

No. 42718-4-II

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION II

PUGET SOUND CRAB ASSOCIATION; BRIAN E. ALLISON; JOHN
RANTZ; VINTON WALDRON; KENNETH CREWS; BRIAN
MELVIN; BRIAN MACKEY,

Appellants,

v.

STATE OF WASHINGTON and DEPARTMENT OF
FISH AND WILDLIFE,

Respondents.

REPLY BRIEF OF APPELLANT

APPEAL FROM THE SUPERIOR COURT OF THURSTON COUNTY

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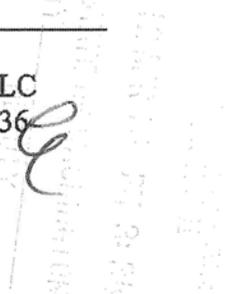


TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	REPLY STATEMENT OF THE CASE	5
III.	REPLY ARGUMENT	8
	A. WDFW Violated Statutory Mandates that Protect “Commercial Fishing” and the “Fishing Industry”	8
	B. The Agency Action Is Arbitrary and Capricious	21
	C. Appellants Are Entitled to Attorneys Fees and Costs	24
IV.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>City of Seattle v. State</i> , 136 Wn.2d 693, 965 P.2d 619 (1998)	10
<i>Erection Co. v. Dep't. of Labor & Indus.</i> , 121 Wn.2d 513, 852 P.2d 288 (1993)	10
<i>Estate of Blessing</i> , 160 Wn.App. 847, 248 P.3d 1107 (2011)	10
<i>Estate of Bunch ex rel. Bunch v. McGraw</i>	

<i>Residential Center</i> , 159 Wn.App. 852, 248 P.3d 565 (2011)	10
<i>Goldmark v. McKenna</i> , 172 Wn.2d 568, 259 P.3d 1095 (2011)	10
<i>HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services</i> , 148 Wn.2d 451, 61 P.3d 1141 (2003)	10
<i>In re K.R.P.</i> , 160 Wn.App. 215, 247 P.3d 491 (2011)	10
<i>Lietz v. Hansen Law Offices, P.S.C.</i> , 2012 WL 375335, 9 (Div. 2, 2012)	10
<i>North Cent. Washington Respiratory Care Services, Inc. v. State, Dept. of Revenue</i> , 165 Wn.App. 616, 268 P.3d 972 (2011)	10
<i>Phil. II v. Gregoire</i> , 128 Wn.2d 707, 911 P.2d 389 (1996)	10
<i>Puget Sound Harvesters Ass'n v. Wash. Dept. of Fish and Wildlife</i> , 157 Wn.App. 935, 239 P.23d 1140 (2010)	4, 22, 23
<i>State v. Krall</i> , 125 Wn.2d 146, 881 P.2d 1040 (1994)	10
<i>State v. McKague</i> , 159 Wn.App. 489, 246 P.3d 558 (2011)	10
<i>Western Telepage, Inc. v. City of Tacoma Dept. of Financing</i> , 140 Wn.2d 599, 998 P.2d 884, 92 (2000)	21

Statutes and Regulations

RCW 77.04.012	passim
RCW 77.04.055(1)	9, 16
Laws of 1983, 1st Ex. Sess., ch. 46, sec 1, 5, 6	18-20
WAC 220-56-330	25

Treatises

1A Norman J. Singer, <i>Statutes and Statutory Construction</i> § 21:14, at 179-81 (6th ed.2002).	10
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I. INTRODUCTION AND SUMMARY

Appellants the Puget Sound Crab Association (“PSCA”) and six individual commercial crabbers submit this Reply to Respondents State of Washington’s and Department of Fish and Wildlife’s Response to Appellants’ Opening Brief (“Response”).¹ WDFW here improved recreational fishing, in a zero-sum fishery, by cutting the historic commercial allocation by 24% from its stable, two-thirds share. WDFW also broadened the definition of the term “fishing industry” to include recreational support industries, and gave recreational crabbers formal priority and a fixed season. WDFW claims it has discretion to do this under its interpretation of RCW 77.04.012’s terms relating to “fishing industry” and “recreational and commercial fishing.”

The WDFW argument fails; WDFW fails to cite a dictionary definition and fails to discuss ordinary meanings of key terms. Under the ordinary dictionary definition, the term “the *X* industry” is unambiguous and means commercial participants who sell, trade or make *X*. Thus “the fishing industry” is unambiguous and means commercial fishers, wholesalers and processors, not recreational fishers and their support industries such as food, gas, drinks, and hotel suppliers. Moreover, the Legislature deliberately used the word “shall” in the “fishing industry”

¹ Appellants will use the term “PSCA” to refer to all appellants.

provision, to create a mandate. WDFW violated the “fishing industry” mandate in RCW 77.04.012 by its new destabilizing system, cutting commercial share 24% and 441,000 pounds while giving recreational fishers new priority and a fixed season, and, worse, setting a precedent that further cuts can come, due to mere recreational demand.

The “recreational and commercial fishing,” also containing the word “shall” must be read as mandatory and not discretionary, too. And the term “and” in that mandate must be read conjunctively, because no context requires otherwise. WDFW violated the provision here, by cutting commercial fishing’s share. This does not “improve . . . commercial fishing” as the provision requires. The provisions in RCW 77.04.012 are only reasonably interpreted to provide real protection for commercial fishing; they mean, absent conservation needs for cuts in catch, WDFW must improve both recreational and commercial fishing and has no option to cut commercial fishing to improve recreational fishing, as it did here.

In sum, RCW 77.04.012 does protect the “fishing industry” which is mostly “commercial fishing,” and this necessarily limits WDFW discretion. RCW 77.04.012 gives WDFW three clear priorities: (a) To protect the resource. This means WDFW must cut recreational and commercial fishing catch levels if necessary for conservation purposes. (b) If the conservation mandate is being fulfilled, WDFW must maintain

the economic well-being and stability of the fishing industry (commercial harvesters, processors and wholesalers). This means WDFW must cut recreational share, if needed for this purpose. (c) Otherwise, when improving commercial or recreational fishing WDFW must improve both. This means if the conservation and fishing industry maintenance mandates are being fulfilled -- as here -- WDFW may not improve recreational fishing by cutting commercial fishing. WDFW violated the mandates in (b) and (c). The Court should invalidate the new policy/rule on that basis.

Even if there is resort to statutory construction, the same result follows. The Legislature knew small numbers of commercial fishers in zero sum fisheries need protection from demands of hundreds of thousands (or millions) of recreational fishers. To read RCW 77.04.012 as giving no protection to commercial fishing is unreasonable. WDFW's position here means it may take another 24% out of the commercial share next season; or the next; and again the next; citing "citizen needs" as voiced by ever-growing numbers of recreational fishers (or achieve the same thing by citing the fact they spend money on other industries.) The new definition of "fishing industry" as including sellers of gasoline, food, hotels and the like is utterly unlikely. WDFW's position also requires changing "shall's" in RCW 77.04.012 into "may's" which is unlikely. The WDFW interpretation is unreasonable and frustrates goals of the

statute and fishery management to keep commercial fishing stable.

Under the correct interpretation and even under its erroneous interpretation of “fishing industry” the WDFW action here was arbitrary and capricious. WDFW failed to estimate spending in recreational support industries and its claim of \$5 million in potential economic benefit is simply a monumental error. The TCW Report on which this figure is based, clearly states it is not estimating recreational spending, but only recreational shellfish gatherers’ “individual satisfaction” -- that is, the pleasure they feel, not any spending or income or market transaction. And WDFW did not estimate their spending. So WDFW did no real economic analysis at all, particularly where it did not look beyond one season. And more: WDFW now admits “no attempt” was made to quantify offsetting economic impacts. Response at 30. This is stunning. In *Puget Sound Harvesters Ass’n v. Wash. Dept. of Fish and Wildlife*, 157 Wn.App. 935, 946-947, 239 P.23d 1140 (2010), failure to estimate catch levels was arbitrary; here WDFW failed to estimate them beyond one season and ignored the first season estimate clearly showing loss of 441,000 pounds, a 24% cut in share. This is harm and destabilization to the fishing industry/commercial fishing. Ignoring this was arbitrary and capricious.

Finally, WDFW’s positions here were so unreasonable PSCA is entitled to fees and costs under the EAJA for the appeal and below.

II. REPLY STATEMENT OF THE CASE

WDFW now admits a shocking fact: it made no estimate of offsetting economic impacts. Response at 30. Later WDFW seems to say the opposite, that it did make “estimation of the objectives.” Response at 32. The facts and WDFW “analysis” are as follows.

WDFW did claim “potential economic benefit” from the new system, however. CES 11, AR 16. Specifically, it found expanded access will increase recreational crabbing trips and increase their spending on support industries leading WDFW to find that State “personal income” from the projected new level of recreational spending on support industries will be \$19,361,000 (2006 dollars)” which represents a 37% increase or a new \$5 million in income, due to the new rule/policy. CES 11; AR 16. In fact, closer review shows this entire estimate is fundamentally flawed, and fictitious.

WDFW’s starts in its new interpretation of “fishing industry” to include recreational “fishing related support industries.” Response at 24-25; CES 10, AR15. WDFW does not define support industries. In the TCW Report, TCW considers that there is economic benefit from recreational fisher spending on many things: food, lodging, transportation, bait, cooking fuel, equipment, tents, clothes, boats, vans, magazines, dues, licenses, permits, land rental, land purchase, gasoline, food, motels,

campgrounds, food stores, wages paid in food stores, re-spending of recreational spending, entities supplying goods to food stores, food transporters, beverage stores, hotels, motels, "casino hotels," air transport, state and local government passenger transit, books, music, "[o]ther amusement, gambling and recreational industries," and "all other sectors of the Washington State economy," TCW 36, 19-20; AR 1527, 1510-1511. See Appendix B.

Thus, these are the so-called "recreational support industries" in which the increase in personal income occurs, from increasing recreational fishing. The WDFW conclusion of \$5 million added in personal income derives from WDFW staff's multiplying a rate of \$43 "per angler day or trip" times the projected number of recreational crab days or trips expected to result from the new rule (446,931) producing what staff called the "expenditures" by recreational crabbers under the new rule, saying these expenditures would rise to \$19,218,033. AR 1098 (Dec. 4, 2010 presentation, see Appendix C).

However, the TCW Report is the source of the \$43 per day figure, and it does not represent any spending (or real income) at all. TCW said that "net economic value" from recreational fishing is the recreational "individual's satisfaction" which *excludes* any real out of pocket spending. TCW 30, AR 1521; see Appendix B. TCW used older surveys (from

many states, and relating to shellfish generally) to find the imputed “individual[] satisfaction” value for recreational shell-fishing is \$43 a day. Id. The claim by WDFW that its \$5 million benefit figure is income, or spending, is fictitious because this is merely inner pleasure or satisfaction.²

Since WDFW did not estimate actual spending by recreational crabbers, and the \$43 a day figure is their inner personal satisfaction, (a) the \$19 million and \$5 million “personal income” claims are erroneous, and (b) WDFW truly did not quantify economic impacts (even under its erroneous interpretation of fishing industry). There is no estimate in this AR of the claimed positive economic impact on support industries from increased recreational crabbing trips, as WDFW claims.

