Brief of Respondents

No. 43642

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION,
Respondents,

v.

THOR TOLLEFSON, WASHINGTON STATE DEPARTMENT OF FISHERIES, and STATE OF WASHINGTON,
Appellants.

WASHINGTON KELPERS ASSOCIATION,
Respondents,

v.

THOR TOLLEFSON, WASHINGTON STATE DEPARTMENT OF FISHERIES, and STATE OF WASHINGTON,
Appellants.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COUNTY

THE HONORABLE GERRY L. ALEXANDER, *Judge*

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

COUNTERSTATEMENT OF THE CASE

Sports fishing for salmon off the Washington coast and in the northern portion of the Strait of Juan de Fuca has been a major recreational pursuit for a number of years. In the late 40's and early 50's the charter boat industry was born. Charter boats were taken for hire by sports fishermen in Washington coastal areas for the purpose of

catching chinook and coho salmon. This industry has grown to its present proportions (350 to 400 charter boats in Washington) and now constitutes a major industry with the greatest density being in the areas of Ilwaco and Westport on the southern coast of Washington and all of the Olympic Penninsula ports, including Neah Bay, Seiku, LaPush, Agate Beach, Port Angeles and others.

The plaintiffs below, respondents herein, are represented by a non-profit association known as the Washington State Commercial Passenger Fishing Vessel Association (hereinafter called the Washington Charter Association). The membership of said association consists of skippers and owners of charter boats and owners of charter boat offices in the ports of Ilwaco, Westport and all Olympic Penninsula ports indicated above. In addition, associate membership of the Washington Charter Association includes those who conduct businesses affected by the charter boat industry. Findings of Fact, pg. 1-2 (Tr. ....)

For a number of years the sport catch limit in Washington coastal waters, including the northern portion of the Strait of Juan de Fuca, has been three salmon per day, per angler. Likewise, the daily bag limit has been three fish per angler, per day in the neighboring State of Oregon. There also exists a charter boat industry in Astoria and other Oregon fishing ports in the vicinity of the Columbia River and directly in competition with Ilwaco and indirectly competing with the Westport charter fleet.

In February, 1974, the case known as *United States of America, et al, v. State of Washington, et al,* 384 F. Supp. 312, affirmed, ... F.2d ..... (1974), petition for certiorari to the United States Supreme Court was denied in late January, 1976. (Citation unknown at this time.) The decision by Judge George Boldt, Federal District Judge for the Western District of Washington at Tacoma, is commonly known as the *Boldt decision.* The "case area" is defined as set forth in appel-

lants' brief at page 9. It is important to recognize that the case area extends from Grays Harbor north and includes all of Puget Sound. A majority of the fishing done by the Washington Charter Association takes place south of the case area under the jurisdiction of the *Boldt decision.*

The case cited at page 11 of appellants' brief, *SoHappy v. Smith,* 302 F. Supp. 899 (1969) is not a part of this appeal and should not be considered by the court in this matter. The case was not cited by the State of Washington to the trial court for the propositions set forth in appellants' brief. The only reference to the *SoHappy v. Smith, supra,* case in the trial court is on pages 8 and 9 of defendants' supplemental brief on the issue of the preliminary injunction entered by Judge Henry in Thurston County Superior Court in June, 1974. The regulations in question were adopted as of April 24, 1974 (appellants' brief, appendix). The order amending judgment of October 10, 1968 in the *SoHappy v. Smith, supra,* case did not take place until May 10, 1974 (appellants' brief appendix). Consequently, the position of the appellants that the Department of Fisheries was influenced by the decision of Judge Belloni with respect to the 1974 regulations cannot be maintained since the regulations were promulgated prior to the adoption of the Belloni order.

