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EXPEDITE  
 No hearing set  
 Hearing is set  
Date: May 13, 2011  
Time: 9:00 a.m.  
The Honorable Thomas McPhee

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

PUGET SOUND CRAB ASSOCIATION, a ) Washington nonprofit corporation; BRIAN ) E. ALLISON, a single person; JOHN ) RANTZ, a married person; VINTON ) WALDRON, a married person; KENNETH ) CREWS, a married person, BRIAN ) MELVIN, a married person, BRIAN ) MACKEY, a married person, )	Case No.: 11-2-00578-7
Petitioners, )	PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION
vs. )	
STATE OF WASHINGTON and ) DEPARTMENT OF FISH AND ) WILDLIFE, a State agency, ) )	
Respondents. )	

**I. RELIEF REQUESTED**

Six commercial fishers in the Puget Sound Dungeness crab fishery, and their association the Puget Sound Crab Association ("PSCA"), move for a preliminary injunction staying new regulations adopted by the Washington Department of Fish and Wildlife ("WDFW"). The new regulations challenged are those amendments to WAC 220-56-330 adopted on February 4, 2011, by the WDFW Commission, that add a weekend day to the summer Dungeness crab season for recreational crabbers. Petitioners also seek a stay of any implementation of this change and the relevant portion of WDFW's Puget Sound Crab Fishery Policy c-3609 adopted

1 on October 1, 2010, insofar as this also expands recreational crabbing opportunity in Puget  
2 Sound.<sup>1</sup> The expansion of the recreational crabbers' season will directly reduce the commercial  
3 crabbers catch. This will cause an admitted revenue loss the first season alone of over one  
4 million dollars, by reallocating hundreds of thousands of pounds of the catch, from commercial  
5 harvesters to recreational harvesters. Losses in later seasons will be even more. This radical re-  
6 allocation violates the RCW 77.04.012 mandate that WDFW shall "maintain the economic well  
7 being and stability of the fishing industry."

8  
9 The new regulation is also arbitrary and capricious, where WDFW considered  
10 recreational crabber's personal satisfaction, and spending at casinos and drinking places, as part  
11 of the economic well being WDFW should maintain, but not the impact of the change on the  
12 financial solvency of the commercial crabbers. WDFW simply ignored the clear severe  
13 economic impact that its own numbers show. Petitioners seek orders staying any  
14 implementation of the new rule and policy, and declaring that WDFW shall comply with RCW  
15 77.04.012, by making an allocation between recreational and commercial crabbers, then  
16 enacting rules to manage the recreational fishing opportunity to assure the commercial catch  
17 level.

## 18 19 **II. EVIDENCE RELIED UPON**

20 Petitioners rely upon the following:

- 21
- 22 • Files and pleadings herein;
  - 23 • Declaration of Brian Allison dated Feb. 28, 2011 (annexed to petition, and also  
24 served herewith) (the WAC amendments and policy challenged herein, are in  
25 Exhibits B and C thereto);
  - Second Decl. of Allison dated April 28, 2011;

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26 <sup>1</sup> These regulations concern only Dungeness crab rules in Puget Sound, meaning the Sound, Strait of  
Juan de Fuca, Georgia Strait and the San Juans.

- Declaration of Cleveland Stockmeyer dated April 28, 2011 (the “Concise Explanatory Statement (CES) WAC 220-56-330 Crab -Areas and seasons” (“CES”) filed at the Office of the Code Reviser on April 11, 2011 is Exhibit A thereto);
- Declaration of Paul Isaacson dated January 25, 2011 (included as Exhibit D in the Stockmeyer Declaration); and
- Declaration of Matt Schneider dated January 25, 2011 (included as Exhibit E in the Stockmeyer Declaration).

### III. STATEMENT OF FACTS

#### A. Commercial and Recreational Crabbers Compete for Non-Tribal Crabs.

Petitioners are some of the 160 commercial crabbers who have invested tens of millions of dollars in licenses, boats, crab pots and gear in the Puget Sound, Dungeness crab, limited-entry fishery. Second Allison Decl. ¶ 2. Their boats are not useful for other fishing or other commercial purposes. Id. In mid-2010 the licenses sold for some \$60,000. Stockmeyer Decl. Exhibit E (Schneider Decl.). The petitioners’ boats, license and gear investment are worth over \$200,000 each. Second Allison Decl. ¶ 2. The annual revenue of the commercial fleet was over \$8 million in 2009. Allison Decl. Exhibit D at 27 (WDFW power point chart). This is one of the most valuable commercial fisheries in the State.

Competing for the non-tribal share of the limited crab resources are recreational crabbers, who number over 235,000.<sup>2</sup> They annually pay a few dollars for a special Puget Sound Dungeness Crab endorsement. Prior to the new regulations, they could take five crabs a day *four* days of the week in their summer season starting July 1st. The new regulation and policy that are challenged expand the recreationals’ opportunity to *five* days a week.

#### B. Background and History of the Puget Sound Crabbing Industry.

In 1980, the Legislature made the commercial Puget Sound Dungeness crab fishery

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<sup>2</sup> As in all Washington fisheries, Tribal fishers take half the overall catch and the remaining half, called the State share, is divided among state fishers, here the commercial and recreational crabbers.

1 limited-entry.<sup>3</sup> CES at 13-14, citing RCW 77.70.110. The Legislature explained this was to  
2 “*preserve and efficiently manage the commercial crab fishery*” in Puget Sound. 1980 Laws,  
3 chapter 133 § 1 (emphasis added). The 1980 enactment provided that as of 1982, WDFW could  
4 issue no new licenses, and license renewals would be limited to those holding one previously  
5 (or acquiring a license from such a person). RCW 77.70.110(1), (2). The licenses may be  
6 transferred only to another licensee; or bequeathed or inherited; or transferred to a surviving  
7 spouse; they are not saleable generally. RCW 77.65.020; RCW 77.70.110(5). Also, if the  
8 number of licenses drops, the Legislature directed WDFW to award new licenses by lot,  
9 “sufficient to maintain one hundred twenty-five licenses in the Puget Sound Dungeness crab  
10 fishery.” RCW 77.110(6). In *Weikal v. Washington Dept. of Fisheries*, 37 Wn.App. 322, 329,  
11 679 P.2d 956 (1984), the court upheld the limited-entry provisions, finding a legislative purpose  
12 to “protect[] those with a traditional investment in the area,” and to ensure those with  
13 commercial licenses will be able to harvest enough “*to be financially solvent* without seriously  
14 depleting the crop.” *Id.*, 37 Wn.App. at 326 (emphasis added).

