

## **DECLARATION OF BRIAN E. ALLISON**

1. I am Brian E. Allison, president of the Puget Sound Crab Association (PSCA), am over the age of 18 years, am competent, and I make this declaration based on personal knowledge and relying on the source material indicated.

### **Background**

2. PSCA has approximately 75 members, and each is a license holder for commercial crabbing of the Dungeness Crab in Puget Sound inland waters (that is, from Neah Bay to Point Roberts, and South to Olympia). There are about 165 licensed commercial fishers in this fishery.

3. I have been a commercial fisher for 36 years in Washington and Alaska, and I have participated in the Dungeness Crab Puget Sound fishery for 4 years. I am familiar with catch data, information from the State of Washington, practices, how the commercial fleet operates, and how a business in this fishery operates. I have been active in PSCA for 3 years and have been president of PSCA since September of 2009.

4. Every year, the State of Washington and several Treaty Tribes co manage the Dungeness Crab resource. Federal treaty law as determined by the courts mandates that the Tribes get half the crabs, and the State of Washington the other half. The State of Washington Department of Fish and Wildlife (WDFW) is the agency managing the fishery for the State. The WDFW issues licenses for both recreational and commercial crabbers, and those two groups harvest the state share. Because the State shares the resources with the Tribes, it is important to count the crabs caught so that overall harvesting limits can be set and observed, and so that the State and Tribal shares can be kept equal.

5. The commercial crabbers operate as a business. The recreational crabbers are individuals who get a crab endorsement and a fishing license. They do not operate as a business, other than those of them who illegally operate as a black market business.

6. The recreational crabbers are largely persons with recreational boats, who take crabs as an adjunct to their on-the-water boating; or they are waterfront property owners, with a dock. There are very few places where one can recreationally harvest Puget Sound Dungeness Crabs without a boat, dock or waterfront property. There are some 220,000 recreational crabbers who take catch reporting cards (CRC) each season. There are an unknown number who crab but do not take out the catch reporting cards (which is illegal). As discussed below, a significant number of the ones taking out the CRC card do fish, but do not report, and this is also illegal. The State Auditor Report dated January 15, 2010 at page 16 states that recreational's high rate of non-reporting, noncompliance and violations of harvest rules threaten the resource ("Violations by some recreational crabbers may jeopardize the fishery"). A true and correct copy of excerpts of the State Auditor's Report is attached hereto as **Exhibit A**.

7. The commercial fleet sells to about 32 buyers who put the commercially harvested crabs into the stream of commerce, selling live crabs to restaurants, food stores, and wholesale buyers. The commercial fleet is thus the start of an economic pipeline in which the crabs reach the vast majority of the people of the State of Washington. The majority of the population does not own a boat, dock or waterfront property and has access to the State's Dungeness Crabs through this commercial pipeline that reaches the consumer when she or he buys crab at a restaurant or grocery store.

8. For many years the WDFW has managed this fishery by having the recreational fishers, fish first in the season, followed by the commercial fishers.

9. WDFW Commission has for years not set any firm or enforced quota share, or allocation, between recreational and commercial crabbers.

10. Instead, they have set a target number for the recreational catch. There is no consequence for recreational fishers for their exceeding the target number. Instead, when the recreational crabbers have exceeded this target in past years, overfishing the target, the excess over the target is then taken out of the crabs available to the commercial fleet that year, so that the total is within the State share. In other words, the “target” is not enforced or made real, and there is no real quota or allocation system as is common in most fisheries. The recreationals take whatever they take out of the half belonging to the State; the commercial fleet, which has a later season, gets what is left over.

11. In recent years the recreationals went over their target, and did so more and more. This is shown below in “Chart 6: Historical Reported Overharvest By Recreational Crabbers.” Their overfishing above the target level resulted in lost opportunity for the commercial sector.

### **New Policy and New Regulations**

12. Last October, the Commission adopted a new policy of giving recreational crabbers formal “priority” over the commercial fleet. Source: Puget Sound Crab Fishery Policy c-3609 dated October 1, 2010. A true and correct copy of this policy document is attached hereto as **Exhibit B**.