III. REPLY ARGUMENT

A. **WDFW Violated Statutory Mandates that Protect “Commercial Fishing” and the “Fishing Industry.”**

WDFW claims it is impossible to give more crabs to both recreational and commercial crabbers in a zero sum fishery, therefore the

² “Spending” in support industries is gross revenue to them and one must deduct their costs to derive income, which WDFW failed to do.

The trial court stated WDFW did not much rely on the TCW Report. Response at 30. This is not so, as shown. The estimate of increased personal income is (erroneously) based on the TCW \$43 per day figure relating to inner satisfaction. Perhaps the trial court was observing that the \$43 figure does not relate to spending for gas, food, and drinks, but that just means WDFW did not base its action on actual spending or income in recreational support industries.

“recreational and commercial fishing” provision may not be read as mandatory and only can be read as discretionary, allowing WDFW to improve either commercial *or* recreational fishing through catch level increases. WDFW claims that RCW 77.04.012 gives no special protection to commercial fishing and in this statute the Legislature gave WDFW discretion to change harvesting opportunities – that is catch levels – to respond as it sees fit in its judgment to changing citizen “needs” and its judgment of those of “varied fishing interests.” Response at 17. WDFW argues that commercial and recreational fishing are part of the “fishing industry” and this term also includes spending on recreational “fishing related support industries.” Response at 24-25. As noted, in practice these support industries include food, bars, restaurants, gas stations, even fish licenses and state ferries. Then WDFW relies on positive impacts in recreational support industries to find it was maintaining the fishing industry economically.

In effect, this is a claim that WDFW may cut commercial fishing to satisfy recreational demands for more catch in a zero sum fishery. WDFW’s claim is it may do this due to numerical superiority of the recreational group, combined with the fact their spending now counts as “fishing industry” income. But these claims fail, as they violate most rules

of statutory construction, and ordinary dictionary definitions, most of which WDFW utterly ignores in its presentation.

1. The Statute and Rules of Construction

RCW 77.04.012 includes the following:

- A conservation provision: WDFW “*shall* preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters” and “*shall* conserve the wildlife and food fish, game fish, and shellfish resources in a manner that does not impair the resource.”
- A “fishing industry” provision: “In a manner consistent with this goal, [WDFW] *shall* seek to maintain the economic well-being and stability of the *fishing industry* in the state.”
- A “commercial fishing” provision: WDFW “*shall* promote orderly fisheries and *shall* enhance and improve *recreational and commercial fishing* in this state.”
- A management provision: WDFW “*may* authorize the taking of wildlife, food fish, game fish, and shellfish 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,” and
- A “maximization” provision: WDFW “*shall* attempt to maximize the public recreational game fishing and hunting opportunities of all citizens” [Emphases added.]³

To find legislative intent the Court applies the ordinary meanings of words in context; if not defined statutorily, standard dictionary

³ As explained in the Opening Brief, under the normal rule that listing some things means others are excluded, this provision plainly means WDFW is not directed to maximize recreational taking of shell fish or food fish. Opening Brief at 31. WDFW cites RCW 77.04.055(1) (Response at 24) but plainly that statute must be read as not directing improvement of recreational shell fish or food fish harvesting when this would violate provisions in RCW 77.04.012 to protect the resource, or to protect commercial fishing or the fishing industry. See note 10 below.

definitions are used, and control. See Opening Brief at 24-25.⁴ Every word is given meaning, with none made superfluous. *State v. McKague*, 159 Wn.App. 489, 520, 246 P.3d 558 (2011), citing *City of Seattle v. State*, 136 Wn.2d 693, 701, 965 P.2d 619 (1998). Where a statute uses “shall” and “may,” the word, “shall” is presumed mandatory, and “may” is presumed permissive, unless a contrary intent is shown by the overall scheme, purpose and consequences of the alternate.⁵ “And” is similarly presumed to be used conjunctively, and not to mean “or.”⁶

2. Dictionary Definitions Ignored by WDFW

Relevant dictionary definitions are as follows (see Appendix A):

“Industry”; **“a specific named industry.”** “Industry” means commercial production or sale of goods or services; the term, “the [insert

⁴ See also *North Cent. Washington Respiratory Care Services, Inc. v. State, Dept. of Revenue*, 165 Wn.App. 616, 626-627, 268 P.3d 972 (2011); *Estate of Blessing*, 160 Wn.App. 847, 850-851, 248 P.3d 1107 (2011) (citing cases); *Estate of Bunch ex rel. Bunch v. McGraw Residential Center*, 159 Wn.App. 852, 862, 248 P.3d 565 (2011) (“a standard dictionary definition controls” if statute does not define the term).

⁵ *Goldmark v. McKenna*, 172 Wn.2d 568, 575, 259 P.3d 1095 (2011) citing *Phil. II v. Gregoire*, 128 Wn.2d 707, 713, 911 P.2d 389 (1996); see also *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994); *Erection Co. v. Dep't. of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993); *Lietz v. Hansen Law Offices, P.S.C.*, 2012 WL 375335, 9 (Div. 2, 2012); *In re K.R.P.*, 160 Wn.App. 215, 223, 247 P.3d 491 (2011) and citations in Opening Brief at 26.

⁶ *HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 474, 61 P.3d 1141 (2003), citing inter alia, 1A Norman J. Singer, *Statutes and Statutory Construction* § 21:14, at 179-81 (6th ed.2002).

the blank] industry” means manufacture or trade in the *specific named industry* (e.g., “the electronics industry”). Webster’s II New Riverside Dictionary, Houghton Mifflin 1996 (“Webster’s”), at 354.⁷ Random House Webster’s Unabridged Dictionary, 2d Ed. 1998 (“Random House”) at 976 defines “the [X] industry” as enterprises in a particular field, “named after its principal product: the *automobile industry*; the *steel industry*”; . . . *the Italian tourist industry*.”⁸

Thus, the “fishing” industry includes business actors whose product is fish or derived from fishing.

“**Maintain**” means preserve, keep unimpaired or in a specified position, keep or hold against attack, or “defend as against attack or danger.” Webster’s at 404; Random House at 1160. “**Economic**” refers to income, wealth or commodities. Random House at 618; Webster’s at 220. “**Well being**” means a state of good condition or prosperity. Random House at 2158; Webster’s at 769. “**Stability**” means unchanging and enduring, resisting change, Webster’s at 657, or fixed in position, continuance without change, not likely to fall, likely to continue and resistant to sudden change or deterioration. Random House at 1852.

⁷ Thus, the trial court statement there is no dictionary definition of the term “the specific industry” (see Response at 25) was simply incorrect.

⁸ See Webster’s New World Dictionary, 2d ed., 1980, at 719 defining “industry” (Appendix A) and CP 354-355 and 950.

“**Enhance**” means to raise value or price of, Random House at 646, or *make greater or heighten*, Webster’s at 230 (emphasis added).

“**Improve**” means to make better, Webster’s at 347 or bring into more desirable condition, increase in value, Random House at 963;

3. The Plain Meaning of the “Fishing Industry” and “Recreational and Commercial Fishing” Provisions

The management provision in RCW 77.04.012 uses “may.” In contrast, the conservation provision and the “fishing industry” and “commercial fishing” use “shall.” Thus the “fishing industry” and “recreational and commercial fishing” provisions are mandatory, like the conservation provision. The Legislature would not use the same word for different meanings.

The dictionary definition of “the X industry” means “the fishing industry” includes persons or businesses whose product is for sale, and whose product is fish or shellfish or their products. This excludes recreational fishers and also their spending on support industries, whose products are not fish. “[T]he fishing industry” thus includes commercial fishing, and wholesalers and processors, and not recreational fishers who are not allowed to sell anything they catch. See Opening Brief at 34. Sellers of gas, food, air tickets, boats and equipment, casino or hotel services are in the “gas industry,” the “food industry,” the “airline

industry,” the “boat industry,” the “gaming industry” or the “recreational goods industry” and not the fishing industry.

WDFW fails to cite a dictionary definition supporting its interpretation and is merely creating ambiguity where there is none. Income for steel makers is in the steel industry and not the auto industry.

Ignoring dictionaries, WDFW is forced to claim that because “fishing industry” is soon followed by “recreational and commercial fishing” in the statute, this means “fishing industry” means “recreational and commercial fishing.” Response at 24.⁹ But this erases the different words chosen by the Legislature. Different words must be given different meanings or else they are made meaningless. WDFW’s argument deletes the term “industry” from “fishing industry,” to impermissibly let WDFW insert “recreational fishing” into the term. But, recreational fishers do not sell their catch and have no income from crabs, or economic well being at stake. So WDFW goes further still stretching “fishing industry” to include the entire array of support industries. All this ignores the ordinary meaning of the words, “the fishing industry.” Simply put, gasoline sellers are in the gasoline industry, restaurants are in the restaurant industry and

⁹ WDFW notes 1983 changes deleted the word “commercial” before “fishing industry.” Response at 24-25. This is addressed below.

recreational goods sellers are in the recreational or retail industry, not the fishing industry.

Recreational fishers also have no economic well-being or stability at stake to be “maintained” while commercial fishers, wholesalers and processors do. The Legislature knew competition from recreational takers in a zero sum fishery can harm or wipe out the commercial fishing industry. The Legislature knew recreational takers outnumber commercial ones, and always will. If commercial fishing has no mandated protection, it could be seriously harmed, or wiped out. This is plainly why the Legislature enacted the terms giving mandated protection to the fishing industry.

WDFW’s other arguments fail. It complains that PSCA wants a set allocation. The terms “stability” and “maintain” often will lead in practice to leaving allocation outcomes unchanged.

WDFW’s interpretation gives it too much power. WDFW complains it is hard to resist demands for recreational crabbing increases. This is specious and the recreational demands for more will always plague WDFW in fisheries like crab and salmon, but this is why the Legislature resolved this problem by mandating WDFW to maintain the commercial fishing industry in a stable manner.

As for the “recreational and commercial fishing” provision, WDFW argues it cannot comply with it, if read literally. Response at 22-23. However, WDFW can comply. Often compliance will require doing nothing where there is abundance in a zero sum fishery (resource levels and the economic well-being and stability of the fishing industry are preserved). This is because in this situation, the provision bars WDFW from improving recreational fishing by cutting commercial catch. In this situation WDFW easily complies by leaving things alone.

If there is more abundance then WDFW complies by increasing both recreational and commercial fishing catch levels. WDFW also can comply through reducing poaching or illegal harvesting to create more crab which then can be used to improve both recreational and commercial catch levels. (That is what it should have done here, given the State Auditor’s concerns that recreational fishing violations is a threat to the resource).

Thus, the claim it is “impossible” to comply fails. As a result, there is no context requiring the word “and” to be read as “or” so “and” is read conjunctively meaning in conditions of relative abundance, as here, WDFW is barred from cutting commercial catch to improve recreational fishing. WDFW’s action here blatantly violates the statute: cutting commercial fishing is not “improv[ing] . . . commercial fishing.”