15  
16 The 1980 laws caused the number of licenses to be limited to 250. Today the number is  
17 still limited.<sup>4</sup> Second Allison Decl. ¶ 2. Relying on these limitations, the commercial crabbers  
18 have invested tens of millions of dollars in this limited-entry fishery. *Id.*

### 20 C. Growth of Recreational Crabbers

21 In 1994, when the federal *Rafeedie* decision was issued, tribal and state fishers had to

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22  
23 <sup>3</sup> Salmon and shrimp are also limited-entry commercial fisheries where there are substantial recreational  
24 fishers or harvesters. RCW 77.70.090, 77.70.230, 77.70.410 and 77.70.420.

25 <sup>4</sup> About half the commercial participants in this fishery are members of petitioner PSCA, a nonprofit that  
26 exists to represent their interests. Petition ¶ 6, Second Allison Decl. ¶ 2. The individual petitioners are  
all commercial fishers with licenses and each has invested over some \$200,000 invested in boats,  
licenses and equipment for this fishery. Second Allison Decl. ¶ 2.

1 begin sharing the fish and shellfish in the state equally. CES (Stockmeyer Decl. Exhibit A) at  
2 14. Thereafter, the WDFW and tribal managers each season would predict the total harvest,  
3 setting the estimated State share, and then, before the season started, the WDFW Commission  
4 set seasons and area rules “to allocate” the State share, as “between the state commercial and  
5 recreational fishers.” Id., CES at 2. This is because there were not enough crabs in the State  
6 share to satisfy both groups. In the Puget Sound Dungeness crab fishery, traditionally the  
7 recreational season is July 1 through Labor Day, followed by a commercial season starting  
8 October 1 and going through the Winter and Spring.  
9

10 By 2001, there were some 112,000 recreational crabbers. CES at 15. The continued  
11 growth in recreational crabber population caused WDFW in February 2000 to adopt a policy to  
12 set annual “targets” limiting recreational crabbers’ harvest. CES at 15. To further limit the  
13 recreational catch, in 2004, new WDFW rules reduced the recreational daily bag limit from 6 to  
14 5 crabs, and restricted them to four days per week (Wednesday through Saturday). CES at 15.

15 WDFW did not properly limit the recreational crabbers. In 2004, the Legislature  
16 required the recreational crabbers to use a special Catch Record Card (CRC) and obtain for \$3  
17 special endorsements for Puget Sound Dungeness crab on their fishing licenses. RCW  
18 77.32.430(2).<sup>5</sup> The intent was to assure an accurate “recreational allocation” and that WDFW  
19 would “more accurately estimate the preseason allocation . . . and monitor in-season catch.”  
20 Laws 2004, chapter 107 §§ 1 and 3. In fact, WDFW has not monitored in season catch.  
21

22 After 2004, each year the recreational exceeded their target catch, causing WDFW to  
23 reduce the allowable catch *for the commercial crabbers*, to stay within the State share. CES at  
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25 \_\_\_\_\_  
26 <sup>5</sup> See also RCW 77.32.070(3) (recreational crabber must report the catch on catch record cards endorsed  
for Puget Sound Dungeness crab and nonreporting may be cured next season by late reporting and  
paying \$10).

1 15. Mr. Allison shows, using WDFW data, that the Region 2E recreational target was 350,000  
2 pounds for 2008 through 2010, but the recreational catch there rose from 504,000 pounds in  
3 2008, to 585,026 pounds in 2010. The recreational overcatch thus rose, from some 150,000  
4 pounds to some 236,000 pounds, in a few years. Similarly, the Region 1 recreational target was  
5 360,000 pounds, but their catch rose from 464,857 pounds in 2008 to 567,428 pounds in 2010.  
6 Allison Decl. ¶ 112. (Region 2E is east of Whidbey, and Region 1 is the San Juans).

7 By 2010 there were some 236,000 recreational crabbers. CES at 15. According to a  
8 January 15, 2010, State Auditor report (Puget Sound Dungeness Crab Fishing Performance  
9 Audit Report No. 1002690) (“Audit Report”) (Exhibit A to Allison Decl.), citing WDFW data,  
10 many recreational crabbers violated harvest and reporting rules. Specifically, 43% were found  
11 in violation, in 383 enforcement encounters with WDFW in 2007-2008. The State Auditor  
12 concluded that violations by recreational crabbers could endanger the long term populations of  
13 crab and jeopardize the fishery. CES at 6. The State Auditor also called on WDFW to clarify  
14 the recreational/commercial allocation issue. CES at 2.

#### 16 **D. The New Policy and Regulation and CES**

17 The dissatisfaction of commercial crabbers, recreational crabbers and the State Auditor  
18 led the Commission to initiate a policy and rule making review, starting in January 2010. CES  
19 at 14-15. After public input the Commission adopted the new policy statement on October 1,  
20 2010, CES at 16, providing that recreational crabbers would harvest five rather than four days a  
21 week in their summer season, enjoying two rather than one weekend day. CES at 1, 3, 16.<sup>6</sup> On  
22 December 4, 2010, in a public comment meeting, commercial crabbers and the PSCA protested  
23 this would devastate the commercial crabbers. PSCA counsel pointed out that by WDFW’s  
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26 <sup>6</sup> The policy also calls for providing information to the public including website information, a shellfish  
hotline, and pages in the sport pamphlet devoted to the Dungeness crab recreational rules. CES at 17.

1 own admission the changes would cause a 20% decline in commercial revenue, a “Great  
2 Depression” for the commercial crabbers, and this would violate the mandate in RCW  
3 77.04.012 that WDFW “maintain the economic well being and stability of the fishing industry.”  
4 Stockmeyer Decl.

5 Notwithstanding these concerns, on February 4, 2011, the Commission adopted the  
6 changes to WAC 220-56-330 implementing the additional weekend day for recreational  
7 crabbers. CES at 4. The CES explains that the new rule represents a change in the allocation  
8 between recreational and commercial harvesters. CES at 2.

9 The CES concludes the new rule is consistent with the agency “mandate to maintain the  
10 economic well-being and stability of the fishing industry.” CES at 12; *see* RCW 77.04.012. The  
11 premise of this conclusion is the CES statement that the Department views the term “fishing  
12 industry” in RCW 77.04.012 as including *both commercial and recreational harvesters*.