Subsequent to the *Boldt decision* giving treaty Indian fishermen the opportunity to take up to 50% of the harvestable number of fish, the appellants issued regulations which were to take effect June 15, 1974, reducing the sports catch limit for all salmon in Washington coastal waters from three to two fish. The plaintiff, Washington Charter Association, brought an action to enjoin the execution of the regulations and declare said regulations to be arbitrary and capricious on the merits and beyond the authority of the director as indicated in the enabling legislation, RCW 34.04.070 and 080. On June 17, 1974,

Judge Hewitt A. Henry of Thurston County Superior Court entered a temporary injunction enjoining the enforcement of the Department of Fisheries regulations pending a trial on the merits. (Tr. .....) (No. 7 of Praecipe for Tr. on Appeal)

The director of the Department of Fisheries, Thor Tollefson, testified at trial that the reduction in sports catch limit from three to two fish was directly a result of the *Boldt decision.* (St. 13, 14) Parenthetically, it should be observed that the action of the Washington Kelpers Association to enjoin enforcement of off-shore fishery regulations was consolidated for trial before Judge Alexander. It is my understanding that although the plaintiff, Washington Kelpers Association, is a respondent herein, counsel for said association will not be filing an appellate brief or participating in oral argument in connection with this appeal. Therefore, the Kelpers' participation in the trial will not be referenced further in this brief.

As reported in appellants' brief, the original decision in the *SoHappy v. Smith, supra,* case required that the State of Oregon manage all of the fishery so that Indian fishermen would receive a "fair share" (App. Br. 12). Therefore, at the time the regulations were promulgated affecting the area of the Columbia River, where the Ilwaco fleet fishes, and Grays Harbor south, where the Westport fleet fishes, there was no constraint except as previously indicated, that the management permit the Indians to receive a "fair share".

The point stressed in appellants' brief, pages 12 and 13, relating the testimony of respondents' expert witness, Dr. Stephen Mathews, was to the effect that a significant portion of the fish, taken at the Ilwaco and Westport areas are under the jurisdiction of Judge Boldt as being in the case area. Dr. Mathews testified that there were approximately six and a half million chinook and coho salmon of catchable size in Washington waters during the course of any one year. (St.

3-150) He further indicated that the chinook salmon tend to migrate to the north, to their streams of origin and that very few of them go south along the coast. Coho salmon coming out of Puget Sound are somewhat more diffuse in their migration patterns. However, even the coho salmon tend to go in a northerly direction. (St. 3-150, 3-151) Dr. Mathews testified that of the body of 6.5 million fish available to be caught, the biggest bulk of them are caught by Canadian troll and net fisheries in the Straits. (St. 3-151) Dr. Mathews testified as follows:

> "As you get to the southern end of say the Washington coast, off the mouth of the Columbia River, you are going to find a higher proportion of Columbia River fish and a lesser proportion of Puget Sound fish. As you get up in the Straits area off the north coast of Washington you are getting a higher proportion of Puget Sound fish and a lesser proportion of Columbia River fish." (St. 3-152)

The point is that the regulations here challenged in no way relied upon the *SoHappy v. Smith, supra,* case except insofar as it was sufficient to give the Indians a "fair share". The amendment to this thesis by Judge Belloni did not occur until May 10, 1974, after the regulations challenged had already been promulgated and published.

Further, it is apparent, pursuant to testimony by experts on both sides and as pointed out at pages 11 and 12 of plaintiff's trial brief at the time of trial, that the reduction of the sport bag limit would result in the following increase to the Indian fishery:

> "The estimated distribution would be 20,000 salmon to Puget Sound, 10,000 salmon to Washington coastal streams and 50,000 salmon to the Columbia River system."

(Paragraph VII, page 2 of the report submitted to Judge Boldt, September 25, 1974, by the Department of Fisheries, Exhibit II to plaintiff's trial brief.)