The reading of 77.04.012 urged here is more equitable, as it protects commercial investments. And it produces a clear set of priorities for WDFW: protecting the resource is the top priority; then protecting the fishing industry; if those needs are met, abundance increases must be shared between commercial and recreational fishing, and WDFW may not cut commercial share to improve recreational fishing. WDFW violated RCW 77.04.012 by reducing commercial share from historic stable levels, destabilizing the industry, simply to improve recreational fishing. This reading gives meaning to all parts of RCW 77.04.012. The WDFW interpretation makes much of its language meaningless.¹⁰

If WDFW were right, it could cut commercial fishing to improve recreational fishing here again next season. And it could cut salmon commercial catch, to improve recreational salmon fishing. WDFW's interpretation gives it unbridled power to cut commercial fishing until there is none left, based on the spending by recreational fishers on gas and gear, or beer and meals. This is unreasonable. WDFW's interpretations

¹⁰ WDFW cites RCW 77.04.055(1) referring to maximizing "recreational opportunities. But this only refers to opportunities consistent with fulfilling the mandates in RCW 77.04.012. RCW 77.04.055(1) may not be read to undercut the provisions protecting the resource, nor those protecting commercial fishing and the fishing industry, in RCW 77.04.012. Notably, the overall mandates in 77.04.012 include one that WDFW shall maximize recreational game fishing and hunting -- this excludes maximizing food fish harvesting or shellfish harvesting.

requires two “shall’s” to be read as “may’s” in the statute. “Industry” must also be erased. The dictionary definition of “the X industry” must be ignored. The WDFW view leads to the unreasonable result of no real protection for commercial fishing, also that WDFW now must maintain the economic stability and well-being of restaurants and gas stations.

WDFW makes a series of arguments that largely avoid the ordinary meanings of the words. WDFW says it has no duty to guarantee catch levels. WDFW Brief at 18. In fact, it must maintain the fishing industry and may not cut commercial fishing to improve recreational fishing, in circumstances like those present here. This means in situations like those present here – stable catch levels being maintained under one management policy – it must not change the policy if this cuts commercial share to improve recreational fishing or significantly reduces commercial catch. This is a logical outcome for mandates to maintain economic “stability.” WDFW argues the commercial group has no property in the crabs. None is claimed.¹¹ But *since* commercial fishers lack property rights in fish, that is *why* the Legislature may have felt the need for *statutory* protection. WDFW discusses other parts of title 77 (Response at 19-21), but clearly the focus of the Title relating to recreational and

¹¹ Appellants here have shown standing (it is not challenged) and violations of RCW 77.04.012 and the WAPA; this is what they must show to win the relief sought, invalidation of the agency actions.

commercial fishing is to distinguish them -- not merge them into one "collective" mass as WDFW claims.

WDFW argues it cannot comply with the plain meaning of the "recreational and commercial fishing" provision. Response at 22-23. It could have complied here, by doing nothing. This would have been apropos as the prior system for years produced a stable one-third/two-thirds outcome. Or it could have responded to the threat identified by the Auditor, cut illegal harvesting then increase both commercial and recreational share.

WDFW cites a January 1983 House staff memorandum stating 1983 amendments were to give "commercial and recreational fisheries co-equal status" (Response at 25; the memo itself is in Appendix D hereto). The reference to both recreational and commercial fishing parallels the provision regarding improving "recreational and commercial fishing" which was inserted in the 1983 revisions. See Laws of 1983, 1st Ex. Sess., ch. 46, section 5 in Appendix E. Thus the commentary about "co-equal status" does not refer to the "fishing industry" provision but to the "recreational and commercial fishing" provision" and thus *supports the PSCA reading* of the "recreational and commercial fishing" part of 77.04.012. Here, WDFW subordinated commercial to recreational fishing by cutting commercial share in conditions of relative abundance, cutting

commercial fishing 24%, while giving recreational fishers formal “priority” and a fixed season. All this violates the “equality” theory espoused by WDFW. To the extent conservation and the industry is maintained, the “equality” theory means any increase should be to both sectors, and improving recreational fishing by cutting commercial share is barred.

WDFW notes 1983 changes deleted the word “commercial” before “fishing industry” in 1983. Response at 24-25. But this change was not substantive. As noted, the words about co-equal status in a staff memo do not apply to this provision. And sec. 1 of the 1983 laws states that unless otherwise clearly required by the context, no change shall be construed as substantive. Appendix E. The House memo states “No substantive changes” were made and the changes were to “eliminate duplicative, contradictory, and outdated language.” Appendix D. As shown, “industry” refers to commercial sale of a product. So, the Legislature deleted “commercial” before “fishing industry” to delete a duplicative word and no substantive change was intended.

Sec. 6 of the 1983 law is not mentioned by WDFW and it undercuts its legislative history argument. See Appendix E. There, the Legislature inserted the word “recreational” in front of the words “fishing industry” and left in place the word, “commercial” (to broaden this

provision's scope governing who may be fisheries director). The result was a provision including the terms, "commercial and recreational fishing industry." Thus, (a) where the concept of a recreational fishing industry was chosen, the Legislature used the words "recreational fishing industry"; and (b) this term is to be distinguished from the use of the term "fishing industry" in sec. 5, which includes commercial fishing only (because "industry" means commercial activity anyway). *The Legislature could have used the same term "commercial and recreational fishing industry" in sec. 5 but chose not to*, indicating that section's provision concerning maintaining the "fishing industry," *does not include recreational fishing*. Thus, even if legislative history were relevant and it is not, it supports the PSCA plain meaning reading.

WDFW claims "fishing industry" *reasonably* may be read as including recreational support industries. Response at 24-25. But that is not so where the Legislature chose not to use the word "recreational" in the "fishing industry" prong of 77.04.012, no dictionary definition is offered and this is contrary to the dictionary definitions PSCA cites. To say "fishing industry" includes gas, food, drinks, books, music, hotels, airline services and so on is not reasonable at all.

The Response at 25-26 claims WDFW should receive deference for its new interpretation of "fishing industry." But its interpretation

conflicts with the statute's plain meaning. It conflicts with legislative history. And WDFW has no expertise in estimating economic impacts among boat, gasoline, or food sellers. In any event, WDFW could cite a prior agency interpretation or longstanding practice to measure spending in recreational support industries when cutting recreational seasons, if it ever had done so, but fails to do so here. WDFW cites no prior rule or agency interpretation it has ever made stating that "fishing industry" includes recreational fishing or its "support industries." While a Court defers to "long-standing agency interpretation of a statute, it only does so if the agency interpretation is "clear and definitive." *Western Telepage, Inc. v. City of Tacoma Dept. of Financing*, 140 Wn.2d 599, 612, 998 P.2d 884, 891 - 892 (2000). Here there is no clear interpretation of "fishing industry" as it is unclear if WDFW really considers gas stations and hotels part of the fishing industry, and mixes up fisher satisfaction, with industry. And there is no long standing interpretation shown.

B. The Agency Action Is Arbitrary and Capricious.

WDFW willfully and unreasonably ignored the destabilization, reduction and harm to the fishing industry/commercial fishing: loss of 441,000 pounds and a 24% cut; loss of \$1.2 million; a new regime giving recreational crabbers priority; refusal to study beyond one season. The agency action was arbitrary and capricious. See Opening Brief at 42-46.

Now, WDFW admits “no attempt was made to quantify the offsetting economic impacts.” Response at 30. Failing to attempt to quantify offsetting impacts, is the epitome of ignorance, and acting arbitrarily and capriciously. WDFW needs to point to information in the file to show it was acting rationally to fulfill statutory mandates to maintain the fishing industry and “sustainable and stable” levels for the commercial catch. See *Puget Sound Harvesters*, 157 Wn.App. 935 at 946-947. WDFW also says it cannot estimate future outcomes. Response at 27. But it must estimate catch levels beyond one season, to assure it is maintaining the fishing industry and improving commercial fishing.¹²

WDFW claims PSCA is arguing for a “Better” economic analysis. Response at 26. This is not so: there was no economic analysis here where WDFW admits it did not attempt to quantify impacts and WDFW failed to estimate catch levels or impacts beyond one season and did not estimate even the increase in spending by recreational or commercial groups. WDFW seems ignorant of the fact its \$43 measure leading to its conclusion of a \$5 million gain in income on one side of the ledger is

¹² Even under the erroneously broader definition of “fishing industry” adopted by WDFW, it acted arbitrarily and capriciously by failing to quantify offsetting economic impacts. Under its incorrect view of the term “fishing industry,” the “fishing industry” is not kept stable through large sudden shifts from one part of it (commercial fishing) to another (recreational fishing) and overall it is not rational to find it is maintained economically if there is no quantification of offsetting impacts.

really about non-market inner satisfaction or pleasure, not spending or income. In fact, the entire economic discussion by WDFW is nonsense given that its estimate of increase in personal income is 100% fictitious, being composed entirely of "individual satisfaction" or pleasure -- not income or spending or economic exchange, by anyone.

WDFW states *Puget Sound Harvesters* requires it to make an "estimation of the objectives." Response at 31-32. WDFW failed to do so. It admits this. It failed to study catch levels beyond one year, or impacts, or make any real study of spending. This is all the more reason to conclude its action here implementing dramatic changes like a 24% cut, and giving recreational crabbers priority and a fixed season, were arbitrary and capricious when WDFW ignored the 24% cut to commercial share.

WDFW argues there are growing numbers of recreational crabbers, and it left commercial crabbers roughly 50 percent while "maintaining a relatively stable inflation-adjusted ex vessel value" for the commercial group. Response at 27. However, this ignores the facts: this is a 24% cut and the commercial group has no protection from future cuts made on the same basis. Revenues are not as relevant as pounds of crab; revenues depend on price, which is outside WDFW's control. And saying a 24% cut in share does not matter compared to revenues for 2000-2009 is arbitrary. The trend was clear improvement that would be factored into

commercial expectations. See Appendix F hereto. No consumer would think that a sudden drop in home values in 2009, to the average of the last ten years, was stability, or good news. If the drop is due to a new regulatory system it is even more instable. WDFW used a decade to look back, and one year to look forward, without estimating catch levels beyond one year into the future. The 441,000 pounds in one year becomes 1.3 million in three years. WDFW does not remedy the situation by noting it now may have to implement rule changes every season, Response at 27-28, as this only shows it has no real basis for concluding things are being maintained. There is nothing stopping it from implementing another cut, next year. The prospect of annual changes shows instability, and that it was acting arbitrarily and capriciously under statutes requiring it to maintain stability.

C. Appellants Are Entitled to Attorneys Fees and Costs

Appellants are entitled to fees and costs because the agency positions here were not reasonable. Opening Brief at 47-49. WDFW did not quantify offsetting economic impacts, its finding of \$5 million increase in personal income is fictitious, it failed to estimate catch levels beyond one year, all of which was unreasonable. The commercial crabbers told it again and again its actions were wrong. It abandoned traditional management goals for a zero sum fishery in which recreational

fishers' harvest must be limited, to protect commercial fishers. WDFW never cited a dictionary definition and the claim "fishing industry" means income in the food, gas, drinks, and gaming industries is unreasonable. The claim it was required to construe "shall" as "may" two times in a statute or that it was "impossible" to comply was not reasonable. The claim that saying "no more" to recreational crabbers is too hard, is unreasonable.

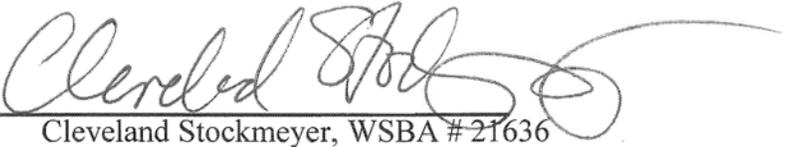
WDFW's claim it is improving commercial fishing by cutting it 24% and giving recreational crabbers priority, was not reasonable. Recreational fishers always have and will outnumber commercial ones. This does not change things nor justify giving them all they want.

