1 2 3 4 5 6 7 8	□ EXPEDITE □ No hearing set □ Hearing is set: Date: Time: Judge: SUPERIOR COURT OF IN THE COUNTY	
10 11 12 13 14 15 16 17	FISH NORTHWEST, a Washington nonprofit corporation, Petitioner, VS. WASHINGTON DEPARTMENT OF FISH & WILDLIFE, an agency of the State of Washington, Respondent.	Case No.: 24-2-03376-34 PETITION FOR REVIEW AND DECLATORY JUDGMENT
18 19 20 21 22 23 24 25 26	COMES NOW Fish Northwest, by and through its attorney of record, Joe D. Frawley of Lacey Law Group, PLLC, and submits this Petition for Review and Declaratory Judgment. I. PARTIES AND JURISDICTION 1.1 Petitioner Fish Northwest is a Washington non-profit corporation that is committed to the conservation and preservation of Puget Sound salmon and restoring and expanding fishing opportunities for Washington's anglers. Its members include individuals who enjoy fishing and care deeply about the conservation and recovery of Puget Sound salmon. Fish Northwest's members include businesses that rely on salmon fisheries for Puget Sound salmon.	

Page 1 of 5 PETITION FOR REVIEW AND DECLARATORY JUDGMENT

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- 1.2 Defendant is the Washington Department of Fish and Wildlife, an agency of the State of Washington, and was created and organized pursuant to Chapter 77.04 RCW. The mailing address for WDFW is 1111 Washington Street SE, Olympia, WA 98501.
- 1.3 This Court has jurisdiction over this matter and venue is proper in Thurston County Superior Court pursuant to Chapter 34.05 RCW.

II. AGENCY ACTION

2.1 The agency actions challenged by this Petition are the adoption WAC 220-312-020, WAC 220-312-030, WAC 220-312-040, WAC 220-312-050, WAC 220-312-060, WAC 220-313-060, WAC 220-354-120, WAC 220-354-160, WAC 220-354-180, WAC 220-354-200, WAC 220-354-250 and WAC 220-354-290 (the "Rules").

III. FIRST CLAIM FOR RELIEF: ADOPTION OF THE RULES WAS ARBITRARY AND CAPRICIOUS

- 3.1 Petitioner herein realleges and incorporates paragraphs 1.1 through 2.1, above.
- 3.2 WDFW's annual rule-making process for salmon fisheries is governed by *U.S. v. Washington*, 50 F.Supp. 312, aff'd 420 F.2d 676 (9th Cir. 19750), cert. denied 423 U.S. 1086. The Court in *U.S. v. Washington* upheld the treaty rights of a number of Washington Indian tribes to fish for salmon.
- 3.3 The Court in *U.S. v. Washington* issued an Order Adopting Puget Sound Salmon Management Plan. That order remains in effect today, and a copy is attached hereto as Exhibit A.
- 3.4 There are several requirements found in the Puget Sound Salmon Management Plan ("PSSMP"). Section 5.0, titled Technical and Management Reports, states that "[t]he timely exchange of information and management recommendations is vital for the preparation of management options as well as for the review and performance auditing of the management actions undertaken by the parties." Section 5.0 further states "[m]anagement reports and documents

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prepared by the parties facilitate the management process..." To facilitate effective management of fisheries by the treaty tribes and WDFW, the PSSMP requires a series of reports be prepared annually.

- 3.5 Section 1.2 of the PSSMP provides as follows:
- 1.2 This plan is intended to ensure that treaty fishermen and non-treaty fishermen, subject to their respective regulatory authorities, shall be afforded the opportunities to harvest their shares as determined in <u>United States v. Washington</u>, 384 F.Supp.312, <u>aff'd 520 F.2d 676 (9th Cir. 1975)</u>, cert. denied 423 U.S. 1086, <u>aff'd sub nom Washington v. Washington State Commercial Passenger Fishing Vessel Association</u>, 443 U.S. 658 (1979) and other orders under the court's continuing jurisdiction.

Each year, WDFW and the treaty tribes are required to predict levels of harvest and/or harvestable numbers of salmon prior to season setting. The reporting requirements apply to both Endangered Species Act listed salmon and salmon that are not listed under the Endangered Species Act. The intent is to harvest the available salmon while ensuring enough salmon escape the fisheries to spawn and produce fish for future use. WDFW and the treaty tribes do not determine the harvestable numbers of salmon each year prior to season setting. WDFW and the treaty tribes are also required, under Section 5.2.3, to create a pre-season report containing methods to provide inseason estimates of run size and allocation to ensure catch sharing and conservation objectives are being met.

3.5 Another such report is the post-season audit report, which the order and PSSMP require because it is "necessary to permit an assessment of the parties' annual management performance in achieving spawning escapement, enhancement, harvest and allocation objectives."

Page 3 of 5
PETITION FOR REVIEW AND DECLARATORY
JUDGMENT

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The report "shall be prepared in accordance with the schedule in Section 6," which sets forth specific dates by which the various reports must be completed.

- 3.6 As part of the annual review process, the PSSMP requires that "shares will be calculated annually post-season, using preliminary data, by no later than one month after the date of the post-season audit report." In order to deter either the treaty or non-treaty fishers from harvesting more than the 50/50 allocation dictated by *U.S. v. Washington*, "[d]efficiencies in shares shall be adjusted annually unless neither party exceeded its share by more than 5% of the total of both parties' shares." Section 10.5 requires that "[a]djustments calculated pursuant to subsection 10.4 shall be made during the next year, or in as few years as possible..."
- 3.7 WDFW has not compiled and published the required reports in many years, including 2023 or 2024. The reports, and allocation adjustments, were not utilized in crafting the challenged WACs and fishing seasons. WDFW's adoption of the Rules was arbitrary and capricious because WDFW failed to comply with the requirements of the PSSMP.
- 3.8 WDFW has not complied with, or attempted to comply with, the annual adjustments in shares provided for in Sections 10.4 and 10.5 in years, including in 2023 and 2024.

IV. SECOND CLAIM FOR RELIEF: CHAPTER 19.85 RCW

- 4.1 Petitioner herein realleges and incorporates paragraphs 1.1 through 3.7, above.
- 4.2 WDFW did not create a small business economic impact statement when enacting the Rules.
- 4.3 WDFW is required by Chapter 19.85 RCW to prepare a small business economic impact statement when enacting rules.
 - 4.4 WDFW enacted the Rules in violation of Chapter 19.85 RCW.

V. PRAYER FOR RELIEF

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

- 5.1 For Declaratory Judgment invalidating the Rules;
- 5.2 For an injunction preventing future violations of the APA, including requiring compliance with the PSSMP by calculating the harvestable surplus, timely producing all reports required by the PSSMP and complying with the annual adjustment requirements;
 - 5.3 For Judgment for attorney's fees, costs, and expenses; and
 - 5.4 For such other relief as the Court deems just and equitable.

DATED this Aday of September, 2024.

LACEY LAW GROUP, PLLC

JOE D. FRAWLEY, WSB #41814

Attorneys for Petitioner