The major case area of the *Boldt decision* being Puget Sound, the

following analysis found on page 13 of plaintiff's trial brief is, therefore, valid:

> "It was indicated in Findings of Fact, page 28 of the decision by Judge Boldt that the Canadian fishermen now harvest 65% of Puget Sound origin chinook salmon and over 50% of Puget Sound origin coho salmon. Therefore the analysis of the 20,000 salmon returning to Puget Sound as a result of the reduction in the sport limit from three to two fish must first be at least reduced by half, or 10,000 fish, as a result of Canadian harvest of both chinook and coho. Then the 10,000 fish would be allocated 50% to the Indian fishery and 50% to the non-Indian sport and net fishery resulting in only 5,000 fish being returned to treaty Indian fishermen in case areas by the Department's own statistics."

Consequently, plaintiffs demonstrated to the trial court that this would be an insignificant number of fish available to be harvested by treaty Indians in terminal case areas, as compared with the 6.5 million harvestable fish available to be harvested in any one year in Washington waters. This must be balanced against a clear showing at the time of trial that the Washington Charter Association was irreparably damaged during the time the Department of Fisheries had in effect regulations which decreased the daily sport bag limit from three to two fish in Washington coastal waters from June 15 to June 17, 1974, in that the charter boat fleets in both Ilwaco and Westport experienced a sharp decrease in numbers of sports fishermen carried aboard the charter boats which necessitated a three to six week recovery period. (Finding of Fact No. 17, p. 6) (Tr. .....)

ARGUMENT IN SUPPORT OF JUDGMENT AND IN ANSWER TO APPELLANTS

Answers to Assignments of Error No. 1, 2, 4, 6, 7, 11, 13, 14, 15, 16 and 17

A. *The Regulations Challenged Exceed the Statutory Authority of the Director of Fisheries Under the Enabling Legislation*

The trial court in Finding of Fact No. 4 referred to the authority of the Director of Fisheries as set forth in RCW 75.08, *et seq.* This

takes into account the entire statutory scheme of regulation and authority of the Director of Fisheries. Apparently the appellants do not recognize the use of the words "*et seq.*" as including the entire chapter under RCW. The trial court properly concluded the Director of Fisheries had exceeded his statutory authorization in reducing the sports catch limit from three to two fish based solely on the Boldt decision. Said legislation at RCW 75.08.020 states, in part, 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 decision of Judge Boldt permitting the treaty Indians the opportunity to harvest 50% of the anadromous fish is not included in the language "propagation, protection, conservation, preservation, and management". The court properly observed that the *Boldt decision* does not give authority to the director of fisheries in excess of the authority granted by the state legislature by the following language:

> ". . . these regulations, but for the 'Boldt decision' would not have been adopted. They were in response to that decision which the Fisheries Department feels was incumbent upon them to enact." (St. 8-67)

The court went on to conclude that the director exceeded his authority, as follows:

> "This court finds that the regulations in question clearly exceed the statutory authority of the Agency. The authority of the Agency, the Fisheries Department, is set forth in RCW 75.08.020, and without reading the entire statute, indicates that the Director shall devote his time to the duties of his office and enforce the laws and regulations of the Department relating to propagation, protection, conservation, preservation and management of food fish and shellfish. That is a statutory charge.
>
> "And on this issue I want to state clearly so that there will be no misunderstanding that I do not believe as a matter of law that the decision in the case of the *United States versus Washington* changes what is the State law. An administrator, whether he be the Director of Motor Vehicles or the Director of the Department of Fisheries, has no greater power than is given to him by statute.

> So the Court's first conclusion of law is that the regulations in question, zero to three mile prohibition and the reduction in the bag limit, clearly exceed the statutory authority of the Director of Fisheries as it is given to him by state statute because they were not adopted to carry out the purposes defined in RCW 75.08.020." (St. 8-67, 8-68)

In support of the Judge's decision in this case is a recent decision by this court, *Hartman v. State Game Commission,* 85 Wn.2d 176 (1975). This case has nothing to do with the *Boldt decision.* However, it strikes an amazing parallel to the instant situation. A challenge to regulations promulgated by the State Game Commission was heard by Judge Gerry L. Alexander in Thurston County Superior Court. Judge Alexander, of course, was the trial judge in the instant litigation. Judge Alexander ruled in the *Hartman, supra,* case that the challenged section was invalid on the grounds that its adoption was without statutory authority, without procedural requirements relating to rule-making, and in violation of the plaintiffs' constitutional rights to due process.