IV. CONCLUSION

For the foregoing reasons, this Court should invalidate the changes to WAC 220-56-330 and Puget Sound Crab Fishery Policy C-3609, reverse final orders of the trial court, provide the meaning of RCW 77.04.012 as urged herein, and award fees and costs to appellants.

DATED this 16th day of April 2012.

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DECLARATION OF SERVICE

LISALOU GOGAL states under penalty of perjury of the laws of the State of Washington, as follows:

On this day, I caused the foregoing to be served upon counsel for defendants by mail by depositing same postage prepaid in the US mail, addressed to:

Michael S. Grossman
William C. Frymire
Attorney General of Washington
PO Box 40100
1125 Washington Street SE
Olympia, WA 98504-0100

I also emailed the foregoing to said counsel at their e mail addresses listed with the Washington State Bar Association and used by them in connection with this case.

DATED this 16th day of April 2012 at Seattle, King County, Washington.



LisaLou Gogal

APR 16 2012
STATE OF WASHINGTON
KING COUNTY
CLERK OF SUPERIOR COURT

APPENDIX A

Webster's II
New Riverside
Dictionary

REVISED EDITION

1996



Houghton Mifflin Company

Boston • New York

in-dustry (in'do-stré) *n.*, *pl.* -tries. 1. The commercial production and sale of goods and services. 2. A branch of manufacture and trade <the electronics industry> 3. Industrial management as distinguished from labor. 4. Diligence.
-ise *suff.* Of or resembling <serpentine>

354

re-c-re-a-tion (rèk'rè-'a'shan) *n.* Refreshment and relaxation of one's body or mind after work. —**rec're-a-tion-al** *adj.*

573

main-tain (màn-tàn') *v.* 1. To carry on : continue <maintain a sound economy> 2. To keep in a desirable condition <maintain bridges> 3. To provide for <maintain a large family> 4. To defend, as against attack or danger. 5. To declare : assert. —**main-tain'-able** *adj.* —**main'te-nance** (-tə-nəns) *n.*

414

ec-o-nom-ic (èk'ə-nóm'ik, è'kə : ud) 1. Of or relating to the development, production, and management of material wealth. 2. Of or relating to the necessities of life : utilitarian.

220

well-be-ing (wèl'bè'ing) *n.* The state of being gen. healthy, happy, or prosperous.

769

sta-ble¹ (stá'bəl) *adj.* -bler, -blest. 1. Resisting changes of condition or position. 2. *Physics.* Having no known mode of decay. —Used of atomic particles. 3. Unchanging and permanent : enduring. 4. *Chem.* Not easily modified chemically. 5. a. Dependable. b. Rational <a stable person> —**stabil'i-ty** (stə-bil'i-tē) *n.*

657

en-hance (èn-hāns') *v.* -hanced, -hanc-ing. To make greater, as in beauty or value : heighten. —**en-hance'ment** *n.*

230

im-prove (im-prōov') *v.* -proved, -prov-ing. 1. To make or become better. 2. To increase (e.g., land) in productivity or value. —**im-prov'a-ble** *adj.*

347

RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY

Second Edition

1998



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NEW YORK

976

in-dus-try (in'de strē), *n.*, *pl.* **-tries** for 1, 2, 7. 1. the aggregate of manufacturing or technically productive enterprises in a particular field, often named after its principal product: *the automobile industry; the steel industry.* 2. any general business activity; commercial enterprise: *the Italian tourist industry.* 3. trade or manufacture in general: *the rise of industry in Africa.* 4. the ownership and management of companies, factories, etc.: *friction between labor and industry.* 5. systematic work or labor. 6. energetic, devoted activity at any work or task; diligence: *Her teacher praised her industry.* 7. *Archaeol.* an assemblage of artifacts regarded as unmistakably the work of a single prehistoric group. [1475-85; earlier *industrie* < *L. industria*, *n.* use of fem. of *industrius* **INDUSTRIOUS**]

—**Syn.** 6. application, effort, assiduity, industriousness.

1613
rec·re·a·tion (rek/rē ā/shən), *n.* 1. refreshment by means of some pastime, agreeable exercise, or the like. 2. a pastime, diversion, exercise, or other resource affording relaxation and enjoyment. [1350-1400; ME *re-creacioun* (< MF *recreation*) < L *recreātiōn-* (s. of *recreātiō*) restoration, recovery, equiv. to *recreāt(us)* (see RECREATE) + *-iōn-* *-ION*] —**rec/re-a/tion-al**, **rec-re-a-to-ry** (rek/rē ə tōr/ē, -tōr/ē), *adj.*

main-tain (mán tain'), v.t. 1. to keep in existence or continuance; preserve; retain: *to maintain good relations with neighboring countries.* 2. to keep in an appropriate condition, operation, or force; keep unimpaired: *to maintain order, to maintain public highways.* 3. to keep in a specified state, position, etc.: *to maintain a correct posture; to maintain good health.* 4. to affirm; assert; declare: *He maintained that the country was going downhill.* 5. to support in speech or argument, as a statement or proposition. 6. to keep or hold against attack: *to maintain one's ground.* 7. to provide for the upkeep or support of; carry the expenses of: *to maintain a family.* 8. to sustain or support: *not enough water to maintain life.* [1200-50; ME *maintainen* < OF *maintenir* < ML *manutēnere*, L *manū tenere* lit., to hold in hand, equiv. to *manū*, abl. of *manus* hand (see **MANUAL**) + *tenere* to hold (see **TENET**)] —**main-tain'a-ble**, adj. —**main-tain'a-bil'i-ty**, n. —**main-tain'er**, n.

1160

—**Syn.** 1. continue. 2. keep up. 4. asseverate. **MAINTAIN**, **ASSERT**, **AVER**, **ALLEGE**, **HOLD**, **STATE** all mean to express an opinion, judgment, or position. **MAINTAIN** carries the implications of both firmness and persistence in declaring or supporting a conviction: *She maintained her client's innocence even in the face of damaging evidence.* **ASSERT** suggests assurance, confidence, and sometimes aggressiveness in the effort to persuade others to agree with or accept one's position: *He asserted again and again the government's right to control the waterway.* **AVER**, like **ASSERT**, implies confident declaration and sometimes suggests a firmly positive or peremptory tone; in legal use **AVER** means "to allege as fact": *to aver that the evidence is incontrovertible.* **ALLEGE** indicates a statement without evidence to support it, and thus can imply doubt as to the validity or accuracy of an assertion: *The official is alleged to have been unaware of the crime.* **HOLD** means simply to have or express a conviction or belief: *We hold these truths to be self-evident; She held that her rights had been violated.* **STATE** usually suggests a declaration that is forthright and unambiguous: *He stated his reasons in clear, simple language.* 5. uphold, defend, vindicate, justify. 7. See **SUPPORT**. —**Ant.** 1. discontinue. 5. contradict.

ec-o-nom-ic (ek'ə nom'ik, ə'kə-), adj. 1. pertaining to the production, distribution, and use of income, wealth, and commodities. 2. of or pertaining to the science of economics. 3. pertaining to an economy, or system of organization or operation, esp. of the process of production. 4. involving or pertaining to one's personal resources of money: *to give up a large house for economic reasons.* 5. pertaining to use as a resource in the economy: *economic entomology; economic botany.* 6. affecting or apt to affect the welfare of material resources: *weevils and other economic pests.* 7. economical. [1585-95; (< MF *economique*) < L *oeconomicus* < Gk *oikonomikos* relating to household management, equiv. to *oikónom(os)* steward (*oikos*(s) house + *nómos* manager) + *-ikos* -ic]

618

well-be-ing (wel'be'ing), n. a good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity; welfare: *to influence the well-being of the nation and its people.* [1603-15]

2158

sta-bil-i-ty (stə bil'i tē), n., pl. **-ties**. 1. the state or quality of being stable. 2. firmness in position. 3. continuance without change; permanence. 4. Chem. resistance or the degree of resistance to chemical change or disintegration. 5. resistance to change, esp. sudden change or deterioration: *The stability of the economy encourages investment.* 6. steadfastness; constancy, as of character or purpose: *The job calls for a great deal of emotional stability.* 7. Aeron. the ability of an aircraft to return to its original flying position when abruptly displaced. 8. Rom. Cath. Ch. a vow taken by a Benedictine monk, binding him to residence for life in the same monastery in which he made the vow. [1400-50; < L *stabilitas*, equiv. to *stabilis*(s) **STABLE** + *-tas*-**TY**; cf. ME *stablete* < OF < L, as above] —**Syn.** 6. steadiness, strength, soundness, poise, solidity, balance.

1852

en-hance (en hanz', -hānz'), *v.t.*, -hanced, -hanc-ing.

1. to raise to a higher degree; intensify; magnify: *The candlelight enhanced her beauty.* 2. to raise the value or price of: *Rarity enhances the worth of old coins.* [1325-75; ME *enhauncen* < AF *enhauncer*, appar. for OF *enhancer*, equiv. to *en-* EN- + *haucer* to raise (F *hausser*) < VL **altiare* (deriv. of L *altus* high, with *h-* < Gmc; see HAUGHTY), though *-n-* is unexplained] —**en-hance/ment**, *n.* —**en-hanc/ive**, *ad.*

—**Syn.** 2. See **elevate**. —**Ant.** 1. diminish. 2. reduce.

646

im-prove (im prōv'), *v.*, -proved, -prov-ing. —*v.t.* 1. to bring into a more desirable or excellent condition: *He*

took vitamins to improve his health. 2. to make (land) more useful, profitable, or valuable by enclosure, cultivation, etc. 3. to increase the value of (real property) by betterments, as the construction of buildings and sewers. 4. to make good use of, turn to account: *He improved the stupor by seeing a client with offices there.* —*v.i.* 5. to increase in value, excellence, etc., become better: *The student's situation is improving.* 6. to make improvements as by revision, addition, or change: *None of the younger violinists have been able to improve on his interpretation of that work.* [1425-75, late ME *improven*, *emprouen* < AF *emprouer* to turn (something) into profit, deriv. of phrase *en prou* into profit, equiv. to *en* (see EN-) + *prou*, OF *prou*, *preu* < LL *prode* (test), by reanalysis of L *prōdest* (it) is beneficial, of use, with *prode* taken as a neut. n. (cf. *prout*), & by assoc. with *prove*, *approve*] —**im-prov/a-ble**, *ad.* —**im-prov/a-bil/ity**, *n.* —**im-prov/a-ble-ness**, *n.* —**im-prov/a-bly**, *ad.* —**im-prov/ing-ly**, *ad.*

—**Syn.** 1. amend, emend, IMPROVE, AMELIORATE, BETTER imply bringing to a more desirable state. IMPROVE usually implies remedying a lack or a felt need; to *improve a process, oneself* (as by gaining more knowledge). AMELIORATE, a formal word, implies improving oppressive, unjust, or difficult conditions; to *ameliorate working conditions*. To BETTER is to improve conditions which, though not bad, are unsatisfying; to *better an attempt, oneself* (gain a higher salary). —**Ant.** 1. 5. worsen.

