

**THE HONORABLE RICARDO S. MARTINEZ**

**UNITED STATE DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

**UNITED STATES OF AMERICA, et al.,**

**Case No. C70-9213**

Plaintiffs,

**DECLARATON OF PATRICK  
PATTILLO**

**v.**

**STATE OF WASHINGTON, et al.,**

Defendants.

PATRICK PATTILLO declares under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am over 18 years of age and competent to testify, and make this declaration based upon my own personal knowledge.

2. I have a Bachelor of Science degree from the University of Washington School of Fisheries. I was employed with the Washington Department of Fisheries (WDF) and Washington Department of Fish and Wildlife (WDFW) for 36 years. I have extensive experience with the management of salmon fisheries in Washington State and throughout the Pacific Northwest. My responsibilities over those 36 years with the State of Washington was as a Fishery Management Scientist (1978-1991), Statewide Salmon Fishery Manager (1991-2000), Policy Lead for Inter-jurisdictional Fisheries Management (2000-2009), and Special Assistant to the Director (2010-

1 2014).

2 3. I was the lead negotiator and writer for state-tribal fishery management agreements  
3 including the joint Tribal-WDFW Puget Sound Chinook Fishery Management Plans approved by  
4 the federal government under the Endangered Species Act (“ESA”) from 1999 to 2014. I was  
5 WDFW’s lead negotiator for annual fishery management agreements with the Puget Sound Tribes  
6 in the North of Falcon (“NOF”) season-setting process, as well as WDFW’s lead policy  
7 representative directing the public involvement component of the annual North Falcon process. I  
8 was a member of the Pacific Salmon Commission (PSC) Chinook Technical Team (1989-1997),  
9 and a member of the Pacific Fishery Management Council’s Salmon Technical Team (1983-1989).  
10 I was WDFW’s alternate Pacific Fishery Management Council member (2011-2014). I was a  
11 member of the U.S. delegation negotiating long-term fishing agreements for Chinook salmon, coho  
12 salmon and chum salmon as part of the Pacific Salmon Treaty between the United States and  
13 Canada (1999 and 2009). I have testified a number of times in this case as an expert witness.  
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15 4. Since retiring from service with the State of Washington in 2014, I have continued  
16 to be involved in salmon fishery management. I contracted to assist WDFW with the North of  
17 Falcon process from February – April of 2015. Since 2015, I have participated in the annual North  
18 of Falcon salmon fishery management process either as a contracted representative of recreational  
19 fishing organizations, or as a volunteer member of WDFW’s Puget Sound Sport Fishing Advisory  
20 Group.  
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22 5. As discussed above, I have been the lead negotiator for WDFW during NOF a  
23 number of times. I am intimately familiar with the NOF process. I am familiar with the legal  
24 framework, with the biology, and with the politics involved in the process. I have worked with  
25 and know most of the current, key state, tribal, federal and public participants in NOF.  
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1           6.       NOF is the process used by WDFW and the Treaty Tribes (Indian tribes with  
2 treaties that guarantee them the right to harvest salmon in Washington) to reach agreement  
3 annually on salmon fishing seasons and regulations, as well as the division of the annual salmon  
4 harvest. Once that agreement is reached, the federal government, through the National Oceanic  
5 and Atmospheric Administration, conducts an analysis of fisheries planned by WDFW and the  
6 Treaty Tribes for the year for compliance with conservation objectives, including fishing limits  
7 defined by the co-managers and other restrictions recommended by federal authorities to ensure  
8 consistency with the Endangered Species Act (“ESA”). The analysis is intended to ensure that the  
9 salmon harvested or otherwise harmed incidentally during the process of fishing (after or during  
10 release, for example) by the state fisheries (managed by WDFW) and the treaty fisheries will not  
11 jeopardize salmon runs and other species listed as threatened or endangered. The agreement  
12 between the state and treaty tribes is reduced to writing in a document called the “List of Agreed  
13 Fisheries” (“LOAF”). Those fisheries, as set forth in the LOAF, are then the basis for both the  
14 state’s Washington Administrative Code to open salmon fisheries and for NOAA’s analysis. Once  
15 the LOAF is set, no substantive changes can occur without agreement between WDFW, the Tribes  
16 and concurrence by NOAA.

19           7.       The annual NOF process begins in January with the creation of forecasts for the  
20 number of salmon potentially available for fisheries in that year. These forecasts are agreed to by  
21 WDFW staff and their tribal counterparts and ultimately transmitted to NOAA to serve as the basis  
22 for the season setting process.