Judge Alexander was affirmed by this court on the issue of exceeding the regulatory authority of the agency in the following language at page 178:

> "The chief of the Fisheries Management Division testified specifically that the purpose of the regulation was to govern the deportment of fishermen using a river, there having arisen disputes and dissention between bank fishermen and those fishing from powered boats. Such a purpose is obviously improper if the legislature intended to limit the commission's regulatory authority to the effectuation of those concerns enunciated in RCW 77.12-010."

The state argued that the challenged regulation pertains to the "manner" of taking game fish and is, therefore, within the regulatory authority. Similar argument is advanced in the instant litigation by appellants. (App. Br. 21)

The position of appellants' counsel is set forth in a brief entitled "Memorandum in Opposition to Motion for Preliminary Injunction" filed before Judge Boldt in the continuing jurisdiction of *United States of America v. State of Washington, supra,* on June 24, 1975, wherein counsel stated at page 9, as follows:

> "As is more well known to participants in this action, that same court rendered a decision in *Washington State Commercial Passenger Fishing Vessel Assn. v. Tollefson* and *Washington Kelpers Assn. v. Tollefson,* in which it concluded that regulations of the Director intended to implement Final Decision #1 were beyond the statutory authority of the Director and arbitrary and capricious. That decision is now on appeal to the Washington State Supreme Court, No. 43642."

Again, the precise argument advanced by appellants in this case was rejected by this court in the *Hartman v. State Game Commission, supra,* decision wherein the words "conservation" and "management" were taken to apply to the method of fishing on a river by power boat only and, consequently, did not relate to conservation and management, but simply to the method of taking fish.

The State of Washington, appellant herein, has recognized the deficiency of the director's authority and has introduced in two sessions of the state legislature legislation which could cure the existing defect in the authority of the director of fisheries to allocate. Said legislation was introduced in the 1975 session of the legislature and the 1976 session of the legislature. The most recent bill introduced in this connection is HB 1334. Nowhere in the definition of management and conservation can there be read authority of the director to reduce sports catch limits in order to give the opportunity to Indians to harvest 50% of the available stocks of salmon. This has nothing to do with management or conservation and, as indicated by the director, is intended to allocate numbers of fish away from sports fishermen in Washington coastal waters, toward treaty Indian tribes in the case area, primarily Puget Sound.

The position of appellants at page 25 of appellants' brief is not well taken where they contend that without the regulations the result would have been overfishing of the resource. This clearly was not the case since subsequent regulations in the 1974 season did permit increased harvest of anadromous fish by the treaty Indian tribes. The problem the Department is faced with is that the *Boldt decision* permits regulation by the treaty tribes off reservation, thus casting the Department in the role of attempting to manage the resource along with 13 or more treaty Indian tribes. Admittedly, this is a difficult position. However, additional enabling legislation would permit the Department to more adequately cope with this problem. Recognizing this, the Department has, in fact, proposed such legislation.

Further, it is anticipated that at the time this matter will be argued, the Department will be attempting to regulate the offshore troll fishery, which was not done in the 1974-75 regulations. If there had been testimony at the time of trial that the regulations related to conservation and management, this would be a different matter. However, the director properly rested the decision to promulgate the regulations reducing the sport bag limit from three to two fish in Washington coastal waters squarely and solely on the *Boldt decision* requiring allocation of the non-Indian fishery in such a way as to permit an increase of the Indian fishery. This effort to engraft a federal treaty on the state statute, giving greater authority to the director, is the point of challenge and this question was properly resolved by the trial court decision that federal law could not give greater authority to the director than was given by the state's enabling legislation.