963

SECOND COLLEGE EDITION



**WEBSTER'S
NEW WORLD
DICTIONARY**
OF THE AMERICAN LANGUAGE

DAVID B. GURALNIK, *Editor in Chief*

1980

SIMON AND SCHUSTER

in·dus·try (in'dəs trē) *n., pl. -tries* [LME. < MFr. *indus-
tric* < L. *industria* < *industrius*, active, industrious] 1.
orig., *a*) skill or cleverness *b*) the application of this 2.
earnest, steady effort; constant diligence in or application
to work 3. systematic work; habitual employment 4. *a*)
any particular branch of productive, esp. manufacturing,
enterprise [the paper *industry*] *b*) any large-scale business
activity [the motion-picture *industry*] 5. *a*) manufacturing
productive enterprises collectively, esp. as distinguished
from agriculture *b*) the owners and managers of industry
—SYN. see BUSINESS

719

APPENDIX B

anglers incur to participate in sport fishing, net economic values (often referred to as “consumer surplus”) represent the net or surplus amount that anglers would (theoretically) be willing to spend to participate in sport fishing. Economic impacts measure the importance of the “sport fishing economy.”

Angler Expenditures

According to the U.S. Fish and Wildlife Service (2008), all fishing-related expenditures in Washington State totaled about \$905 million in 2006 (Table 9). Trip-related expenditures, which include food, lodging, transportation, and other trip expenses, totaled \$355 million, or about 39 percent of all fishing expenditures. Expenditures for food and lodging were \$118 million and transportation expenditures were \$120 million. Other trip expenses, such as equipment rental, bait, and cooking fuel, totaled \$117 million. Each angler spent an average of \$482 on trip-related costs during 2006.

Anglers spent about \$550 million on equipment in Washington in 2006, 60 percent of all fishing expenditures. Fishing equipment (rods, reels, line, etc.) spending totaled \$139 million, 29 percent of the equipment total. Auxiliary equipment expenditures (tents, special fishing clothes, etc.) and special equipment expenditures (boats, vans, etc.) amounted to \$347 million, or about 71 percent of the equipment total. Special and auxiliary equipment are items that were purchased for fishing but could be used in activities other than fishing. The purchase of other items,

Table 9. Trip and equipment expenditures for sport fishing in Washington in 2006 by resident and nonresident anglers (in thousands of dollars)

TYPE OF EXPENDITURE	RESIDENT ANGLERS	NON-RESIDENT ANGLERS	ALL ANGLERS IN WASHINGTON ²
Food and lodging	\$104,600	\$13,278	\$117,878
Transportation	\$97,508	\$22,623	\$120,130
Boating costs ¹	\$71,482	\$2,136	\$73,619
Other trip costs	\$36,686	\$6,567	\$43,253
Total trip-related expenditures	\$310,276	\$44,604	\$354,880
Total expenditures	\$777,745	\$63,081	\$904,795

Notes:

¹ Boating costs for non-residents were estimated based on available data.

² Expenditures for equipment and total expenditures by all anglers in Washington do not equal the sum of values from resident and non-resident anglers because these values were derived from different samples.

Source: USFWS 2008

such as magazines, membership dues, licenses, permits, stamps, and land leasing and ownership, amounted to \$64 million—7 percent of all fishing expenditures.

Net Economic Values

Net economic values measure the monetary value that anglers place on sport fishing over and above what they actually spend to participate in the fisheries. These values are the appropriate measure of economic value for a wide range of analyses (including benefit-cost analysis) that quantify and compare benefits and costs. Total user benefits from sport fisheries are calculated as the summation of anglers' willingness to pay across all individuals who participate in sport fishing.

Net economic values associated with sport fishing typically are determined based on the value of an

angler day (or trip). Angler surveys often are used to estimate these values. Values differ by type of activity, including species sought, mode of fishing (e.g., shore fishing or fishing from a boat), and angler success. As described in *Appendix A*, net economic values for recreational fisheries focus on sport anglers only, and are estimated based on a review of previous studies of anglers' net willingness to pay for fishing opportunities. For this study, the following per day values are used to estimate the net economic value of sport fishing:

- Salmon fishing in marine waters, \$58/day
- Other fishing in marine waters, \$60/day
- Shellfish harvesting, \$43/day
- Trout fishing, \$50/day

Section 3 (cont.)

- Salmon/steelhead fishing in freshwaters, \$58/day
- Other coldwater fishing in freshwaters, \$45/day
- Warmwater fishing, \$30/day

Based on these per day values and on the number of angler days reported in *Table 8*, net economic values for sport fishing in Washington State are estimated at \$462.0 million in 2006, including \$380.2 million for freshwater fishing and \$81.8 million for saltwater fishing. At \$145.9 million, fishing for trout generates the greatest amount of net economic values, followed by salmon (both saltwater and freshwater) at \$129.4 million, steelhead at \$51.3 million, and black bass at \$39.4 million.

Economic Impacts

The economic impacts generated by sport fishing activity can be traced from anglers who purchase goods and services, to the creation of statewide jobs and earnings that are supported by these purchases. Anglers purchase gasoline and food, stay at motels and campgrounds, and purchase other goods and services in communities throughout the state. This spending directly supports jobs and generates earnings in fishing-related sectors, and indirectly generates jobs and earnings in many other sectors of the economy as the directly-affected businesses and their employees spend in the local economy. In effect, angler purchases result in three types of economic impacts on regional and the state economy:

- Direct impacts: the first round effect of angler-related spending



(e.g., increase in food sales, income to food store owners, wages paid to store employees).

- Indirect impacts: the ripple effect of additional rounds of re-spending of the initial angler-related expenditures (i.e., the effects of purchases of additional goods and services by other firms in sectors supplying goods and services to food stores, such as food wholesalers and transporters).
- Induced impacts: further ripple effects generated by employees in directly and indirectly affected businesses spending some of their wages in other businesses (i.e., food store employees spend part of their wages in local businesses whose owners and employees also spend in the local area).

Together, these three effects constitute the total impact on sales, employment and income resulting from angler spending. The magnitude and location of the impacts are

affected by the number of anglers, amount of spending, and where anglers make their purchases.

In 2006, anglers accounted for more than 9 million angler days in the state and generated an estimated \$355 million in trip-related spending and \$549 million in equipment expenditures. Direct impacts of this spending on the state economy include supporting an estimated 7,950 jobs and \$165.7 million in personal income (*Table 10*). Accounting for the multiplier effect (indirect and induced impacts) increases the total statewide number of jobs to 12,850 and \$392.9 million in personal income. Business sectors substantially affected by angler spending include food and lodging (1,383 direct jobs supported), transportation (304 direct jobs supported), sporting goods (4,961 direct jobs supported), recreation equipment rental (92 direct jobs supported), and recreation services (1,149 direct jobs supported).

Because spending by non-resident anglers is part of the tourism industry in Washington State, it is important to highlight the impact that angler spending by non-resident visitors have on the state economy. As shown in *Table 10*, spending by non-resident anglers directly support 509 jobs statewide and indirectly support an additional 374 jobs through the multiplier effect. Spending by non-resident anglers also directly generates \$13.1 million and indirectly generates an additional \$17.4 million in personal income for persons working in recreation-related sectors.

NET ECONOMIC VALUES FOR RECREATIONAL FISHING

[Note: Much of the material in this appendix is drawn from a report prepared by the U.S. FWS (2003) that describes results from a special contingent valuation study as part of the 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.]

In 2006, an estimated 824,000 anglers fished in Washington State. These anglers spent \$349.9 million on trips to participate in sport fishing. Expenditures are a useful indicator of the importance of sport fishing activities to local, regional, and national economies. However, they do not measure the economic benefit to either the individual participant or, when aggregated, to society.

Net economic values associated with sport fishing include values that recreational fisheries generate for both consumers (anglers) and producers of goods and services that sell to anglers. Net economic value to consumers is measured by the dollar amount that anglers would be willing to pay over and above what they actually pay to participate in sport fishing. Net economic value to producers (e.g., charter boat operators, guides, and other sport fishing-related businesses) is measured by the net income (or profit) generated by sales to recreational anglers.

For this study, only net economic values to consumers (sport anglers) are evaluated. It is assumed that

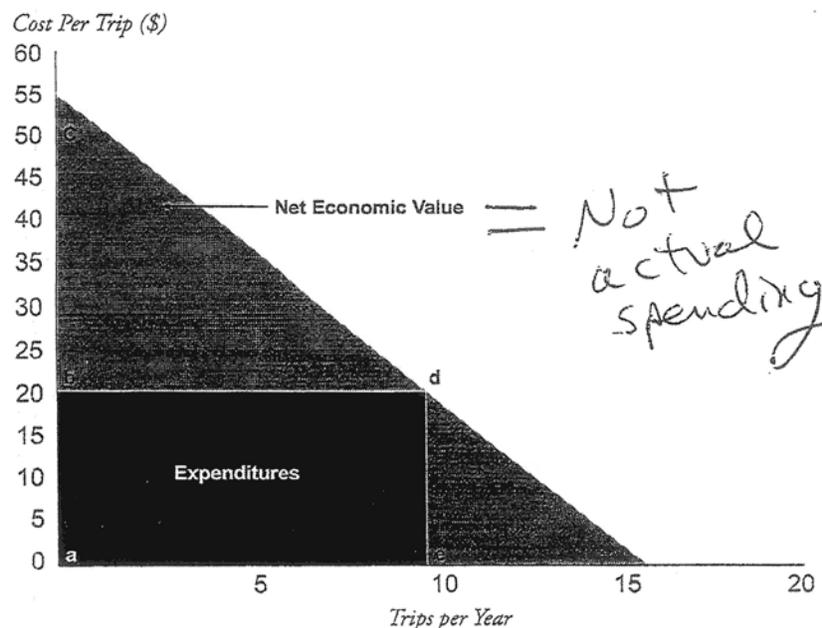
the net income to producers would occur elsewhere in the economy if anglers changed their spending behavior. For example, if sport anglers no longer have opportunities to sport fish for salmon in Puget Sound, the net income to sport fishery-related producers associated with the reduction in angler spending would shift to producers of other goods and services as anglers shift their spending patterns. Consequently, there would be no net change in net income from a state perspective.

Expenditures and net economic values are two widely used but distinctly different measures of the economic value of recreational fisheries. Net willingness to pay, or “consumer

surplus,” is the accepted measure of economic value for a wide range of analyses that seek to quantify benefits and costs. The total benefit to anglers is the summation of willingness to pay across all fishing participants.

There is a direct relationship between expenditures and net economic value, as shown in *Figure A-1*. A demand curve for a representative angler is shown in the figure. An individual angler’s demand curve provides the number of trips that the angler would take per year at different trip costs. The downward sloping demand curve represents the angler’s marginal willingness to pay per trip and indicates that each additional trip is valued less by the angler than the preceding trip. All other factors

Figure A-1. Individual angler’s demand curve for fishing Trips



Appendix A (cont.)

being equal, the lower the cost per trip (vertical axis) the more trips the angler will take (horizontal axis). The cost of an angling trip serves as an implicit price for fishing because a market price generally does not exist for this activity. At \$60 per trip, the angler would choose not to fish, but if fishing trips were free, the angler would take 16 fishing trips. At a cost per trip of \$20, the angler takes 10 trips, with a total willingness to pay \$375 (area *acde* in Figure A-1).