13. In a resource that is limited, as the State share is each year, this priority policy means commercial crabbing is now officially and permanently in a junior position. It will be available only if and to the extent the recreational fishers do not take the crab available in a given region’s share of the overall State share. As with a first and second mortgage, the secondary position is junior, and can be wiped out, if there is not enough for the first priority holder.

Therefore the new policy is one where recreational overfishing now officially can lead to the commercial harvest being reduced or wiped out in Puget Sound.

14. On February 4, 2011, the Commission adopted new regulations to implement the new policy. A true and correct copy of the new regulations adopted that date is attached hereto as **Exhibit C** (entitled WAC 220-56-330 Crab Areas and Seasons).

15. These regulations expand the access of recreational crabbers from 4 days a week to 5 days a week. The additional day added is a weekend day. Formerly, recreationals could crab four days a week, including a Saturday; under the new regulations, they can crab five days a week including both Saturday and Sunday. The new regulations also expand their winter season and allow recreationals to fish 7 days a week in winter. The new winter season for recreationals will overlap with that of the commercial crabbers and cause friction and instability as the two user groups are now fishing at the same time. The recreational winter season will start in early October. The WDFW has no real basis for projecting the impact of this new season in the two key regions (we have not had a winter fishery in regions 1 and 2E in several years due to overharvest in the summer season by the recreational fishers). Adding this new 7 day a week winter season to the extra day for the recreationals' summer season means their total catch will increase by well more than 25% due to the new regulations and policy.

16. Rich Childers is the Puget Sound Shellfish Lead of the WDFW. He told the Commission and it is the WDFW's position that for the principal, spring to summer season, the new, 5th day, will result in additional catch for the recreational crabbers; and the new catch is equal to that of an average Saturday. Childers stated this at the January 8, 2011 Commission meeting and this is included at page 23 of his January 8, 2011 power point shown to the Commission on that date. See the attached true and correct copy of excerpts of the January 8,

2011 powerpoint, attached hereto as **Exhibit D**. Because the Saturday harvest is greater than a weekday's harvest for the recreationalists, the new weekend day expands their catch by more than 25% . (Adding one day out of four where each is equal, is a 25% expansion of access; adding a day where the catch is greater expands access and the catch by more than 25%). Adding a weekend day in fact is an expansion greater than 25% because the weekend day is a bigger day in terms of participation in crabbing.

**WDFW Admits 16% Decline in Revenues in Year One; this Seriously Underestimates Impacts.**

17. Childers correctly has informed the Commission that the new regulations and the new policy will cause the 2011 commercial catch to decline, both in pounds caught and in revenues resulting from the pounds caught. He told the Commission on January 8, 2011 that the commercial catch value will decline to \$6,251,767 as a result of the new regulations and policy (see Exhibit D, page 27; see Exhibit E, page 18). He told the commission on January 8, 2011 this is a revenue loss to the commercial crab fleet in the amount of some \$1.171 million or about 16% of their revenue. He conveyed this January 8, 2011 by showing them the powerpoint page in Exhibit D page 27; see also Exhibit E page 18. (On Exhibit D page 27 he shows the commercial catch dropping to \$6,251,767. A true and correct copy of excerpts of Childers' power point with certain attached spreadsheets that he showed to the State Legislature on January 13, 2011 is attached hereto as **Exhibit E**. See also Exhibit E, page 18; on that page he shows his math, subtracting \$6,251,767 from a 2007-2009 average value of \$7,423,000; the difference is some \$1.171 million). At the January 8, 2011 meeting he indicated the drop was only just over a million dollars saying this was minimal harm as it averaged out to only \$5,000 per license.

18. These figures showing there will be a 16% revenue drop do not indicate minimal harm, but show substantial economic harm to the commercial fleet. A sixteen percent permanent contraction in revenues is substantial economic harm to a business sector. In this case a 16% revenue drop to the commercial fleet more likely than not will cause substantial economic harm and great instability in the fleet, as boats would compete for a smaller catch and have lower profits.

19. It also constitutes instability as the same number of license holders have to fight over a harvest amount that is substantially reduced due to the new regulation and policy.