24           8.       In theory, once the agreed forecasts for the number of salmon are available,  
25 WDFW, the treaty tribes, and NOAA calculate a number of “harvestable” fish for each salmon  
26 population or run. These are hatchery fish over and above the number deemed necessary for

1 spawning or wild fish that can be harvested while meeting conservation objectives. These  
2 harvestable fish are then supposed to be allocated between the various WDFW-managed  
3 (commercial and recreational) and Tribal fisheries under consideration for that year during the  
4 NOF process, consistent with applicable management plans, such as the Puget Sound Salmon  
5 Management Plan, and legal requirements, such as *U.S. v Washington* or the Pacific Salmon  
6 Treaty. In recent years, WDFW has ignored important provisions of the applicable management  
7 plans and legal requirements.  
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9       9. This court adopted the Puget Sound Salmon Management Plan (PSSMP, 1985),  
10 which was implemented by the co-managers to ensure that treaty and nontreaty fishermen each are  
11 afforded the opportunities to catch their shares of harvestable numbers of Puget Sound salmon  
12 stocks. The PSSMP remains in effect, but WDFW has failed to follow that plan's key  
13 requirements, including, most importantly, identification of harvestable numbers of chinook and  
14 coho salmon for each of six Puget Sound allocation units. Without harvestable numbers, there is  
15 no ability to determine shares for nontreaty fisheries. The requirements and express intent of the  
16 PSSMP to ensure that treaty fishermen and non-treaty fishermen will be afforded the opportunities  
17 to harvest their shares cannot be evaluated.  
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19       10. The 2020 NOF process is illustrative. Prior to the start of the 2020 North of Falcon  
20 process, at the request of recreational fishery constituents, WDFW agreed to provide public  
21 estimates of the harvestable number of Puget Sound chinook as part of the decision process. Those  
22 estimates were not provided to members of the public participating in the 2020 North of Falcon  
23 meetings. Estimates of the total allowable harvest for Puget Sound coho stocks that are to be  
24 allocated between treaty and nontreaty fisheries also were not made available to the public by  
25 WDFW during the North of Falcon pre-season planning process. Without calculating the total  
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1 number of harvestable fish, it is impossible to evaluate achievement of the sharing intent of the  
2 PSSMP.

3 11. If the number of harvestable fish were calculated, as required by the PSSMP and  
4 other existing orders in this case, then such calculations would show that non-treaty fisheries  
5 adopted by WDFW were not sufficient in providing the opportunity to take 50% of the total  
6 number of harvestable fish. The catch estimates provided by WDFW for the 2020 NOF show a  
7 disparity between tribal and non-treaty catch and fishing opportunity of 42,000 chinook salmon.  
8 For coho salmon the estimates show a disparity between tribal and non-treaty catch or fishing  
9 opportunity amounting to 40,000 coho salmon.  
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11 12. WDFW adopted fishing seasons in 2020 that precluded the opportunity to harvest  
12 up to 50% of the total number of harvestable chinook and coho salmon. Nontreaty fisheries  
13 could have been increased in 2020 while being consistent with conservation objectives and  
14 without exceeding the non-treaty fisheries 50% share. Nontreaty fisheries have the capability to  
15 harvest hatchery chinook and coho salmon at a relatively higher rate, while minimizing impacts  
16 on wild salmon stocks, using techniques that selectively harvest fin-clipped hatchery produced  
17 fish.  
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19 13. The harvest imbalance is known and has occurred consistently for years. For  
20 example, I have reviewed the Fisheries Regulations Assessment Models ("FRAM") for Puget  
21 Sound Chinook for the years of 2020, 2019, 2018 and 2017. These FRAM models are used by  
22 WDFW, the treaty tribes, and NMFS predict the harvest of both hatchery and wild salmon based  
23 on the proposed, and eventually implemented, fishing regulations and seasons. Based on the  
24 seasons approved by WDFW, the treaty tribes and NMFS and reflected in the final 2020 FRAM,  
25 the forecasted catch of Puget Sound Chinook salmon was 111,615 for the treaty tribes and  
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1 69,622 for the nontreaty fishers. In 2020, the non-treaty harvest of Puget Sound Chinook is  
2 predicted to be 38% of the total harvest. In 2019, the non-treaty harvest of Puget Sound Chinook  
3 was predicted to be roughly 42% of the total harvest. In 2018, the nontreaty harvest of Puget  
4 Sound Chinook was predicted to be roughly 43% of the total harvest. In 2017, the nontreaty  
5 harvest of Puget Sound Chinook was predicted to be roughly 41% of the total harvest. For the  
6 years of 2017 through 2020, it is estimated, based on the FRAMs, that the non-treaty fisheries  
7 harvested 124,696 less Puget Sound chinook salmon than did the treaty fishers. In each of those  
8 years, the treaty tribes harvest significantly more wild Chinook than do nontreaty fishers. It is  
9 worth noting, for purposes of calculating conservation impacts, that the non-treaty fisheries  
10 account for only 25% of the impacts on wild chinook in 2020.  
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12 DATED this 1<sup>st</sup> day of October, 2020.

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16 PATRICK PATTILLO  
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