Total willingness to pay is the total value that the angler places on participation. The angler will not take more than 10 trips because the cost per trip (\$20) exceeds what he would pay for an additional trip. For each trip between zero and 10, however, the angler would actually have been willing to pay more than \$20 (the demand curve, showing marginal willingness to pay, lies above \$20). The difference between what the angler is willing to pay and what is actually paid is the net economic value.

In this simple example, therefore, net economic value is \$175 [(\$55 - \$20) × 10 ÷ 2] (triangle *bcd* in Figure A-1) and angler expenditures are \$200 (\$20 × 10) (rectangle *abde* in Figure A-1). Thus, the angler's total willingness to pay is composed of net economic value and total expenditures. Net economic value is simply total willingness to pay minus expenditures. The relationship between net economic value and

expenditures is the basis for asserting that net economic value is an appropriate measure of the benefit an individual derives from participation in an activity and that expenditures are not the appropriate benefit measure. Expenditures are out-of-pocket expenses on items an angler purchases in order to fish. The remaining value, net willingness to pay (net economic value), is the economic measure of an individual's satisfaction after all costs of participation have been paid.

For this study, net economic values to sport anglers is estimated based on the findings of previous studies focused on estimating net economic values for different sport fishing activities. These values are summarized in Table A-1, with specific values used to estimate the value of freshwater and saltwater fishing for different species highlighted. All values in Table A-1 are presented in 2006 values. In addition to the values reported in Table A-1, net economic values for trout fishing (\$50/angler day) were derived from the U.S. FWS's special report (2003) cited at the beginning of this appendix. The per-day values used to estimate the net economic values for sport fishing were as follows:

- Salmon fishing in marine waters, \$58/day
- Other fishing in marine waters, \$60/day

- Shellfish harvesting, \$43/day
- Trout fishing, \$50/day
- Salmon/steelhead fishing in freshwaters, \$58/day
- Other coldwater fishing in freshwaters, \$45/day
- Warmwater fishing, \$30/day

These per day values were applied to the number of angler days to derive estimates of total net economic values for all anglers in Washington State.

* not actual payment

Table A-1. Net economic values for sport fishing, by type of fishing and region

Species Category	N	NORTHEAST	N	SOUTHEAST	N	INTERMOUNTAIN	N	PACIFIC	N	ALASKA	N	NATIONAL
Cold Water	58		20		116		13		4			3
Min		\$3.75		\$19.48		\$6.62		\$2.56		\$2.56		\$30.28
Max		\$149.57		\$117.05		\$420.57		\$194.41		\$96.28		\$53.85
Average		\$39.54		\$51.25		\$62.54		\$54.10		\$53.90		\$38.53
Median		\$27.04		\$51.19		\$47.22		\$45.31		\$58.37		\$31.47
Warm Water	119		63		38		3					7
Min		\$0.48		\$3.84		\$13.05		\$14.91				\$19.34
Max		\$176.10		\$254.30		\$129.56		\$41.01				\$115.59
Average		\$42.87		\$54.37		\$45.55		\$28.59				\$55.59
Median		\$27.18		\$47.13		\$32.84						\$55.93
Coastal	11		34				24					9
Min		\$2.41		\$3.36				\$5.80				\$9.14
Max		\$215.16		\$990.22				\$533.72				\$272.19
Average		\$68.47		\$144.74				\$140.09				\$73.70
Median		\$7.34		\$73.32				\$102.10				\$59.66
Anadromous	33		1		15		27		18			3
Min		\$0.35		\$138.22		\$15.11		\$19.31		\$20.73		\$41.62
Max		\$149.61		\$138.22		\$85.00		\$287.33		\$84.40		\$190.16
Average		\$39.41		\$138.22		\$51.20		\$65.61		\$40.76		\$103.36
Median		\$4.69		\$138.22		\$49.21		\$77.92		\$38.90		\$78.30
Mixed	30		1		16				16			
Min		\$0.71		\$134.24		\$26.77				\$55.96		
Max		\$61.91		\$134.24		\$217.71				\$328.96		
Average		\$20.08		\$134.24		\$59.28				\$213.13		
Median		\$18.32		\$134.24		\$36.18				\$206.87		
Not Specified	112		16		48		14		2			1
Min		\$4.51		\$3.46		\$11.28		\$1.74		\$85.18		\$67.12
Max		\$390.45		\$474.77		\$312.71		\$119.87		\$105.94		\$67.12
Average		\$49.66		\$93.47		\$77.31		\$39.10		\$95.56		\$67.12
Median		\$36.01		\$34.20		\$62.70		\$63.12		\$95.56		\$67.12

Note:

All values presented in the table have been converted to a 2006 base year.

Source: Derived from Boyle et. al 1997

Appendix B (cont.)

alternative uses of capital and/or there were alternative employment opportunities, NEV might be significantly lower than the estimates shown.

- Only commercial REI and NEV “use” benefits are calculated. There may be other non-use and non-market benefits associated with commercial fisheries that would be additive to the use benefits. For example, there may be tourists who are drawn to working waterfronts, and their spending may generate economic contributions and add to economic wealth. There may be (positive or negative) passive use values associated with commercial harvests that should be taken into account in the NEV calculation. Passive use values are associated with people wanting the fish resource to exist but who may not actually use the resource.

Recreational Fisheries Analysis

The analysis of economic impacts of the recreational fisheries was conducted using the IMPLAN economic input-output model and the 2006 data set for Washington State. IMPLAN (Impact Analysis for PLANning) is a computer-driven input-output model originally developed by the USDA Forest Service in cooperation with the Federal Emergency Management Agency and the USDI Bureau of Land Management to assist the Forest Service in land and resource management planning. The IMPLAN system has been in use

since 1979, evolving from a main-frame, non-interactive application to a menu-driven microcomputer program that is completely interactive. (Minnesota IMPLAN Group 2000)

The IMPLAN system comprises two components: the software and the database. The software performs the necessary calculations, using study area data, to create regional and state input-output models. The databases, which are available at the county and zip code area level, and which are periodically revised using updated socioeconomic data, provide all the information needed to create the IMPLAN models. The primary input variables needed to conduct an impact analysis using IMPLAN are estimates of final demand for products or services.

For evaluating the economic impacts of recreational fisheries in Washington State, angler spending identified in *Table 10* was first disaggregated to appropriate expenditure categories based on spending profiles identified in Southwick Associates 2007. These results were then inputted to corresponding sectors in the IMPLAN model. The following IMPLAN sectors, with types of expenditures inputted to them, were used for the IMPLAN model runs:

- Food and beverage stores (used for food expenditures)
- Food services and drinking places (used for food expenditures)
- Hotels and motels—including casino hotels (used for lodging expenditures)

- Air transportation (used for airfare transportation expenditures)
- State and local government passenger transit (used for public transportation expenditures)
- Gasoline stations (used for private transportation expenditures)
- Sporting goods, hobby, books, and music stores (used for fishing and recreation equipment expenditures)
- General and consumer goods rental (used for equipment rental expenditures)
- Other amusement, gambling, and recreational industries (used for boat launching, mooring, guides, and land use fee expenditures)
- Other sectors: all other sectors of the Washington State economy

Recreational spending estimates were inputted into the IMPLAN model separately for expenditures made by all anglers, by resident anglers, and by non-resident anglers. The output of the modeling runs included estimates of direct, indirect, and induced levels of employment and personal income at the state level.

APPENDIX C

Projected Increase in Recreational Expenditures Resulting from Proposed Season Design

Average number of recreational crab trips 2008-2009	Projected number of recreational crab trips in 2011	Projected recreational crab expenditures based on \$43 per angler day or trip
340,371	446,931	\$19,218,033

Estimated \$43.00 expenditure per angler trip taken from: Economic
Analysis of the Non-Treaty Commercial and Recreational Fisheries
in Washington State (2008)

Projected Increase in the Recreational Fishery Net Economic Value and Personal Income Value

\$43 net economic value per angler trip and \$43.32 personal income value per angler trip taken from: *Economic Analysis of the Non-Treaty Commercial and Recreational Fisheries in Washington State (2008)*

Average number of recreational crab trips 2008-2009	Projected number of recreational crab trips in 2011	Estimated net economic value based on \$43 per angler day or trip	Estimated total personal income value based on \$43.32 per angler day or trip
340,371	446,931	\$19,218,000	\$19,361,000

APPENDIX D



OFFICE OF PROGRAM RESEARCH

House of Representatives

January 31, 1983

MEMORANDUM

TO: Members, House Natural Resources Committee
FROM: W. Scott Morgan, ^{WRM} Research Analyst
SUBJECT: HB 278 - Fisheries Code Revision

★ Title 75 RCW -- the Fisheries Code -- governs management of the state's food fish and shellfish resources. Numerous enactments and amendments over the years have called attention to the need for a major review and revision to eliminate duplicative, contradictory, and outdated language and create a more consolidated code within a useful organization structure.

House Floor Resolution No. 82-113 called for the House Natural Resources and Environmental Affairs Committee to undertake such a revision.

Committee staff, with the cooperation of Senate staff, and Fisheries Department staff, developed legislation for the 1983 session.

Some basic parameters within which the revisions were made follow:

★ 1. No substantive changes in the law.

In cases where statutes conflict or legislative intent is not clear, the sections will be identified for the Committee.

2. Use drafting principles and style instructions contained in the Code Reviser's Bill Drafting Guide.

Long sections have been shortened and divided into subsections; unnecessary provisos and legalese are eliminated where possible.

3. Consolidate sections and chapters where appropriate.

The working draft collapses 15 chapters down to 11 (see attachment). The numerous sections setting forth commercial fishing licenses have been combined into 4 sections which include gear type, resident, and nonresident fees. Personal recreational licenses are included within a single chapter. Commercial licenses moratoria are included in a

single chapter and duplicative sections eliminated.

4. Where practical, use Game Code revisions of 1980 as a model.

Some portions of the Fisheries Code are similar to the Game Code. Where practical, the Game Code has been used as a model in enforcement, administration, and other areas.

5. Rewrite sections in clear and understandable language.

Unnecessary legalese has been eliminated in favor of clear, understandable English.

As a result, the bill repeals 108 sections and decodifies 17 additional sections.

APPENDIX E

1983
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FORTY-EIGHTH LEGISLATURE
Convened January 10, 1983. Adjourned April 24, 1983.

1st EXTRAORDINARY SESSION
FORTY-EIGHTH LEGISLATURE
Convened April 25, 1983. Adjourned May 24, 1983.

2nd EXTRAORDINARY SESSION
FORTY-EIGHTH LEGISLATURE
Convened May 25, 1983. Adjourned May 25, 1983.



Published at Olympia by the Statute Law Committee pursuant to Chapter
6, Laws of 1969.