13 Stretching the definition even further, it considers the “fishing industry” to also include any  
14 “support industries” providing goods or services to commercial or recreational harvesters. CES  
15 at 5, 10.<sup>7</sup> The CES cites a study by TCW Economics which considers expenditures of  
16 recreational crabbers -- even for gas, food, gear, other inputs, or even casino hotels, drinking  
17 places, airfare, boats or vans -- as associated with recreational crabbing. *See* Thomas Wegge,  
18 TCW Economics, Economic Analysis of the Non-Treaty Commercial and Recreational  
19 Fisheries in Washington State, December 2008 (“TCW Report”), at 19, 24, 36 (Stockmeyer  
20 Decl. Exhibit B) cited in CES (Stockmeyer Decl. Exhibit A) at 11. The CES interpretation of  
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24 \_\_\_\_\_  
25 <sup>7</sup> Notably, to respond to comment that no small business impact study was done, the CES states that the  
26 proposed rules relating to recreational crabbing are only for “personal use” crabbing and the new rules  
“do not regulate business *or industry*,” CES at 14 (emphasis added) -- contrary to the position the  
recreationals are industry.

1 “fishing industry” in RCW 77.04.012 is thus boundless.

2 WDFW admits that the new rule will lead to the largest recreational catch ever --  
3 1,832,417 pounds, much greater than the 2000-2009 average catch of 1,357,000 pounds. CES  
4 at 11. The CES says this means recreational crabber-caused personal income will increase by  
5 \$5.2 million (up by 37% to \$19,361,000 dollars, as compared to 2007-2009 CPI-adjusted  
6 levels). CES at 11.

7 The CES also states that, despite expanding the recreational catch, the new rule will  
8 result in commercial revenues for 2011 “likely ... approximately equal” to 2000-2009 average  
9 revenue. CES at 11-12. Tellingly, the CES admits that the new rule will lead in 2011 to  
10 commercial crabbers’ having ex vessel landing values totaling \$6,251,767, compared to a 2000-  
11 2009 average revenue of \$6,498,000. CES at 11-12 (using CPI-adjusted numbers).<sup>8</sup>

13 But the data provided in the rule making process and mentioned in the CES shows the  
14 impact on commercial crabbers is more severe: WDFW acknowledges the new rule will hike  
15 the recreational catch from 32% to 48% of the State share, and will reduce the commercial catch  
16 from 68% to 52% of the State share. CES at 13, also 10-11. As shown in the information  
17 given to the commission in January 2011, WDFW’s commission was told commercial crabbers  
18 will lose some 441,000 pounds of crab worth over a million dollars. Allison Decl. ¶ 17, 25  
19 Exhibit D pages 26-27. As shown below, WDFW’s data showed the impact was far greater.

20 The CES conclusion was that the new rule has potential net “economic benefits to the  
21 State. CES at 1, 9-13. This is based on the views mentioned above, which weight individual  
22 angler “satisfaction” and expanded economic activity in things such as casino hotels, airfare,  
23

24 \_\_\_\_\_  
25 <sup>8</sup> There is no explanation how this 4% decline constitutes revenues remaining “approximately equal.”  
26 Many businesses become unprofitable with a 4% revenue decline. Moreover, the WDFW’s own  
numbers in the rule making file show the decline is far worse, more on the order of 31-38% revenue loss  
in the first season alone, as shown below.



1 gear, food and gas for recreational crabbing, in the same balance as direct revenue loss to  
2 commercial crabbers. The CES also bases the new rule on the fact that there are very many  
3 more recreational than commercial crabbers. CES at 13.

4 The CES also concludes the new rule will not violate WDFW's mandate to protect the  
5 crabs. See RCW 77.04.012. Although the CES states that 2010 enforcement encounters  
6 showed 23.6% of the recreational were in violation of harvest rules, CES at 7, it concludes that  
7 this is not important, because most violations involved taking slightly-undersized crabs, which  
8 would still have had a season or two, to reproduce, prior to being taken while under the size  
9 limit. CES at 7.<sup>9</sup> The CES says the State Auditor's concerns about underreporting by  
10 recreational harvesters are "primarily an allocation issue and not a conservation threat." CES at  
11 13. There is no analysis of this allocation issue, however.

13 **E. The New Rule Causes Immediate, Severe, and Progressive**  
14 **Economic Harm to the Commercial Crabbers.**

15 The CES itself states the new rule is an allocation change in which the commercial  
16 catch will drop from 68% to 52% of the State share in 2011 alone. This is a severe and  
17 wrenching change. As shown in the Allison Declaration, the information before the  
18 Commission during the rule making process showed the new rule will cause very severe  
19 economic harm to the commercial crabbers in this first 2011 season. At the January 8, 2011  
20 meeting, Rich Childers, the WDFW shellfish manager, projected the 2011 commercial revenue  
21 decline would be some \$1.171 million, reducing revenue to \$6,251,767 from his baseline of a  
22 2007-2009 average value of \$7,423,000. Allison Decl. ¶ 17. This is an admitted 16% revenue  
23 loss, and Childers stated it meant roughly a \$5,000 revenue loss per license when averaged over  
24

25 \_\_\_\_\_  
26 <sup>9</sup> The CES also notes size limits in other places or other times are or were slightly lower than 6 ¼  
inches. CES at 7. The CES notes this was true in Hood Canal through 2002. Id. There is no discussion  
of the fact that the Hood Canal crab population has since then collapsed.

1 the 249 licenses. Id. This is severe harm. And given this is a permanent rule change, losses of  
2 more than \$1 million a year for future years are even worse harm.

3 However, the likely harm as shown to the Commission during the rule making process  
4 was even worse. Childers showed the Commission a Powerpoint chart showing the new  
5 regulations would reduce commercial crabbers' revenue from over \$8 million in 2009 down to  
6 some \$6.2 million in 2011 -- *nearly a \$2 million drop in revenue due to the new rule*. Allison  
7 Decl. ¶ 17 and Exhibit D page 27. This nearly 25% revenue reduction is severe harm.