20. However, the statement indicating revenues will reduce 16% is arbitrary and seriously underestimates the impact on the commercial fleet. As discussed below, (a) the actual decline in commercial fleet revenue -- in the first year alone -- is on the order of 31-38%, not 16%; (b) the decline in profit in the first year alone is even greater; and (c) the declines in catch, revenue and profit will not end after the first year under the new regulations and policy, but will continue, will worsen and grow, such that they become even larger in the second, third and later years under the new regulations and policy. Childers and the Commission have ignored these obvious factors all of which point to a far greater impact than the 16% revenue loss suggested by Childers.

**24% Decline in Pounds Caught in Year One.**

21. Childers says the projected 2011 commercial catch will be 2,324,077 pounds (Exhibit D at page 26). We will assume this is correct.

22. The last value known (because the 2010-11 season is not yet completed) is the 2009 commercial catch and this was 3,055,000 pounds. (Exhibit D, page 26; Exhibit E, page 17 and the excel spreadsheet attached to that page).

23. Subtracting 2,324,077 from 3,055,000 pounds indicates the drop off due to the new regulations and policy is 730,923 pounds.

24. In percentage terms, compared to a base line of 2009's catch, this is a 23.9 % decline.

25. Childers told the Commission the decline would only be some 441,957 pounds. Exhibit D, page 26. This is incorrect and seriously underestimates the drop off in poundage due to a simple error. Childers got this number by subtracting 2,324,077 from 2,766,034. That latter number was not the 2009 catch, however, but was an average of the commercial catch over five years from 2005 to 2009. Exhibit D, page 26.

26. This is incorrect because the commercial catch was increasing in each of those years and it is incorrect to use a five-year average for an increasing value, to gauge a decline in that value in the next year. Rather, the last value obtained should be used as the baseline. A decline in a stock price is from the last value, not the average value for the last five years.

27. The mistake is substantial. The poundage drop off due to the new regulations and policy according to Childers is only 14.4% ( $441,957/3.055$  million) but in reality it is a 23.9% decline as shown above.

28. (I should note that the 23.9% itself is a highly conservative estimate. Given five years of increasing values, one reasonably should take the average rate of increase over the five years, then use that to project a 2011 baseline poundage (without the new regulations). This value would be substantially higher than 3.055 million. When 2,324,077 is subtracted from that higher number, this would yield a drop off much higher than 730,923 pounds figure I have used above. If one is to use past years to project the future, the correct way is to take the average of the change in values over the prior period not simply an average of the values.)

**24% Lost Poundage is 31-38% Decline in Revenue in First Year.**

29. The drop off of 730,923 pounds has a dollar value based on the per pound price for those lost pounds. The lost pounds come at the end of the season. This is because there would be a race among the commercial fleet to catch the crabs available to the commercial fleet. The season is from October through mid April, usually, with some 60% of the commercial catch taken in October, and the rest spread throughout the remaining months. The price rises from about \$2.85 at the start of the season (that is this season's starting price) to about \$4.50 to \$5 at the end of the season. The price today (February 2011) for example is \$3.80 pound. The 730,000+ lost pounds coming at the end of the season thus represent crabs that could be sold at a high, late-season price that is higher than the starting price or higher than the average price for the entire season.

30. A reasonable projection is that these crabs would be sold in the range of \$ 3.50 to 4.25 per pound. The math is as follows: 730,923 times \$3.50/pound = \$ 2.56 million; and 730,923 times \$4.25/pound = \$ 3.11 million. Thus, the revenue drop due to new regulations and policy next season is \$2.5 million to \$3.1 million, not just \$1.17 million. As a percentage drop in fleet revenue, these numbers equate to a 31-38% revenue loss ( $\$ 2.56 \text{ million} / \$8,247,000 = 31\%$ ;  $\$ 3.11 \text{ million} / \$8,247,000 = 38\%$ ), twice or more than twice the 16% stated by Childers..

31. Thus, the 23.9% drop in poundage caught equates to a 31-38% revenue loss to the commercial fleet and this revenue loss is several million dollars.

32. Childers estimated a revenue decline of just some 16% saying the lost revenue was only \$1.171 million. This was based on a price of \$2.69 per pound (as well as the incorrect poundage number discussed above). The \$2.69 per pound was derived from the average price over the whole season. Exhibit D, page 26; Exhibit E, page 18.