DENNIS W. COOPER
Code Reviser

chapter 12, Laws of 1955 as amended by section 2, chapter 171, Laws of 1963 and RCW 75.40.040; amending section 75.40.060, chapter 12, Laws of 1955 and RCW 75.40.060; amending section 3, chapter 183, Laws of 1975 1st ex. sess. as amended by section 3, chapter 230, Laws of 1977 ex. sess. and RCW 75.28.505; amending section 4, chapter 183, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 43, Laws of 1979 ex. sess. and RCW 75.28.510; amending section 5, chapter 183, Laws of 1975 1st ex. sess. and RCW 75.28.515; amending section 6, chapter 183, Laws of 1975 1st ex. sess. as amended by section 2, chapter 43, Laws of 1979 ex. sess. and RCW 75.28.520; amending section 8, chapter 183, Laws of 1975 1st ex. sess. as last amended by section 4, chapter 43, Laws of 1979 ex. sess. and RCW 75.28.530; amending section 9, chapter 183, Laws of 1975 1st ex. sess. as amended by section 5, chapter 230, Laws of 1977 ex. sess. and RCW 75.28.535; amending section 10, chapter 183, Laws of 1975 1st ex. sess. as last amended by section 3, chapter 43, Laws of 1979 ex. sess. and RCW 75.28.540; amending section 2, chapter 308, Laws of 1977 ex. sess. as last amended by section 1, chapter 261, Laws of 1981 and RCW 75.48.020; amending section 3, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.030; amending section 4, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.040; amending section 5, chapter 308, Laws of 1977 ex. sess. as amended by section 2, chapter 261, Laws of 1981 and RCW 75.48.050; amending section 6, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.060; amending section 7, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.070; amending section 8, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.080; amending section 9, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.090; amending section 10, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.100; amending section 11, chapter 308, Laws of 1977 ex. sess. and RCW 75.48.110; amending section 2, chapter 327, Laws of 1977 ex. sess. as last amended by section 1, chapter 66, Laws of 1980 and RCW 75.18.110; amending section 75.98.030, chapter 12, Laws of 1955 and RCW 75.98.030; amending section 171, page 279, Laws of 1860 as last amended by section 1, chapter 98, Laws of 1909 and RCW 3.20.040; amending section 117, chapter 299, Laws of 1961 as amended by section 1, chapter 150, Laws of 1982 and RCW 3.66.060; amending section 35A.69.010, chapter 119, Laws of 1967 ex. sess. and RCW 35A.69.010; amending section 43.52.440, chapter 8, Laws of 1965 and RCW 43.52.440; amending section 1, chapter 39, Laws of 1975 and RCW 69.04.930; amending section 1, chapter 98, Laws of 1980 and RCW 82.27.010; amending section 124, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.390; adding a new section to chapter 75.12 RCW; adding a new section to chapter 75.25 RCW; adding a new chapter to Title 75 RCW; adding a new section to chapter 79.96 RCW; creating new sections; decodifying RCW 75.12.200, 75.12.300, 75.18.100, 75.25.010, 75.25.900, 75.25.910, 75.28.400, 75.28.450, 75.28.500, 75.28.600, 75.30.010, 75.48.010, 75.98.010, 75.98.020, 75.98.040, 75.98.050, and 75.98.060; repealing section 75.04.020, chapter 12, Laws of 1955 and RCW 75.04.020; repealing section 75.04.030, chapter 12, Laws of 1955 and RCW 75.04.030; repealing section 75.04.040, chapter 12, Laws of 1955 and RCW 75.04.040; repealing section 75.04.050, chapter 12, Laws of 1955 and RCW 75.04.050; repealing section 75.04.060, chapter 12, Laws of 1955 and RCW 75.04.060; repealing section 75.04.070, chapter 12, Laws of 1955, section 3, chapter 227, Laws of 1981 and RCW 75.04.070; repealing section 75.04.080, chapter 12, Laws of 1955 and RCW 75.04.080; repealing section 75.04.090, chapter 12, Laws of 1955 and RCW 75.04.090; repealing section 75.04.100, chapter 12, Laws of 1955 and RCW 75.04.100; repealing section 75.04.110, chapter 12, Laws of 1955 and RCW 75.04.110; repealing section 9, chapter 112, Laws of 1949 and RCW 75.08.021; repealing section 4, chapter 112, Laws of 1949 and RCW 75.08.022; repealing section 1, chapter 315, Laws of 1959 and RCW 75.08.027; repealing section 75.08.030, chapter 12, Laws of 1955 and RCW 75.08.030; repealing section 75.08.050, chapter 12, Laws of 1955 and RCW 75.08.050; repealing section 18, chapter 327, Laws of 1977 ex. sess. and RCW 75.08.085; repealing section 75.08.100, chapter 12, Laws of 1955 and RCW 75.08.100; repealing section 75.08.140, chapter 12, Laws of 1955 and RCW 75.08.140; repealing section 75.08.190, chapter 12, Laws of 1955 and RCW 75.08.190; repealing section 13, chapter 207, Laws of 1953 and RCW 75.08.203; repealing section 75.08.240, chapter 12, Laws of 1955 and RCW 75.08.240; repealing section 75.08.250, chapter 12, Laws of 1955, section 34, chapter 106, Laws of 1973 and RCW 75.08.250; repealing section 75.08.270, chapter 12, Laws of 1955 and RCW 75.08.270; repealing section 1, chapter 230, Laws of 1961 and RCW 75.08.290; repealing section 75.12.050, chapter 12, Laws of 1955 and RCW 75.12.050; repealing section 75.12.060, chapter 12, Laws of 1955 and RCW 75.12.060; repealing section 75.12.080, chapter 12,

Laws of 1955 and RCW 75.12.080; repealing section 75.12.110, chapter 12, Laws of 1955 and RCW 75.12.110; repealing section 3, chapter 276, Laws of 1955 and RCW 75.12.150; repealing section 4, chapter 276, Laws of 1955 and RCW 75.12.160; repealing section 4, chapter 108, Laws of 1957, section 1, chapter 234, Laws of 1963 and RCW 75.12.220; repealing section 3, chapter 234, Laws of 1963 and RCW 75.12.232; repealing section 6, chapter 108, Laws of 1957 and RCW 75.12.240; repealing section 7, chapter 108, Laws of 1957 and RCW 75.12.250; repealing section 8, chapter 108, Laws of 1957 and RCW 75.12.260; repealing section 9, chapter 108, Laws of 1957 and RCW 75.12.270; repealing section 26, chapter 309, Laws of 1959 and RCW 75.12.280; repealing section 1, chapter 227, Laws of 1981 and RCW 75.12.290; repealing section 75.16.040, chapter 12, Laws of 1955 and RCW 75.16.040; repealing section 3, chapter 35, Laws of 1971 and RCW 75.16.110; repealing section 75.18.005, chapter 12, Laws of 1955 and RCW 75.18.005; repealing section 75.18.010, chapter 12, Laws of 1955 and RCW 75.18.010; repealing section 75.18.030, chapter 12, Laws of 1955 and RCW 75.18.030; repealing section 75.18.040, chapter 12, Laws of 1955 and RCW 75.18.040; repealing section 75.18.050, chapter 12, Laws of 1955 and RCW 75.18.050; repealing section 75.18.060, chapter 12, Laws of 1955 and RCW 75.18.060; repealing section 75.18.070, chapter 12, Laws of 1955 and RCW 75.18.070; repealing section 75.18.090, chapter 12, Laws of 1955 and RCW 75.18.090; repealing section 75.20.010, chapter 12, Laws of 1955 and RCW 75.20.010; repealing section 75.20.020, chapter 12, Laws of 1955 and RCW 75.20.020; repealing section 75.20.030, chapter 12, Laws of 1955 and RCW 75.20.030; repealing section 75.20.080, chapter 12, Laws of 1955 and RCW 75.20.080; repealing section 2, chapter 4, Laws of 1961 and RCW 75.20.120; repealing section 75.24.020, chapter 12, Laws of 1955 and RCW 75.24.020; repealing section 75.24.040, chapter 12, Laws of 1955 and RCW 75.24.040; repealing section 3, chapter 243, Laws of 1979 ex. sess. and RCW 75.25.030; repealing section 5, chapter 243, Laws of 1979 ex. sess. and RCW 75.25.050; repealing section 6, chapter 243, Laws of 1979 ex. sess. and RCW 75.25.060; repealing section 7, chapter 243, Laws of 1979 ex. sess. and RCW 75.25.070; repealing section 2, chapter 171, Laws of 1957, section 3, chapter 309, Laws of 1959, section 3, chapter 283, Laws of 1971 ex. sess. and RCW 75.28.013; repealing section 75.28.050, chapter 12, Laws of 1955 and RCW 75.28.050; repealing section 1, chapter 40, Laws of 1975-'76 2nd ex. sess. and RCW 75.28.083; repealing section 6, chapter 309, Laws of 1959, section 6, chapter 283, Laws of 1971 ex. sess., section 2, chapter 141, Laws of 1979 ex. sess. and RCW 75.28.087; repealing section 2, chapter 60, Laws of 1979 and RCW 75.28.097; repealing section 75.28.150, chapter 12, Laws of 1955, section 14, chapter 309, Laws of 1959, section 6, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.150; repealing section 75.28.160, chapter 12, Laws of 1955, section 15, chapter 309, Laws of 1959, section 7, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.160; repealing section 75.28.170, chapter 12, Laws of 1955, section 16, chapter 309, Laws of 1959, section 8, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.170; repealing section 75.28.180, chapter 12, Laws of 1955, section 17, chapter 309, Laws of 1959, section 9, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.180; repealing section 75.28.190, chapter 12, Laws of 1955, section 18, chapter 309, Laws of 1959, section 10, chapter 73, Laws of 1965 ex. sess., section 9, chapter 283, Laws of 1971 ex. sess., section 8, chapter 327, Laws of 1977 ex. sess. and RCW 75.28.190; repealing section 75.28.210, chapter 12, Laws of 1955, section 19, chapter 309, Laws of 1959, section 11, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.210; repealing section 75.28.220, chapter 12, Laws of 1955, section 20, chapter 309, Laws of 1959, section 12, chapter 73, Laws of 1965 ex. sess., section 10, chapter 283, Laws of 1971 ex. sess., section 9, chapter 327, Laws of 1977 ex. sess. and RCW 75.28.220; repealing section 75.28.230, chapter 12, Laws of 1955, section 21, chapter 309, Laws of 1959, section 13, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.230; repealing section 75.28.240, chapter 12, Laws of 1955, section 22, chapter 309, Laws of 1959, section 14, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.240; repealing section 75.28.250, chapter 12, Laws of 1955, section 23, chapter 309, Laws of 1959, section 15, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.250; repealing section 75.28.260, chapter 12, Laws of 1955, section 24, chapter 309, Laws of 1959, section 16, chapter 73, Laws of 1965 ex. sess. and RCW 75.28.260; repealing section 75.28.270, chapter 12, Laws of 1955, section 25, chapter 309, Laws of 1959, section 17, chapter 73, Laws of 1965 ex. sess., section 2, chapter 133, Laws of 1980 and RCW 75.28.270; repealing section 3, chapter 133, Laws of 1980 and RCW 75.28.274; repealing section 5, chapter 133, Laws of 1980 and RCW 75.28.276; repealing section 6, chapter 133, Laws of 1980 and RCW 75.28.277; repealing