8 Moreover, Allison explains the actual impacts are worse still, if one simply consider  
9 rather than ignores data known to and provided by the WDFW:  
10

- 11 • Childers projected the commercial catch would decline 441,957 pounds. But he got that  
12 by subtracting his projected 2011 catch not from the 2009 catch level, but from the  
13 average catch level from 2005-2009, years in which the commercial catch increased.  
14 Allison Decl. ¶ 25 and Exhibit D, page 26. The 2009 catch was some 3.055 million  
15 pounds. Allison Decl. ¶ 26-27. If one subtracts Childers' 2.3 million pounds projected  
16 for 2011 catch, from 3.055 million pounds, the result is a *decrease* of 730,923 pounds,  
17 not 441,957 pounds. Thus, the Commission had before it data showing the first year  
18 poundage reduction will be 730,923 pounds, not just 441,000 pounds, and 24% not just  
19 14%. Allison Decl. ¶¶ 21-27. A 730,000 pound reduction is very severe harm. Indeed,  
20 public records requests have since turned up WDFW worksheets confirming this  
21 730,000 pound reduction was the projected impact on the commercial crab fleet at  
22 WDFW. Second Allison Decl. ¶ 8 and Exhibit C. This was hidden and reduced to  
23 441,000 pounds, by deciding to subtract the projected 2011 catch level not from the  
24 prior known year, 2009, but from the average catch level from 2005-2009. This is like  
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26

1 computing last year's fall in home prices by subtracting the current price from the  
2 home's average value in 2005-2009. The method simply ignores the actual drop.

- 3 • Childers used an average price of \$2.69 per pound to convert the reduction in pounds to  
4 a reduction in dollars, estimating a revenue loss of some \$1.171 million in 2011.

5 Allison Decl. ¶ 32 and Exhibit D page 26. This is severe harm. But, managers know,  
6 the price rises over the season, and because commercial fishers compete to harvest  
7 crabs, the lost crab poundage will come at end of season, when prices are higher, likely  
8 \$3.50 to \$4.25 per pound. Allison Decl. ¶ 29-20.<sup>10</sup> By simply using the more-probable  
9 \$3.50 to \$4.25 per pound, rather than \$2.69 per pound, the first-year revenue loss is 2.5  
10 to \$3.1 million, not \$1.171 million, and is a first year revenue loss of 31-38%, not just  
11 16%. Allison Decl. ¶¶ 30, 34. WDFW ignored the price data it has always collected.

- 13 • Lost profits are even greater on a percentage basis, because most costs are fixed. The  
14 31-38% revenue loss for 2011 would equate to a profit decline of 38-50% in the 2011  
15 season alone. Allison Decl. ¶¶ 35-46. Childers and WDFW never looked at profit.

16 Allison also shows effects perceived today from impacts beyond the 2011 season. The  
17 entire basis of the new rule is continued growth in recreational crabbing, so one must expect  
18 that growth to continue. Using WDFW data, he shows (Allison Decl. ¶¶ 47-97) that the  
19 expanded access plus continued population growth in recreational crabbers will decrease the  
20 commercial catch every year for the foreseeable future, taking it down from some 2 million  
21 pounds in 2011, to 513,265 pounds by 2015. Allison Decl. ¶ 63. This is a massive decline of  
22 about 80%, from 2009 to 2015. Id. ¶ 69.

24 Allison also considers WDFW data for the two key regions. In Region 2E (east of  
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26  

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<sup>10</sup> Every sale is reported to WDFW in this intensely regulated industry.

1 Whidbey Island) the commercial share will shrink from a prior level of more than half a million  
2 pounds for recent years, to 128,000 pounds in 2011, then to zero in 2012. Allison ¶ 84, and 76-  
3 84. This is a 100% decline in two seasons. “This is economic devastation and instability.” Id.  
4 ¶ 85. This change will force some 40 boats from Region 2E into Region 1, the San Juans. Id.  
5 In Region 1, the 2009 catch was over two million pounds. The new regulations and policy of  
6 priority mean that the commercial catch there likely will decline to some 1.135 million pounds  
7 by 2016, with more boats chasing the substantially reduced catch. Allison ¶ 97.

8  
9 The new system abandoning the target allocation for recreational is “officially one of  
10 an open fishery for recreational at the expense of commercial. This produces greatly lowered  
11 asset values today and great economic harm today, as the end is now in sight.” Allison Decl. ¶  
12 115. Moreover, historically fisheries with no limits are often fished out and collapse, and this  
13 causes instability in the commercial fleet today. Allison Decl. ¶ 115. The reduction in asset  
14 values is already happening, and licenses are already “sale proof” due to the new policy and  
15 rule. See Stockmeyer Decl. Exhibit D (Isaacson Decl.) and Exhibit E (Schneider Decl.).

16 Recent WDFW communications to PSCA confirm immediate, severe harm and  
17 instability. WDFW has e-mailed Allison twice, saying there may be a November rather than  
18 October start for Region 2, and only 100,000 pounds may be available in that region. Second  
19 Allison Decl. ¶ 2 and Exhibits A and B (e mails dated March 1 and 7, 2011). In a recent  
20 planning meeting, WDFW staff told Allison that the commercial catch in Region 1 may be only  
21 1 million to 1.2 million pounds this season -- a forty or fifty percent drop from the two million  
22 pounds prior to the new rule. Second Allison Decl. ¶ ¶3-7. They also discussed a number of  
23 other destabilizing changes, such as delayed season openings, limits on crab pots and other  
24 consequences of the rule change. Id. WDFW staff admitted the unlimited opportunity for the  
25  
26

1 recreational crabbers means no realistic prediction for the available crab for the commercial  
2 fleet is possible. Id., ¶ 7. This is highly destabilizing. Thus, the economic harm is immediate,  
3 severe, ongoing, cumulative, destabilizing, and far beyond WDFW's conclusion that the  
4 commercial crabbers will be about at the same economic level.

5 The recreational expansion will expand recreational nonreported crabs, and this harms  
6 tribal and commercial harvesters. According to a Dec. 3, 2010 WDFW memorandum, expected  
7 to be part of the rule making record, only 52% of the recreationals who take CRCs report their  
8 catch. Allison Decl. ¶ 99 and Exhibit J. This is consistent with the 2007 data cited in the  
9 Auditor Report showing 45% of those with crabs who were contacted did not report, and only  
10 55% did report. Auditor Report at 11, Allison Decl. ¶ 101 and Exhibit A. If the 45/55% ratio is  
11 extrapolated, this means the recreational nonreported catch is 81.8% of the recreational reported  
12 catch, causing revenue losses from nonreporting, that are over a million dollars a year for treaty  
13 and commercial harvesters. Allison Decl. ¶ 106-107. Expanding the recreational access will  
14 expand this illegal harvesting, and this reduces the crabs available to the law abiding sectors.

