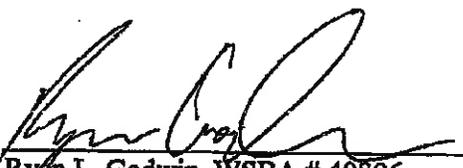
15 8.7 The facts found by the DFW as recently as 2013 show that a thirty percent impact rate
16 ensured the protection of natural origin adults and removed hatchery adults that might otherwise have
17 a negative influence on natural counterparts. The DFW failed to provide a reasoned analysis for the
18 change in the impact rate. The decision to reduce the impact rate in the Policy from thirty percent is
19 arbitrary and capricious because there is no rational relationship to the facts found and the choice
20 made to reduce the impact rate for naturally spawning Chinook.

21 8.8 In addition, there is no conservation benefit to reducing the impact rate from twenty
22 percent and then to fourteen percent after the initial transition period outlined in the Policy. The
23 fourteen percent impact rate applied after 2018 is therefore arbitrary and capricious.

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DATED this 26th day of June 2015.

McGAVICK GRAVES, P.S.

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