section 9, chapter 212, Laws of 1955, section 2, chapter 253, Laws of 1969 ex. sess. and RCW 75.28.281; repealing section 6, chapter 141, Laws of 1979 ex. sess. and RCW 75.28.283; repealing section 12, chapter 283, Laws of 1971 ex. sess. and RCW 75.28.375; repealing section 3, chapter 40, Laws of 1975-'76 2nd ex. sess. and RCW 75.28.377; repealing section 1, chapter 173, Laws of 1973 1st ex. sess. and RCW 75.28.390; repealing section 3, chapter 173, Laws of 1973 1st ex. sess. and RCW 75.28.410; repealing section 5, chapter 173, Laws of 1973 1st ex. sess. and RCW 75.28.430; repealing section 2, chapter 104, Laws of 1974 ex. sess. and RCW 75.28.440; repealing section 4, chapter 184, Laws of 1974 ex. sess. and RCW 75.28.465; repealing section 6, chapter 184, Laws of 1974 ex. sess. and RCW 75.28.470; repealing section 7, chapter 184, Laws of 1974 ex. sess., section 171, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 75.28.475; repealing section 9, chapter 184, Laws of 1974 ex. sess. and RCW 75.28.480; repealing section 7, chapter 183, Laws of 1975 1st ex. sess. and RCW 75.28.525; repealing section 14, chapter 327, Laws of 1977 ex. sess. and RCW 75.28.640; repealing section 1, chapter 113, Laws of 1980 and RCW 75.28.800; repealing section 3, chapter 106, Laws of 1977 ex. sess. and RCW 75.30.030; repealing section 4, chapter 106, Laws of 1977 ex. sess. and RCW 75.30.040; repealing section 3, chapter 101, Laws of 1979 and RCW 75.30.080; repealing section 75.36.020, chapter 12, Laws of 1955 and RCW 75.36.020; repealing section 75.40.050, chapter 12, Laws of 1955, section 1, chapter 100, Laws of 1977 ex. sess. and RCW 75.40.070; repealing section 1, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.010; repealing section 3, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.020; repealing section 4, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.030; repealing section 5, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.040; repealing section 6, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.050; repealing section 7, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.060; repealing section 8, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.070; repealing section 9, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.44.080; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. In enacting this 1983 act, it is the intent of the legislature to revise and reorganize the fisheries code of this state to clarify and improve the administration of the state's fisheries laws. Unless the context clearly requires otherwise, the revisions made to the fisheries code by this act are not to be construed as substantive.

Sec. 2. Section 75.08.010, chapter 12, Laws of 1955 and RCW 75.08.010 are each amended to read as follows:

This title (~~shall be~~) is known and may be cited as the "Fisheries Code of the State of Washington."

NEW SECTION. Sec. 3. RCW 75.04.010, as amended by this 1983 act, is hereby decodified and recodified as RCW 75.08.011.

Sec. 4. Section 75.04.010, chapter 12, Laws of 1955 as amended by section 2, chapter 152, Laws of 1975 1st ex. sess. and RCW 75.04.010 are each amended to read as follows:

~~((Terms))~~ As used in this title or ~~((in any))~~ rules ~~((or regulation))~~ of the director ~~((of fisheries shall have the meaning given to them in this chapter)),~~ unless the context clearly ~~((indicates))~~ requires otherwise:

- (1) "Director" means the director of fisheries.
- (2) "Department" means the department of fisheries.

(3) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.

(4) "Fisheries patrol officer" means a person appointed and commissioned by the director, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

(5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(6) "To fish" and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.

(11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means species of the genus *Oncorhynchus* and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon

<u>Oncorhynchus keta</u>	<u>Chum salmon</u>
<u>Oncorhynchus gorbuscha</u>	<u>Pink salmon</u>
<u>Oncorhynchus nerka</u>	<u>Sockeye salmon</u>

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks.

Sec. 5. Section 3, chapter 112, Laws of 1949 as amended by section 1, chapter 183, Laws of 1975 1st ex. sess. and RCW 75.08.012 are each amended to read as follows:

~~((It shall be the duty and purpose of))~~ The department ~~((of fisheries to))~~ shall preserve, protect, perpetuate and manage the food fish and shellfish in ~~((the waters of the))~~ state waters and ~~((the))~~ offshore waters ~~((thereof to the end that such food fish and shellfish shall not be taken, possessed, sold or disposed of at such times and in such manner as will impair the supply thereof. For the purpose of conservation, and))~~.

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

Sec. 6. Section 10, chapter 207, Laws of 1953 and RCW 75.08.014 are each amended to read as follows:

The director of fisheries shall ~~((have charge and general supervision))~~ supervise the administration and operation of the department of fisheries ~~((; and shall exercise all the powers))~~ and perform ~~((all))~~ the duties prescribed by law ~~((with respect to food fish and shellfish))~~. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

~~((No person shall be eligible to appointment as, or to hold the office of, director of fisheries, unless he has))~~ Only persons having general knowledge of the fisheries resources and commercial and recreational fishing ~~((conditions and of the fishing))~~ industry in this state ~~((; and has no))~~ are eligible

for appointment as director. The director shall not have a financial interest in the fishing industry or ~~((any))~~ a directly related industry ~~((directly connected therewith))~~.

Sec. 7. Section 75.08.020, chapter 12, Laws of 1955 as amended by section 87, chapter 75, Laws of 1977 and RCW 75.08.020 are each amended to read as follows:

~~((The director shall devote his time to the duties of his office and enforce the laws and regulations of the director relating to propagation, protection, conservation, preservation, and management of food fish and shellfish.~~

The director shall purchase, construct, charter, and operate vehicles, boats, and aircraft necessary to properly patrol the shores and waters of the state and the offshore waters in the enforcement of this title and the regulations of the director.)

(1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report ~~((each year))~~ to the governor ~~((; containing a statement of his official actions, of))~~ on the operation ~~((and result of the laws pertaining to the fish and shellfish industry;))~~ of the department and the statistics of the fishing ~~((business, and suggestions as to needed legislation whenever he deems it necessary))~~ industry.

Sec. 8. Section 75.08.025, chapter 12, Laws of 1955 and RCW 75.08.025 are each amended to read as follows:

The ~~((authority of the))~~ director ~~((under the provisions of this title shall extend to negotiating))~~ may negotiate agreements with the United States department of defense ~~((of the United States, or representatives thereof, for the purpose of coordinating and correlating the control of))~~ to coordinate fishing in ~~((the))~~ state waters ~~((of the state))~~ over which the department of defense ~~((; for national defense purposes;))~~ has assumed control ~~((; to the end that such waters may be utilized for fishing consistent with the safety of fishermen, personnel of the department of defense, and the public; to promulgate and enforce regulations for restricted fishing in said areas and to provide for such patrol of said areas as may be necessary))~~.

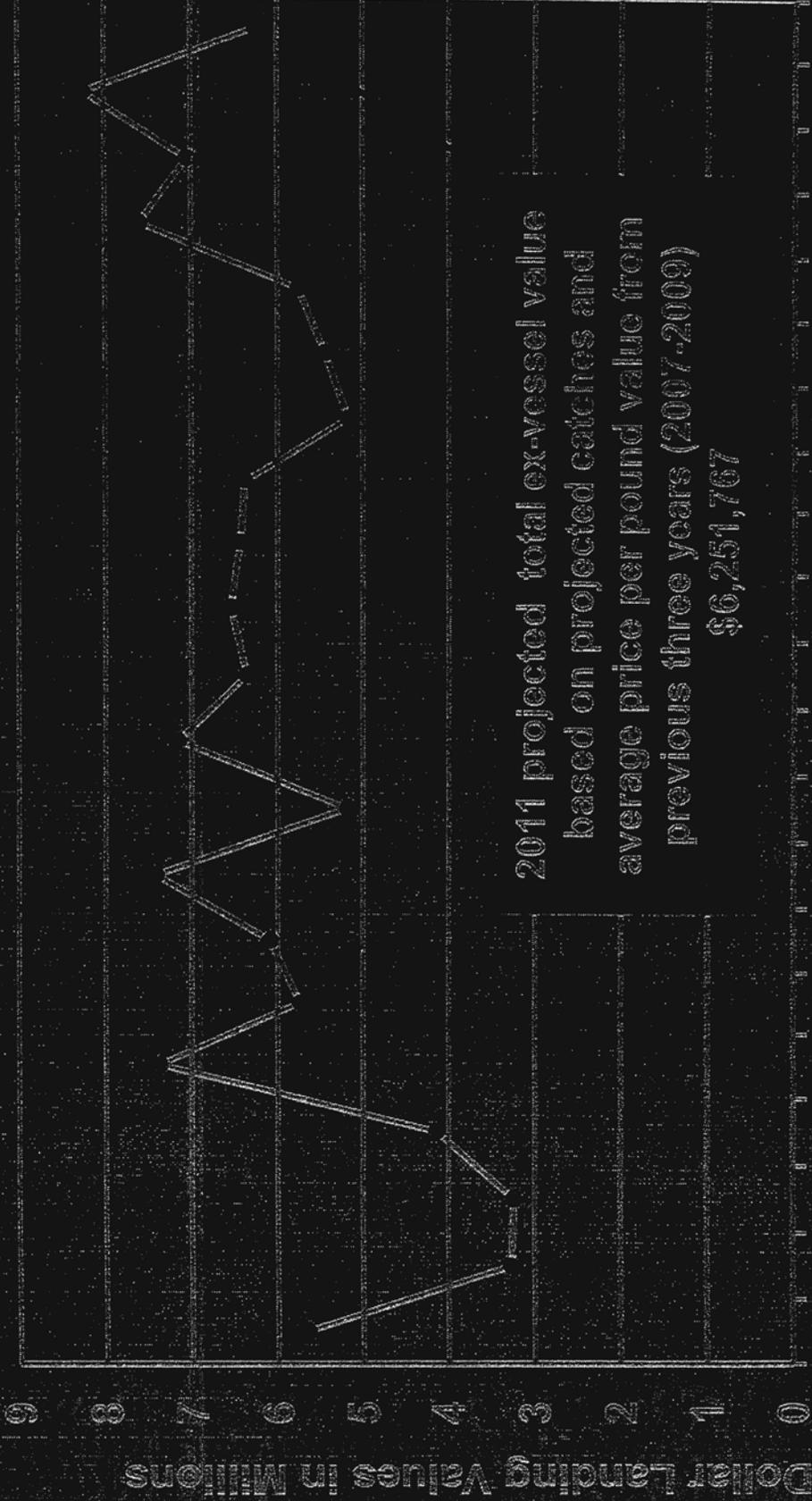
Sec. 9. Section 75.08.040, chapter 12, Laws of 1955 as amended by section 1, chapter 212, Laws of 1955 and RCW 75.08.040 are each amended to read as follows:

The director ~~((shall select and))~~ may acquire by gift, easement, purchase, lease, or condemnation ~~((brought in the name of the state, and by any other lawful means at his disposal, such))~~ lands, water rights, and rights of way, and construct ~~((all))~~ and maintain necessary facilities ~~((thereon, as may be necessary for the exercise of the powers and discharge of the duties of the department))~~ for purposes consistent with this title.

APPENDIX F

Total Adjusted Ex-Vessel Landing Values for the Puget Sound Commercial Crab Fishery (1990-2009 actual) (2011 projected)

Ex-vessel values were adjusted to 2010 dollars using a Consumer Price Index (CPI) conversion maintained by the United States Department of Labor Statistic



2011 projected total ex-vessel value based on projected catches and average price per pound value from previous three years (2007-2009) \$6,251,767