15  
16 **F. Procedural History of this Case**

17 Petitioners filed this petition March 7, 2011, and served it on March 8, 2011. The  
18 petition challenges WDFW action and failure to act, alleging the new policy and regulation are  
19 arbitrary and capricious, and violate the mandate that WDFW must "maintain the economic  
20 well being and stability of the fishing industry." RCW 77.04.012. The petition alleges the  
21 likely declines in the commercial catch and revenues could cause petitioners to lose their  
22 investments -- which exceed \$200,000 each -- and cause many commercial crabbers to be  
23 harmed or go out of business, in a few seasons. Petition, ¶¶ 1, 7. Petitioners seek rulings  
24 invalidating the new regulations and policy, enjoining expanded access by recreationals, and  
25  
26

1 compelling WDFW to set an allocation that would assure commercial crabbers at least their  
2 average percentage caught in the last three seasons. Petition ¶ 2, and prayer for relief.

3 At present, WDFW has not submitted the rulemaking file to this Court. The deadline for  
4 doing this was April 9, 2011, thirty days after filing and service of the petition, as per RCW  
5 34.05.566. Stockmeyer Decl. ¶ 6. This is apparently because WDFW counsel in letters opined  
6 that this suit was premature, arguing there was no rule adoption until April 11, 2011, when  
7 WDFW filed its CES with the Office of the Code Reviser. Stockmeyer Decl. ¶ 6. The effect  
8 was supposedly that WDFW did not need to file a rule making file until about May 11, 2011.  
9 Petitioners' counsel informed counsel the February 4, 2011 vote adopting the rule was official  
10 agency action, and RCW 34.05.375 it to be challenged "at any time." Stockmeyer Decl. ¶ 6.  
11

12 WDFW is going forward to implement the new rule, and disseminate information about  
13 recreational's expanded access, including printing up to a million copies of the new fishing  
14 pamphlet. Stockmeyer Decl. ¶¶ 7-8; Second Allison Decl. ¶ 10. Prior to the July 1, 2011  
15 season opening, those pamphlets will be distributed widely. Second Allison Decl. ¶ 10.  
16

17 Petitioners bring this motion now, because commercial crabbers' investments and  
18 economic well-being are already being harmed and destroyed. Their right to economic well-  
19 being and stability in RCW 77.04.012, once harmed, cannot be restored later. Ongoing efforts  
20 to tell the recreational crabbing public about expanded access will cause additional harm.  
21 Moreover, following a Court ruling on this motion, WDFW would need time to set new rules,  
22 before the season starts July 1, 2011. The remedies sought, to be effective, should be granted  
23 now, not after more irreparable harm is done.  
24

#### 25 IV. ISSUES PRESENTED

26 A. Should the Court enjoin implementation of the expanded recreational access (the

1 additional day) in the new regulations and policy, because petitioners' harm is immediate and  
2 severe, and the regulatory change (a) violates RCW 77.04.012 by harming the economic well-  
3 being and stability of the fishing industry, and (b) was arbitrary and capricious?

4 B. Should the Court rule that WDFW must set a recreational allocation, then seek to  
5 produce that result, through additional rules such as restrictions on days, or the bag limit?

## 6 V. ARGUMENT

### 7 A. Preliminary Injunction Standards

8 RCW 34.05.550 provides a preliminary injunction is available in APA cases under  
9 normal standards. To obtain a preliminary injunction, the movant need show only the  
10 likelihood that at trial it will establish "(1) a clear legal or equitable right; (2) a well-grounded  
11 fear of immediate invasion of that right; and (3) that the acts complained of either have or will  
12 result in actual and substantial injury." *San Juan County v. No New Gas Tax*, 160 Wn.2d 141,  
13 153-54, 157 P.3d 831 (2007).

14  
15 The burden for a preliminary injunction is only to show a *likelihood* that the movant will  
16 prevail on these issues at trial. *Ameriquest Mortgage Co. v. State Att'y Gen.*, 148 Wn.App. 145,  
17 155-56, 199 P.3d 468 (2009); *see also Nw. Gas Ass'n*, 141 Wn.App. 98, 116, 168 P.3d 443  
18 (2007). At the hearing for the preliminary injunction, the plaintiff does *not* need to prove the  
19 merits and the court does not resolve those merits. *Tyler Pipe Indus., Inc. v. Dep't of Revenue*,  
20 96 Wn.2d 785, 793, 638 P.2d 1213 (1982).

### 21 B. Petitioners' Well Grounded Fear of Immediate Invasion of Rights, 22 and Actual and Substantial Injury.

23  
24 The right at issue is a right to have management system that maintains the economic  
25 well being and stability of the fishing industry. It is not disputed that starting after July 1, 2011,  
26 some 200,000+ recreationals will begin crabbing on Sunday under a permanent rule change, and

1 this expansion of their opportunity will increase their catch, and this will cause a reduction in  
2 the commercial catch of 441,000 pounds. The harm to date and likely to occur in the near  
3 future is an admitted \$1.171 million in revenue loss, but in reality it will be a 31-38 % or \$2.5 to  
4 \$3 million revenue loss to the commercial fleet -- in 2011 alone. Whether \$1 million or \$3.5  
5 million, this loss is staggering.

6 And since this is a permanent change, the \$1 million + losses each season simply will  
7 mount in future seasons, causing commercial crabbers' investments to drop in value now. No  
8 one can invest in this fishery now that it is in effect, wide open, with no limit on entry.

9 Moreover, because of the limits in the State share, what the recreational crabbers take  
10 starting in a few weeks can never be restored to the commercial crabbers. WDFW is even  
11 talking of an 80% reduction in catch in Region 2E and a 40-50% reduction in catch in Region 1  
12 for 2011. These are radical, destabilizing changes that have already caused asset values to  
13 plummet and licenses to be sale-proof.

14 Stability once lost cannot be restored later. Boats going out of business now cannot  
15 readily be restored later. Notably, the boats involved are specialized and cannot be used in  
16 other fisheries, so they become relatively worthless scrap.