33. This is incorrect as the lost poundage comes at the end of the season and is not spread over the entire season.

34. In sum, the first year impact is a 31-38% decline in revenue amounting to a loss of some \$2.5 to \$3.1 million for the commercial sector, and not a 16% decline or \$1.171 million loss as Childers stated.

**Profit Declines Will Exceed 31-38% in the First Year.**

35. Childers and the Commission arbitrarily did not address profit. Businesses run on profit, not revenue alone. A business can have a high revenue but if it is not making sufficient profits it will close its doors.

36. The commercial fleet has margins of profit that are generally 40 to 50%. For most commercial fishers, most costs are fixed (boat, insurance, boat financing, moorage, most boat upkeep); the smaller share of costs is variable (fuel, bait, and sometimes labor).

37. To consider the effect of a 31% revenue drop on profit, I will take as an example a typical fisher with gross revenues of some \$58,000 and a margin of 50%. (Exhibit D, page 11 indicates that 56 fishers have revenues of \$58,000 or more while about 100 have revenues up to \$58,000.)

38. If the profit margin is 50%, a loss of revenue of 31% means the fisher's revenue declines from \$58,000 to \$40,020. He loses \$17,980 in revenue due to the new regulations and policy.

39. His costs will decline somewhat, but not in proportion, as most of his costs are fixed (cost of the boat) rather than variable. It is reasonable to project that his costs go down with a decline in poundage by some \$6,000-\$8,000 (mainly for lower costs of fuel and bait due

to shortened season from decrease of harvestable crabs). Moorage, insurance, boat finance and repair stay the same.

40. At a 50% margin making \$58,000, his prior costs were \$29,000. After the decline in harvest, and the decline in revenue, his new costs would be \$21,000 to \$23,000. It is reasonable to use \$22,000 in this example. With new revenue of \$40,020 and a new cost level of \$22,000, his new profit is \$18,020. His margin is now 45% ( $\$18,020/\$40,020$ ). His profits decline by \$10,980, from \$29,000 to \$18,020.

41. As a percentage, this is a 38% decline in profits. Thus, a 31% decline in revenue leads to a 38% decline in profits. The decline in profit is, as a percentage, greater than the decline in revenue.

42. By not considering profit, the statement that revenues drop a certain percentage substantially and arbitrarily underestimates the economic impact of the new regulations and policy.

43. The above example was for a 31% decline in revenue. A 38% decline in revenue would similarly lead to an even greater percentage decline in profits, likely pushing the profit decline over 40 or 50%.

44. Thus it is likely for many fishers the new regulations and policy will cause them to lose nearly half or more than half their profits.

45. This is a wrenching economic change in the first season, due to the new regulations and policy.

46. By only considering revenue, and not addressing profit, the Commission and Childers arbitrarily understate the impact of the new regulation and policy.

**First Year Declines are Exceeded By Declines in All Later Years.**

47. All these effects -- substantially lower catch levels, revenue, margins and profits -  
- increase if one considers more than the first year alone under the new regulations and policy.

48. Continued growth in recreational harvesting and a stable overall State share means commercial catches will be reduced even more, in coming years. The initial year-one revenue loss of 31-38% will be followed in future years by additional declines in revenue. The result is very serious economic reduction of the commercial fleet, soon, and its partial elimination.

49. The basis for the new policy is continued population growth of recreational crabbers and the new policy is to give them priority. All predictions for the State are for continued growth in population, particularly in the counties adjoining the Puget Sound area. The inevitable result is to further reduce then eliminate or nearly eliminate much or most of the commercial fleet.

**New regulations/priority + continued growth in recreationals, eliminates or seriously harms commercials.**

50. Chart 1 below shows how the new regulations and policy, combined with continued natural growth of the recreational harvests, will soon produce serious economic decline and partial elimination of the commercial harvest, and fleet.