B. ***The Trial Court Correctly Concluded That Challenged Regulation Reducing the Sports Limit From Three to Two Fish In Washington Coastal Waters Was Arbitrary and Capricious. (Discussing Appellants' Assignments of Error 13, 14, 15, 16 and 17)***

The court's permanent injunction against the regulation reducing the sports limit from three to two fish in Washington coastal waters was based upon a clear finding, unchallenged by the appellants, that plaintiff, Washington Charter Association, was directly and adversely affected (Finding of Fact No. 14). Further, the court determined that during the period of each of the regulations prior to the temporary injunctions being issued, each plaintiff suffered an economic impact as a result of the particular regulation in question affecting it and had the regulation or regulations remained in effect, without judicial intervention, each plaintiff association and its members would continue to have been adversely economically affected by the regulations in question. Finding of Fact No. 16 provided "irreparable harm would result to each plaintiff if the regulations were held to be valid."

In Finding of Fact No. 17 the trial court found, as follows:

> "The Washington Charter Association was irreparably damaged during the time the Department had in effect the regulation which decreased the daily sport bag limit from three to two fish in Washington coastal waters from June 15 to June 17, 1974, in that, the charter boat fleet in both Ilwaco and Westport experienced a sharp decrease in numbers of sports fishermen carried aboard the charter boat vessels which necessitated a three to six week recovery period."

These Findings were amply supported by the evidence and there was no contrary evidentiary showing on behalf of the state. In fact, this matter is well recognized by the state in its appeal to the U.S. Supreme Court for a writ of certiorari, October term, 1975, said application being signed by Slade Gorton, Attorney General, Earl McGimpsey, Assistant Attorney General, Edward B. Mackey, Deputy Attorney General, counsel for petitioners in *United States of America*

v. Washington, supra, case. The state takes the following position with respect to the effect of the *Boldt decision* at page 20 of its petition:

> "The Indian share, which is substantially more than 50% is grossly disproportional to the relative numbers of Indian and non-Indian fishermen, the make-up of the stocks of fish and the purposes for which the treaty fishing clause was negotiated. In the case area there are 283,650 salmon sport fishermen, 145,000 licensed steelhead sport fishermen, 6,600 non-Indian commercial fishermen, and 794 Indian commercial fishermen. The Indian population accounts for only 0.28% of the people living there, most of whom have been completely acculturated. Only 0.07% of the population are Indians living on reservations. Artificial stocks of fish propagated, in the case of salmon with general state revenues and in the case of steelhead with license fee revenues from sport fishermen, contribute significantly to the harvest of Indians and non-Indians but neither the District Court nor the Court of Appeals considered this as a factor in making an apportionment. The decision below guaranteed Indians an opportunity to harvest *commercially* more than 50% of the total fish harvest for all purposes, but at the time of the treaties commercial fisheries were rudimentary, unsuccessful operations. The treaty records indicate the concern of the Indians was for subsistence fisheries.
>
> "To achieve this 50% apportionment the court has ordered drastic reductions in commercial and sport fishing by non-Indians. Some commercial fishermen have been financially destroyed and the non-Indian fishing industry as a whole seriously depressed by the court's decision. The recreational fishery has been curtailed. Public reaction has been vocal and bitter. Lawsuits have been brought against the state in state court and injunctions granted enjoining state fisheries' officials from implementing reductions ordered by the federal court in non-Indian fishing seasons.[13] [Footnote 13 refers to this case.] More than 450 damage claims have been filed by non-Indian commercial fishermen against the state alleging more than seven million dollars in damage resulting from state enforcement of the federal decree. The decision is also having a substantial impact in the state of Oregon and on Washington fisheries on the Columbia River because Judge Boldt's 50% formula was adopted in *SoHappy v. Smith,* 302 F. Supp. 899 D. Ore. 1969) amended in an unpublished opinion dated May 10, 1974, presently on appeal to the Ninth Circuit Court of Appeals. The fishing industry, which includes commercial fishermen,

sports fishermen, suppliers and tourist related interests in Washington and Oregon has been drastically affected and the court decision is having such a broad impact socially, politically and economically that it requires resolution by the highest court in the land."