17 This irreparable loss will begin to happen in a few weeks once the summer season starts.  
18 WDFW is actively planning the upcoming season including working to publicize the newly  
19 expanded access for recreational fishers, by distributing up to one million fishing pamphlets.  
20 Once the "market" of 200,000+ recreational crabbers is taught about the new crabbing  
21 opportunity, it will be difficult, if not impossible, to "unteach" them. The data available to  
22 WDFW is that they do not even play by the old rules. Expanding their access now and trying to  
23 take it back later will not work. Once the additional day of crabbing starts, it will be impossible  
24  
25  
26



1 to reverse it. As the summer season progresses, the harm continues, and it is irreparable.

2 The commercial crabbers need relief now, because their rights to economic well being  
3 and stability are being lost now, and cannot be restored or remedied later.

4 **C. Petitioners Are Likely to Succeed in Showing**  
5 **Violation of Clear Legal Rights.**

6 To establish a clear legal or equitable right, one need only show a *likelihood of*  
7 prevailing at a trial on the merits. *No New Gas Tax*, 160 Wn.2d at 154 (citing *Rabon v. City of*  
8 *Seattle*, 135 Wn.2d 278, 285, 957 P.2d 621 (1998)).

9 Here, the challenged agency rule is invalid because it violates the statutory authority of  
10 the agency, and was arbitrary and capricious. See *Washington Federation of State Employees v.*  
11 *State Dept. of General Admin.*, 152 Wn.App. 368, 377-378, 216 P.3d 1061, quoting *Wash. Pub.*  
12 *Ports Ass'n v. Dept. of Revenue*, 148 Wn.2d 637, 645, 62 P.3d 462 (2003).

13  
14 **1. The New Rule Violates the Mandate in RCW 77.04.012 to Protect**  
15 **the “Economic Well Being and Stability of the Fishing Industry.”**

16 WDFW’s action here violates the mandate that WDFW must maintain the economic  
17 well being and stability of the fishing industry. “Fishing industry” does not include recreational  
18 harvesters or the casinos they go to, or the food and gas they buy. The entire premise of the  
19 agency action here is a fundamental error of law that this Court must correct. The error  
20 threatens not only these commercial crab harvesters, but also all limited-entry commercial  
21 fishers in fisheries where there are recreational harvesters, such as salmon and shrimp. If  
22 WDFW can view recreational fishers as part of the fishing industry, then nothing in the statute  
23 protects the commercial fishers in limited-entry fisheries from devastating reallocations of catch  
24 to satisfy the demands of recreational harvesters.

1 A Court shall give effect to the plain meaning of words in a statute. *State v.*  
2 *Hirschfelder*, 148 Wn.App. 328, 336-337, 199 P.3d 1017 (Div. 2, 2009), citing *Christensen v.*  
3 *Ellsworth*, 162 Wn.2d 365, 372-73, 173 P.3d 228 (2007). Where the words are not defined in  
4 the statute, the Court uses an ordinary dictionary to determine their meaning. *City of Spokane*  
5 *ex rel. Wastewater Mgmt. Dep't v. Dep't of Revenue*, 145 Wn.2d 445, 454, 38 P.3d 1010  
6 (2002); *Western Telepage, Inc. v. City of Tacoma*, 95 Wn.App. 140, 147-148, 974 P.2d  
7 1270 (1999), *aff'd*, 140 Wn.2d 599 (2000). The Court also draws plain meaning from  
8 considering all related statutory provisions, reading them as a whole, *Christensen*, 162 Wn.2d at  
9 373, giving effect to all words. *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196  
10 (2005); *Hirschfelder*, 148 Wn.App. at 336-337.

12 Moreover, a court applies the plain meaning of statutory words, “regardless of contrary  
13 interpretation by an administrative agency.” *Western Telepage*, 140 Wn.2d at 611-612, quoting  
14 *Cerrillo v. Esparza*, 158 Wn.2d 194, 205-206, 142 P.3d 155 (2006). “Courts are not to read into  
15 statutes matters that are not there, or modify statutes by construction. *King County v. City of*  
16 *Seattle*, 70 Wn.2d 988, 991, 425 P.2d 887 (1967). Only if the plain meaning approach yields  
17 more than one reasonable interpretation does the court resort to statutory construction.  
18 *Christensen*, 162 Wn.2d at 373. In construing a statute, the Court will give effect to its purpose  
19 and must avoid unlikely, absurd or strained consequences. *State v. Stannard*, 109 Wn.2d 29,  
20 742 P.2d 1244 (1987); *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990). The  
21 Court also may look to legislative history and relevant case law. *Christensen*, 162 Wn.2d at  
22 373; *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010).

24 The Legislature did not see a need to define the term “fishing industry.” However,  
25 dictionaries define the plain meaning of “industry” or a “specific industry” as the commercial  
26

1 production and sale of goods or services or the branch of manufacture and trade *in the*  
2 *specifically named industry* (e.g., “the electronics industry”). Webster’s II New Riverside  
3 Dictionary, Houghton Mifflin 1996, at 354; *see also*, Random House Webster’s Unabridged  
4 Dictionary, Second Edition, 1998 at 976 (“enterprises in a particular field, often named after its  
5 principal product: the *automobile industry*; *the steel industry*”; “any general business activity;  
6 commercial enterprise: *the Italian tourist industry*”; or “trade or manufacture in general”);  
7 Compact Edition of the Oxford English Dictionary, Oxford University Press 1971, at 1472  
8 (most prevalent sense of “industry” is a particular branch of trade or manufacture).  
9

10 “Industry” thus means commercial activity by businesses or enterprises. “Fishing  
11 industry” in RCW 77.04.012 thus means those businesses or enterprises related to fishing. This  
12 excludes recreational activity not undertaken for business purposes. The plain meaning of  
13 “industry” excludes recreational crabbing. The dictionary definition of “recreational” supports  
14 this result, too.<sup>11</sup> Contrary to WDFW’s interpretation, recreational fishers are not in the fishing  
15 industry, because they do not sell, or bargain fish for commercial purposes. Moreover, supplier  
16 industries or associated industries are in the casino, gasoline, hotel, food or retail industry, not  
17 in the fishing industry. Just as taking a recreational Sunday drive does not put you in the  
18 automobile industry, going crabbing recreationally, does not put one in the fishing industry.  
19

20 In *Kim v. Pollution Control Hearing Bd.*, 115 Wn.App. 157, 162-163, 61 P.3d  
21 1211 (2003), the Court looked to Webster’s dictionary definition of the term “industry,” to hold  
22 that a provision concerning water used for “industrial purposes” included “commercial nurseries  
23  
24

25  
26 <sup>11</sup> Notably, Random House Webster’s Unabridged Dictionary, Second Edition, 1998 at 1613 defines recreation as  
“refreshment by means of some pastime, agreeable exercise, or the like, “a pastime, diversion, exercise or other  
resource affording relaxation and enjoyment.” Id. at 1613.