51. The horizontal bar on Chart 1 below represents the actual total State share for the years 2007 through 2010 and then for future years, a reasonable stable projection of the overall state share. For the years after 2010, the overall State share is likely to remain, at best, stable, and to remain at about 4.2 million pounds. In future years it is not likely that the State's 50% share will increase overall. The State and the Treaty Tribes each get 50% of all the crabs and they are each co managers of this resource. To increase the state share (as happened in 2009)

both have to agree to the increase. They only agree, if the relative ease of harvesting indicates there is an abundance of crab that year. It is more likely than not that the state share will not increase in future years. Also, it cannot be increased without concern about depleting the resource. Last season the state share was lower than the state share the season before. There was no abundance bump last season, because it was harder to get the catch allowed. It is not likely the state share will grow. It is more likely than not that it will be steady, or it will decline. In fact the projections made herein are conservative because they do not account for the fact that declines in the state share are likely or reasonable.

52. The figures for recreational harvests on Chart 1 are derived as follows. I used actual numbers for past years and calculated the average growth rate to project future growth in recreational harvesting .

53. From 2007 through 2009, the growth rate for recreational (those who report) is some 11% annually, as shown by the data in the below table which is taken from Exhibit D, page 24, Exhibit E page 17, and from the precise numbers in WDFW seasonal summary spreadsheets sent to me on February 17, 2011, true and correct copies of which are attached hereto as **Exhibit F**. (These spreadsheets include actual reported harvest data for each of three seasons from 2007 through 2009). (The issue of the harvest by recreational who do not report is addressed below).

The 11% annual natural growth for recreational is calculated as follows:

<b>Recreational harvest (reported harvest)</b>		<b>% change from prior year</b>
2007	1,141,977	
2008	1,349,424	18.2%
2009	1,459,385	8.1%
2010	1,566,598	7.3
Total		33.6%
Average growth		11.2%

54. (The above harvest number for 2010 is my more-likely-than-not projection, based on data available from WDFW in the form of an in-season working spreadsheet entitled “2010 Final Rec Numbers and Com Quota.xls,” a true and correct copy of which is attached hereto as **Exhibit G**).

55. Starting with the natural growth of 11.2%, the 2010 recreational catch of 1,566,598 pounds more likely than not, will increase by 11.2% to 1,742,057 pound sin the 2011 season.

56. This is an increase of 175,459 pounds due to natural growth.

57. The other source of increase for the 2011 is the new regulations and policy of expanded access and more days of crabbing.

58. I project this impact to be an extra 25% growth in 2011. It is reasonable to project the effect of the extra weekend day as increasing the catch by 25% because one extra day out of four currently, is an additional 25%. For the increase due to the new regulations and policy of expanded access, the new regulations give the recreational fishers 5 days a week instead of 4, which they have historically had, and the new day is another weekend day. It is reasonable to assume recreational activities like boating and or crabbing take place more on weekends than on weekdays. Childers has stated the extra weekend day is going to result in as much crab harvest as the current weekend day. Exhibit D, page 23. (In fact, this extra 25% factor is conservative, as a weekend day in a four day recreational crabbing week represents far more than 25% of the weekly total. And, the new regulations give the recreationals a new 7 day per week winter fishery.)

59. Multiplying the 1,742,057 pounds for 2011 due to natural growth, by 1.25, yields 2,177,571 pounds as the projected recreational catch in 2011. The total growth from both causes

(natural growth, and the new regulations/policy) is 610,973. As a percentage increase, then, the recreational catch will grow 39% from 2010 to 2011 ( $610,973 / 1,566,598 = 39\%$ ). This is a large and substantial increase.

60. In future years the recreational 11% growth continuing would produce the following numbers:

<b>Recreational harvest</b>		<b>% change from prior year</b>
2011	2,177,571	39% (growth & new regs.)
2012	2,421,459	11.2% (growth alone)
2013	2,692,663	11.2%
2014	2,994,241	11.2%
2015	3,329,596	11.2%
2016	3,702,511	11.2%

61. The above numbers are depicted in Chart 1 below. For the commercial harvests shown on Chart 1 below, I use actual commercial harvests for the years 2007 through 2009 as follows:

<b>Year</b>	<b>Commercial harvest</b>
2007	2,709,792
2008	2,855,730
2009	3,036,604

62. The number for 2010 is not available yet, but a large amount of data is available. Based on that actual harvest data to date for the commercial fleet where the season is not yet concluded, (see <http://wdfw.wa.gov/fishing/commercial/crab/pugetsound/landings.html>) (a true and correct copy of the print out I used and made from this site is attached hereto as **Exhibit H**), I looked at historical landings, the available allocation and catch to date, and recent landings, to estimate the commercial catch will be about 2,587,762 for 2010.