In *United States of America v. Washington, supra,* the United States District Court for the Western District of Washington at Tacoma entered Memorandum Decision on Plaintiffs' Request for Determination and Injunction on September 12, 1974, wherein Judge Boldt states with regard to denying jurisdiction, at page 7, as follows:

"(1) In the *Commercial Passenger Fishing Vessel* case, plaintiffs therein obtained a temporary injunction preventing enforcement of a Department of Fisheries regulation reducing the personal use salmon angling daily bag limit in Washington coastal waters and the Strait of Juan de Fuca from three salmon to two salmon. The record herein shows that representatives of some plaintiff tribes opposed enactment of this regulation by the Department of Fisheries, on the ground that such reduction in non-Indian fishing would not to any appreciable extent achieve its stated purpose to make more fish available for harvest by plaintiff tribes in the case area, because the runs of fish to which that regulation applied would return almost entirely to the Columbia River and its tributaries for spawning. Upon the evidence before it, this court finds that plaintiffs herein have not sustained their burden of showing that enforcement of that regulation reducing the daily salmon sport bag limit would achieve the purpose of making a significant number of additional fish available for harvest by treaty right fishermen. For these reasons, this court finds no reason to interfere with the state court temporary injunction currently in effect in cause No. 50370."

The above quotation indicates that Judge Boldt recognized the regulations reducing the sports limit from three to two fish would not achieve the purpose of making significant numbers of fish available for harvest by the treaty right fishermen.

There can be no dispute by appellants in this case of the drastic effect of the proposed regulation reducing the sport bag limit from three to two fish in Washington coastal waters on the members of respondent Washington Charter Association.

The court correctly found and determined the regulation to be arbitrary and capricious in the following language:

> "I further find that the regulations limiting specifically the sports trollers and the kelpers without regulating the ocean trollers who catch most of the fish—at least most of the fish caught commercially—is without any constitutional basis, is arbitrary and capricious action. The Director testified that one of the reasons —and I felt perhaps it was a compelling reason, why they did not regulate the commercial trollers beyond three miles is that it would cause too great an economic loss to the State of Washington. Well, I suggest to you that the economic loss to the kelpers and to the sports trollers by the regulations imposed on them without like regulations being imposed on the ocean trollers and many other people who fish in the waters of the State of Washington, including the Canadians and a lot of other people, is arbitrary and capricious . . ." (St. 8-69, 8-70)

The 1976 regulations, which will be promulgated as of the time of argument in this matter, will in all probability include regulation of the ocean trollers beyond the three mile limit. Whereas, in the regulatory scheme proposed by the Department in the 1974 season, no regulation whatever was contemplated or enacted for the ocean trollers beyond three miles. That is the essence of arbitrary and capricious conduct by the Department, even assuming arguendo the director had the authority under enabling legislation to draft the challenged regulations.

The trial court correctly concluded in Finding of Fact No. 21 the arbitrary and capricious nature of the regulations challenged.

> "The charter boat fleet in Washington coastal waters is regulated by the regulations promulgated by the defendant Department of Fisheries, the subject of this lawsuit, both within and beyond the three mile limit. The sport bag limit applies whether salmon are caught by sport fishermen within or beyond the three mile limit along the Washington coast."

Whereas, the director agreed there was no regulation in 1974 in any way affecting the trip trollers or those who fish beyond the three

mile limit traditionally in the following language at page 36 of the Statement of Facts:

"Q. These people were beyond the three mile limit and therefore their catch was not restricted by the Boldt Decision?

"A. That is correct. They are the only gear that, shall I say, escaped the impact of the Boldt decision." (St. 36)

The director further agreed in that exchange that the sport limit affected fishermen both within and beyond the three mile limit. The director further agreed that if he had exercised jurisdiction over the ocean troll fishery, it would have significantly increased the fish available to the treaty Indians since the ocean troll fishery had an excellent year in 1974.