1 but not noncommercial gardens.” A noncommercial garden is a recreational garden, not an  
2 industrial entity. Similarly, recreational crabbing is a recreational activity, not an industrial one.

3 In Title 77, commercial activity is defined as any taking or selling food fish or shellfish  
4 *for money*. RCW 77.15.110(1). Recreational crabbing is personal use activity under RCW  
5 77.32.470(1), and taking shellfish for sale or barter is excluded from “personal use.” RCW  
6 77.08.010(38). Thus, the thing that makes commercial activity part of an industry (being in  
7 business) is what makes recreational crabbing *not* part of the fishing industry. Commercial  
8 fishing activity is licensed and intensely regulated, including fishing, wholesaling, buying,  
9 processing, charter boat operations or the like. See RCW 77.65.010-520; RCW 77.65.010(1).  
10 Plainly *all these businesses* operating for profit are the entire “fishing industry” whose  
11 economic well-being is protected under RCW 77.04.012. Tribal fishers operating in business  
12 also would be included. As noted in *Weikal*, the point of the limited-entry provisions for this  
13 fishery is to protect those with a traditional investment and assure they are financially solvent  
14 37 Wn.App. at 326-329.<sup>12</sup> That same concern -- the investment in a business in a limited entry  
15 fishery -- is what the economic well being provision in RCW 77.04.012 protects. Recreational  
16 crabbers are unlimited in number, have no designated vessel, pay little for their endorsement,  
17 and do not have “economic well being and stability” worthy of protection in RCW 77.04.012.  
18  
19

20 Even the CES recognizes this, in noting that the small business impact rules do not  
21 apply, because recreational crabbers are not a business or “industry.” CES at 14.  
22  
23

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24 <sup>12</sup> Many parts of Title 77 showing awareness that commercial fishers make the kinds of investment  
25 worthy of the protection provided in RCW 77.04.012. RCW 77.65.220 provides the Puget Sound  
26 Dungeness crab fishery is limited with licenses tied to a vessel; RCW 77.70.110(2) in 1980 cut off  
issuance of new licenses; and RCW 77.110(6) even requires WDFW to take action if the number of  
licenses drops below 125, a provision intended to “preserve” the “commercial crab fishery in the waters  
of Puget Sound.” 1980 Laws, chapter 133 § 1.

1 The legislature limited entry to commercial salmon fishing in 1974. RCW 77.70.090.  
2 Shrimp licenses are limited under RCW 77.70.230, .410 and .420. If the WDFW interpretation  
3 is correct, then to fulfill the mandate of RCW 77.04.012 WDFW could give all the salmon catch  
4 to recreational salmon fishers, on the ground their associated economic activities outweigh the  
5 harm to the commercial fleet. This makes no sense. The structure of Title 77 indicates that  
6 “sports fisheries are managed to allow large numbers of fishermen to take a limited number of  
7 fish,” while “[c]ommercial fisheries, on the other hand, are managed to allow for proper  
8 escapement and *maximum commercial take*.” *Washington Kelpers Ass’n v. State*, 81 Wn.2d  
9 410, 414, 502 P.2d 1170 (1972) (emphasis added.) Equating recreational with commercial as  
10 WDFW has done here, in effect fully opening this limited-entry commercial fishery to unlimited  
11 recreational competition, is at odds with the entire statutory scheme.  
12

13 Plainly, RCW 77.04.012’s mandate, to protect economic well-being and stability of the  
14 fishing industry, protects significant *investments* in such industry, not the personal satisfaction  
15 of a recreational crabber who buys a crab endorsement for a few dollars. The theory of limited  
16 entry fisheries is to prevent unlimited competition that can ruin the participants’ investments,  
17 and the resource. The WDFW interpretation of “fishing industry” is at odds with the plain  
18 meaning of “industry,” and the entire statutory structure, which shows intent to protect limited-  
19 entry fishery investments. The WDFW interpretation could harm and destroy those  
20 investments, as there will always be more recreational fishers than commercial ones.  
21

## 22 **2. Petitioners Will Show Arbitrary and Capricious Action**

23 A rule is arbitrary and capricious if upon consideration of the relevant portions of the  
24 rule-making file and the agency’s explanations, adoption of the rule was “willful and  
25 unreasoning and taken without regard to the attending facts or circumstances.” *Wash. Indep.*  
26

1 *Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 148 Wn.2d 887, 905-906, 64 P.3d 606 (2003);  
2 *Puget Sound Harvesters Ass'n v. Washington State Dept. of Fish and Wildlife*, 157 Wn.App.  
3 935, 944-945, 239 P.3d 1140 (2010). If “there is room for two opinions, an action taken after  
4 due consideration is not arbitrary and capricious.” *Hillis v. Dep't of Ecology*, 131 Wn.2d 373,  
5 383, 932 P.2d 139 (1997).

6 *Puget Sound Harvesters* is highly relevant. There, the trial court and the Court of  
7 Appeals struck down WDFW's regulation giving purse seiners too much fishing time compared  
8 to gillnetters, where WDFW “allocated fishing opportunities between the [salmon] gillnetters  
9 and purse seiners in the relevant areas *rather than placing a limit on the total catch of either*  
10 *group.*” *Puget Sound Harvesters*, 157 Wn.App. at 938. (Emphasis added.) The Court of  
11 Appeals in *Puget Sound Harvesters* noted in 2007, WDFW reduced the gillnetter days compared  
12 to the 2003-2006 seasons, and gillnetters sued. *Id.* at 941. The Court of Appeals invalidated the  
13 rule, finding that it was arbitrary under RCW 77.04.012 and other statutes that indicated intent  
14 to *assure a sustainable and stable level of salmon for commercial fishers.* *Id.* at 946-947.

15  
16 WDFW is doing the same thing here -- giving recreational crabbers too much time,  
17 rather than placing a *limit on their catch.* The same reasoning applies here as in *Puget Sound*  
18 *Harvesters.* RCW 77.04.012 and the limited entry statutes are designed to protect investment  
19 and assure a sustainable commercial fishery. WDFW here failed to first set an allocation, and  
20 justify it, then to condition fishing time based on the desired allocation. WDFW here as in  
21 *Puget Sound Harvesters*, failed to study the economic impact on the affected commercial fleet.  
22 Here, as there, the new rule must be invalidated as arbitrary and capricious.

