

EXPEDITE
 No hearing set
 Hearing is set:
Date:
Time:
Judge:

**SUPERIOR COURT OF WASHINGTON
IN THE COUNTY OF THURSTON**

FISH NORTHWEST, a Washington nonprofit corporation,
Petitioner,

Case No.: 24-2-03376-34

**PETITION FOR REVIEW AND
DECLARATORY JUDGMENT**

VS.

WASHINGTON DEPARTMENT OF FISH & WILDLIFE, an agency of the State of Washington,
Respondent.

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.

1 prepared by the parties facilitate the management process..." To facilitate effective management
2 of fisheries by the treaty tribes and WDFW, the PSSMP requires a series of reports be prepared
3 annually.
4

5 3.5 Section 1.2 of the PSSMP provides as follows:
6

7
8 **1.2 This plan is intended to ensure that treaty fishermen and non-treaty**
9 **fishermen, subject to their respective regulatory authorities, shall be**
10 **afforded the opportunities to harvest their shares as determined in United**
11 **States v. Washington, 384 F.Supp.312, aff'd 520 F.2d 676 (9th Cir. 1975),**
12 **cert. denied 423 U.S. 1086, aff'd sub nom Washington v. Washington State**
13 **Commercial Passenger Fishing Vessel Association, 443 U.S. 658 (1979) and**
14 **other orders under the court's continuing jurisdiction.**

15 Each year, WDFW and the treaty tribes are required to predict levels of harvest and/or harvestable
16 numbers of salmon prior to season setting. The reporting requirements apply to both Endangered
17 Species Act listed salmon and salmon that are not listed under the Endangered Species Act. The
18 intent is to harvest the available salmon while ensuring enough salmon escape the fisheries to
19 spawn and produce fish for future use. WDFW and the treaty tribes do not determine the
20 harvestable numbers of salmon each year prior to season setting. WDFW and the treaty tribes are
21 also required, under Section 5.2.3, to create a pre-season report containing methods to provide in-
22 season estimates of run size and allocation to ensure catch sharing and conservation objectives are
23 being met.
24
25
26

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."

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

3
4 3.6 As part of the annual review process, the PSSMP requires that “shares will be
5 calculated annually post-season, using preliminary data, by no later than one month after the date
6 of the post-season audit report.” In order to deter either the treaty or non-treaty fishers from
7 harvesting more than the 50/50 allocation dictated by *U.S. v. Washington*, “[d]efficiencies in shares
8 shall be adjusted annually unless neither party exceeded its share by more than 5% of the total of
9 both parties’ shares.” Section 10.5 requires that “[a]djustments calculated pursuant to subsection
10 10.4 shall be made during the next year, or in as few years as possible...”

11
12 3.7 WDFW has not compiled and published the required reports in many years,
13 including 2023 or 2024. The reports, and allocation adjustments, were not utilized in crafting the
14 challenged WACs and fishing seasons. WDFW’s adoption of the Rules was arbitrary and
15 capricious because WDFW failed to comply with the requirements of the PSSMP.
16

17 3.8 WDFW has not complied with, or attempted to comply with, the annual
18 adjustments in shares provided for in Sections 10.4 and 10.5 in years, including in 2023 and 2024.
19

20 **IV. SECOND CLAIM FOR RELIEF: CHAPTER 19.85 RCW**

21 4.1 Petitioner herein realleges and incorporates paragraphs 1.1 through 3.7, above.

22 4.2 WDFW did not create a small business economic impact statement when enacting
23 the Rules.

24 4.3 WDFW is required by Chapter 19.85 RCW to prepare a small business economic
25 impact statement when enacting rules.
26

4.4 WDFW enacted the Rules in violation of Chapter 19.85 RCW.

V. PRAYER FOR RELIEF

