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NO. 34883-7-II

STATE OF WASHINGTON

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

ECHO BAY COMMUNITY ASSOCIATION,

Appellants

v.

**STATE OF WASHINGTON, DEPARTMENT OF NATURAL
RESOURCES; RICHARD KAUPILLA; ANDY BLAIR;
RICKY BLAIR; AND F/V PUGET LLC,**

Respondent.

**RESPONSIVE BRIEF OF RESPONDENTS RICHARD KAUPILLA,
ANDY BLAIR, RICKY BLAIR AND F/V PUGET LLC TO
BRIEF OF APPELLANT**

SLOAN BOBRICK OLDFIELD & HELSDON, P.S.

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I. COUNTER STATEMENT OF THE ISSUES

These Respondents concur in the State's Counter Statement.

II. STATEMENT OF THE CASE

These Respondents concur with the Statement of the Case as set forth by the Respondent State of Washington, with the exception that these Respondents wish to clarify that the Aquaculture Lease issued by the Department of Natural Resources in September, 2005 was to F/V Puget, LLC, and was additionally signed individually by Respondents Richard Kaupilla, Andy Blair and Ricky Blair.

III. ARGUMENT

These Respondents concur with the argument made by Respondent Department of Natural Resources. There certainly is no reason to be redundant and to restate those arguments.

With regard to Section V(3) of the Respondent Department of Natural Resources' Brief, however, these Respondents emphasize that the retention of the herring in the net pens is a part of the processing of the herring, and not simply storage. The Department considers herring net pens to be floating culture of herring and recognizes that the herring are held without food in order to prepare the herring for preservation by removing bacteria from the digestive tract. *Aquaculture Handbook*, record at Page 507 and *Aquatic Resources Program Activities Summary*, record at

Page 878. Additionally, the fat content of the herring is reduced with the result that the fish are firmer and stay on the fish hook better.

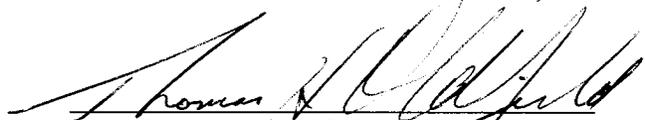
This stage of the processing of the herring is the converse of the comparable stage of processing applied to other commercially raised animals. Beef, swine, sheep, and other animals are commonly confined and fed a rich diet to increase their body fat before they are transported to a facility for slaughter and further processing. In this situation, the herring are held in the pens and deliberately deprived of food to alter their body composition in preparation for further processing. This certainly is part of the system of preparation designed to produce herring that are more easily preserved for sale as bait.

IV. CONCLUSION

These Respondents concur with the conclusions set forth in the Brief of Respondent Department of Natural Resources. The ruling of the Pierce County Superior Court should be affirmed.

Respectfully submitted this 23rd day of October, 2006.

Sloan Bobrick Oldfield and Helsdon, P.S.



By: Thomas H. Oldfield, WSBA #2651
Attorneys for Respondents Kaupilla,
Blair and F/V Puget

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused the foregoing Responsive Brief of Respondents Richard Kaupilla, Andy Blair, Ricky Blair and F/V Puget LLC to be served on the following:

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DATED this 23rd day of October, 2006, at University Place, Washington.



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