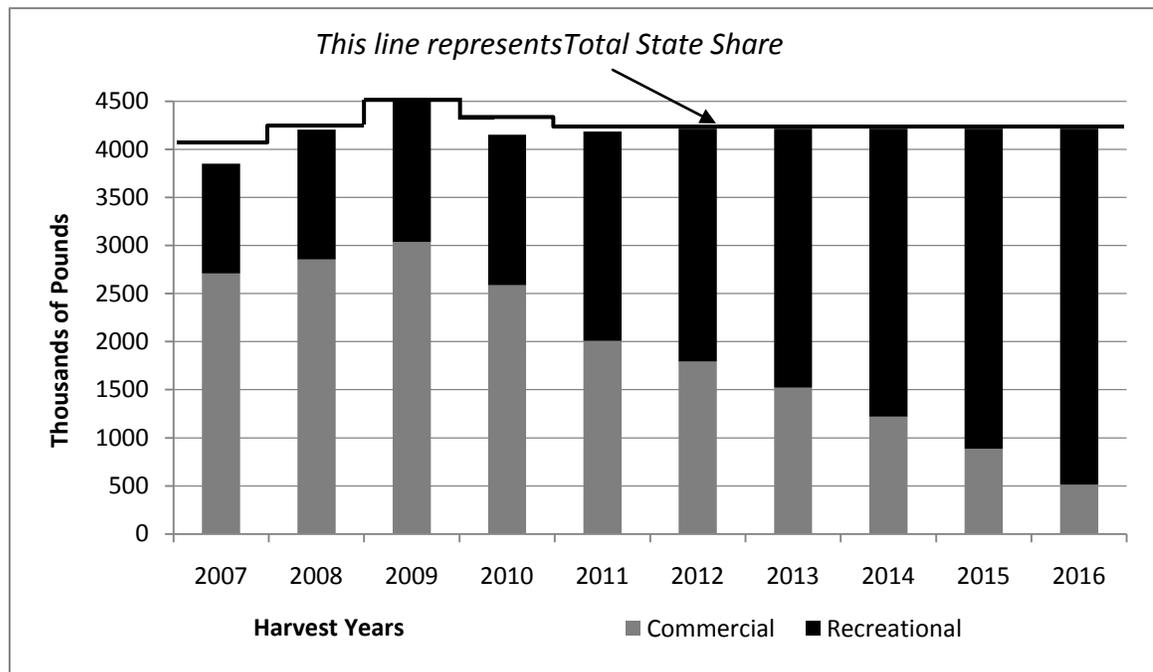
63. The new regulations and policy is priority for the recreational crabbers; they fish first, before the commercial fleet, and they take what they can then the commercials only get

their crabs if any are left over. To reflect this new regulation and policy, chart 1 below calculates the commercial catch in 2011 as being the state share minus the recreational share, as follows:

Year share	State share	minus recreational share	= commercial
2011	4,186,254	2,177,571	2,008,683
2012	4,215,776	2,421,459	1,794,317
2013	4,215,776	2,692,663	1,523,113
2014	4,215,776	2,994,241	1,221,535
2015	4,215,776	3,329,596	886,180
2016	4,215,776	3,702,511	513,265.

The above numbers are shown below.

**Chart 1: The Puget Sound Commercial Catch Will Decrease Substantially Under New Regulations and Policy.**



64. As shown in Chart 1, the new regulations and priority policy spell serious continued economic decline for the commercial sector.

65. The Chart also shows how the decision to only consider the first-year impact seriously and arbitrarily underestimates the economic impact to the commercial fleet.

66. It is only a question of time until it is substantially eliminated. Considering a first-year decline alone and ignoring future years is arbitrary; no reasonable economic projection stops after one year.

67. As shown above, the first year drop in revenue of 31 to 38% will be followed by further substantial declines in revenue, profit and margins. One could make various reasonable projections about different variables to produce slightly different numbers but more likely than not massive and substantial economic decline will take place, soon.

