

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  
transition period will be managed with the following goal:

22 a. The impact rate on Willapa and Naselle river natural-origin fall Chinook in  
23 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.

8.9 Since the conservation objective is satisfied at a thirty percent impact rate, the DFW has failed to maintain the economic well-being and stability of the fishing industry in the state by reducing the impact rate for naturally spawning Chinook to twenty percent and then fourteen percent.

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

## IX. REQUEST FOR RELIEF

WHEREFORE having set forth affirmatively the facts and reasons for believing relief should be granted, Petitioner prays for the following relief:

1. For Judgment ordering Respondent to take the action required by law.
2. For Judgment ordering Respondent to exercise discretion required by law.
3. For judgment ordering Respondent to set aside the Policy, enjoin or stay the Policy, or remand the Policy for further proceedings not inconsistent with the Court's decision.
4. For Judgment making such interlocutory orders the Court finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action.
5. For Judgment of attorney's fees, costs, and expenses as provided by RCW 4.84.350.
6. For such other and further relief as the Court deems equitable and just.

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1 DATED this 26th day of June 2015.

2 McGAVICK GRAVES, P.S.

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4  
5 By: 

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7 Of Attorneys for Petitioner  
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