23  
24 Here, WDFW claimed the commercial crabbers' fortunes will remain the same, yet  
25 WDFW admits a radical percentage change in allocation, and a revenue drop of over \$1 million.  
26

1 WDFW had and ignored other data showing the revenue drop will be \$2 million if not \$3.5  
2 million. These drops are from a 2009 base revenue of \$8 million. To find things will remain  
3 nearly the same is arbitrary where WDFW admits a \$1 million revenue drop, and the data shows  
4 it will or could be several million more. Worse, WDFW never looked at whether the decline  
5 would drive boats out of business, or how many would go out of business. WDFW did not look  
6 at effects beyond the first season, did not look at profits, and did not look at the end of season  
7 price. WDFW simply ignored the attendant facts and circumstances, declared that obvious  
8 economic harm is no harm, and this was arbitrary and capricious in the extreme.  
9

10 In *Puget Sound Harvesters*, as here, the WDFW purported to do some kind of economic  
11 study. There, the Court of Appeals held that WDFW's consideration of things like numbers,  
12 taxes and fees was too cursory. 157. Wn.App. at 950-951. The same is true here. The  
13 "economics" discussed in the CES are simply too cursory and irrational to constitute proper  
14 study, for several reasons.

15 First, WDFW compares apples and oranges. It compares all personal income directly or  
16 indirectly associated with the recreational increase, to only the direct revenue loss to the  
17 commercial fleet. WDFW never looked at the indirect multiplier effects of the more-than \$1.1  
18 million revenue loss to the commercial fleet. Second, WDFW did not study the proper question  
19 which would be the marginal economic return of adding an additional day to the recreational  
20 crabbers. Their added days do not mean added purchases of boats, or pots.

21 Third, the TCW study relied on itself states that it should not be relied on. The report  
22 itself states it is insufficient to be used for a "comparative analysis" of the two fisheries,  
23 recreational and commercial; it says it should not be relied on for reallocation issues as between  
24 commercial and recreational sectors. Stockmeyer Decl. Exhibit B (TCW report, at ES 1 and  
25  
26

1 35). It is arbitrary in the extreme to base a conclusion on a report that disqualifies itself as the  
2 proper underpinning for making that very conclusion.

3         These and other flaws in the TCW study are discussed in the report by economist Bryce  
4 Ward (“ECONorthwest Report”) attached as Exhibit C to the Stockmeyer Decl. As noted  
5 therein: the new rule will significantly harm the commercial crabbers, WDFW underestimated  
6 the impacts, and completely ignored profits and “any impacts at all beyond 2011”; and the new  
7 regulations and policy could contribute to the collapse of commercial crabbing in Puget Sound,  
8 by increasing recreational harvest levels so much commercial efforts become unviable.

9 ECONorthwest Report, at 2. The WDFW action here is arbitrary where federal fishing rules  
10 define significant economic impact as involving merely a revenue loss of 5 % for 20 percent or  
11 more of the affected fishing participants. Id. at 7. This report noted WDFW ignored effects on  
12 profits, id. at 10, ignored the dynamic responses, id. at 11-13, and ignored effects on asset  
13 values, id. at 13-15. The uncertainty impacts were also ignored. Id. at 15-16.

14         More fundamentally, the CES rests on the TCW report in a way that makes recreational  
15 crabbers’ inner “satisfaction,” and spending on “casino hotels,” “drinking places,” airfare,  
16 gasoline, books, music, boats and vans, all part of the “fishing industry” that is to be considered  
17 under RCW 77.04.012. See TCW Report at 19, 24, 36. This is irrational. Those things are not  
18 part of the fishing industry. Inner satisfaction cannot be equated to actual revenue loss.

19         Relying on a report that puts casino spending and personal satisfaction in the economic  
20 effects WDFW must consider, under its “economic well being” mandate in RCW 77.04.012, is  
21 arbitrary and capricious. For the CES to conclude there is an increase in economic benefit from  
22 recreational fishing expansion, when this is premised on an increase in crabbers’ personal  
23 satisfaction, or increase in casino, restaurant or alcohol revenue, is arbitrary and capricious.  
24  
25  
26



1 The CES's blithe dismissal of allocation effect of the rampant rule breaking and  
2 nonreporting by recreational crabbers is also arbitrary. WDFW must consider allocation  
3 impacts of this conduct. It admits they exist, yet it simply ignores them. Crabs taken but not  
4 reported directly fall out of the counted total, and are no longer available to the Tribal fishers or  
5 to the commercial fishers. It was arbitrary to deal with State Auditor concerns about  
6 recreational nonreporting and rule breaking, by expanding recreational crabbing.

7 As in *Puget Sound Harvesters*, here there is a reallocation decision, not justified by any  
8 proper economic study of impacts on the commercial boats affected. WDFW was aware of a  
9 loss to this group of 441,000 or 730,000 pounds, or a million dollars or several million dollars in  
10 2011 alone, and simply ignored this. WDFW is aware the losses continue in later seasons -- yet  
11 ignored the issue of whether this would drive boats out of business. There is no study on how  
12 many boats will go out of business. WDFW never studied the real economic impact on the  
13 bottom line. This is intentionally and willfully acting without regard to attendant  
14 circumstances. The regulation and policy were arbitrary and capricious.

## 15 VI. CONCLUSION

16 For the foregoing reasons, this Court should grant Petitioners' motion for a preliminary  
17 injunction and stay the implementation of the new rule and policy, and enjoin expansion of  
18 recreational crabbing for the 2011 summer season. The Court should also declare that in order  
19 to maintain the economic well being and stability of the fishing industry, WDFW must maintain  
20 the economic well being and stability of the commercial crabbers, by setting a preseason  
21 allocation of the catch, and reducing time on the water or the bag limit for recreational crabbers,  
22 to produce the intended allocation. Consistent with the foregoing, WDFW should be enjoined  
23 from taking any other steps to publicize an expanded recreational crabbing opportunity,  
24  
25  
26

1 including distribution of any pamphlet that tells recreational Puget Sound Dungeness crab  
2 harvesters they have opportunity to fish five days a week this summer.

3 DATED this \_\_\_ day of April, 2011.

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