The director stated his reasons for not regulating the commercial trollers beyond three miles as, recognizing he had the authority to regulate fish landings in the State of Washington, in the following exchange with counsel:

"Q. You did not see fit to pass any regulations on their landing requirements?

"A. That is true. It would hurt the economy of the state. They would land their fish elsewhere.

"Q. To protect the economy of the State of Washington, you decided not to regulate the ocean trollers?

"A. At this point . . ."

Continuing:

"Q. The question was, to preserve the economy of the state, you decided not to regulate by the landing tickets the ocean trollers, and your answer was yes.

"A. Yes." (St. 67, 68)

Without question, the Director of Fisheries candidly admitted he had exceeded the authority granted to him by the legislature to manage salmon for the purpose of propagation, protection, conservation, preservation and management of food fish.

The State of Washington apparently has recognized the lack of the authority of the director to regulate the salmon resource so as to cause the greatest benefit to flow to the citizens of the State of Washington. Attached to this brief as Appendix A is House Bill 1334, indicating that the director will have the authority to manage the fishery in such a way as to produce the greatest benefit to the people of the State of Washington. This bill was sponsored by the Department of Fisheries and the Governor's office and reflects a recognition by the State that the director does not have the proper authority to allocate between user groups or to make determinations as indicated in the above quotation of Director Tollefson.

CONCLUSION

It is the position of plaintiffs in this case that the decision by Judge Alexander in the Findings of Facts and Conclusions of Law were supported by the evidence in this case and, therefore, should be sustained by this court.

Respectfully submitted,

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Attorneys for Respondents

APPENDIX A

HOUSE BILL NO. 1334

State of Washington
44th Legislature
2nd Extraordinary Session

by Representative Martinis

Filed with the Chief Clerk of the House of Representatives January 10, 1976 for introduction January 12, 1976.

AN ACT Relating to food fish and shellfish; amending 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; amending section 75.08.020, chapter 12, Laws of 1955 and RCW 75.08.020; amending section 75.08.150, chapter 12, Laws of 1955 and RCW 75.08.150; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. 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 preserve, protect, perpetuate, enhance, and manage the food fish and shellfish in the waters of the state 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 in a manner consistent therewith, the department shall seek to maintain the economic well-being and stability of the commercial fishing industry in the state of Washington, and shall seek to manage the food fish and shellfish to the greatest possible benefit of the citizens of the state.

Sec. 2. Section 75.08.020, chapter 12, Laws of 1955 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)) and shall promulgate rules and regulations to apportion the harvest of the food fish and shellfish according to sound principles of conservation, propagation, enhancement, and economics consistent with the provisions of this

charter.

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.

The director shall make an annual report on or before the first day of June of each year to the governor, containing a detailed statement of his official actions, of the operation and result of the laws pertaining to the fish and shellfish industry, the method of taking fish and shellfish, the number of fish and shellfish propagated, and full and complete statistics of the fishing business, and suggestions as to needed legislation whenever he deems it necessary.

Sec. 3. Section 75.08.150, chapter 12, Laws of 1955 and RCW 75.08.150 are each amended to read as follows:

Every fisheries inspector, deputy fisheries inspector, game protector, sheriff, constable, marshal, and police officer within his respective jurisdiction, shall enforce all laws and all rules and regulations adopted by the director ((~~for the protection of food fish and shellfish~~)), and the police officers specified, and United States game wardens, any forest officer appointed by the United States government, state forest wardens and rangers, and each of them, by virtue of their election or appointment, are constituted ex officio deputy fisheries inspectors within their respective jurisdictions.

NEW SECTION. Sec. 4. This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Due and timely receipt of three (3) copies of the within Brief acknowledged this.....day of....., 1976.

.....

.....

Attorney(s) for .....