68. Although the below table repeats some of the prior numbers it is provided to show the **cumulative** percentage declines in subsequent years are substantial:

<b>Year</b>	<b>Total State Share</b>	<b>Recreational (reported only)</b>	<b>Commercial</b>	<b>% change from prior year under new regulation/policy</b>
2007	4,079,206	1,141,977	2,709,792	n/a
2008	4,216,293	1,349,424	2,855,730	n/a
2009	4,528,875	1,459,385	3,036,604	n/a
2010	4,372,500	1,566,598	2,587,762	n/a
2011	4,186,254	2,177,571	2,008,683	22.38% decline
2012	4,215,776	2,421,459	1,794,317	10.67% decline
2013	4,215,776	2,692,663	1,523,113	15.11% decline
2014	4,215,776	2,994,241	1,221,535	19.80% decline
2015	4,215,776	3,329,596	886,180	27.45% decline
2016	4,215,776	3,702,511	513,265	42.08% decline

69. The decline from some 2,587,762 pounds in 2010 to 513,265 pounds in 2016 is a decline of 2,074,497 pounds or **80% in just six years**. As shown above revenue and profit decline even more than the poundage caught as, obviously, the fixed cost of having and maintaining a boat, to only catch 20% of the former amount of catch, will nearly completely eliminate all profit. A decline of this magnitude is wrenching and means there is current economic harm to the commercial fleet. Any sector seeing a basic contraction of 80% in six years is simply no longer sustainable and the only question for most is, “do I get out now through a fire sale of my boat and license now? Or hang on one or two more seasons?” In any eventuality this future means great harm and instability to the fleet.

70. It is odd that Childers can use a five year average going back in time to understate the first year drop in poundage, but does not use a five or six year horizon going forward in time to address the economic effects of the new regulation and policy.

71. In the context of considering more than year one, it is clear the new regulations and priority policy result not just in a 16% decline in revenues but in massive ongoing economic decline and devastation to the commercial fleet.

72. By not considering the second and later years, Childers’ projections are substantially and arbitrarily inaccurate.

**Elimination or Serious Decline Will Happen in the Two Key Regions.**

73. The same picture is shown, too, if we look at the catch by harvest regions. One of the two key regions (Region 2E) likely will be eliminated on one season, while the other (Region 1) will see great economic decline and instability, soon, on a magnitude where many or most boats may go out of business.

74. The commercial harvest is divided into 6 regions. They are called Region 1, Regions 2E and 2W, and Regions 3-1, 3-2 and 3-3. See the regional map attached hereto as **Exhibit I** (taken from a Childers power point on January 13, 2011 page 5). Region 2E is generally east of Whidbey Island, and includes Penn Cove and nearby areas. Region 1 is the San Juan Islands and areas to the north by Bellingham and Blaine to Point Roberts.

75. Together 2E and 1 provide some 87 percent of the total commercial harvest every season. Region 1 is the biggest in pounds, and Region 2E is the second biggest, by far. The other regions only account for some 13 percent of the total commercial catch. Of the some 170 boats in this fishery, Region 2E has about 40 boats while Region 1 has about 120 boats.

**Region 2E.**

76. In Region 2E, it is not likely that the overall State share will increase in future years. For many years the overall catch limit for recreational and commercial crabbers in 2E was set at 900,000 pounds. In the last years there was some increase, but this appears temporary and the size and conditions of this region, where I fish, make bumps unlikely. It is more likely than not that the future State share in this region will be some 1 million pounds. I base this on the fact that the last three seasons had slight abundance increases beyond 900,000 pounds, and the State set it at one million pounds in about 2009, and the fact that this was stable for so many years indicates that future increases are not likely.

77. The actual recreational harvests are shown below with corresponding poundage increases and percentage growth:

<b>Region 2E Recreational growth</b>			
<b>Year</b>	<b>Pounds</b>	<b>Increase in pounds</b>	<b>% growth</b>
2007	355,396		

2008	504,500	149,104	42.0%
2009	524,380	19,880	3.9%
2010	585,026	60,646	11.6%
Average growth rate			19.15%

78. The above data is from Exhibits F and G. Thus the natural growth of recreational fishery in this Region is about 19.15%.

79. The recreational harvest in this region for 2011 will result from natural growth plus the impact of the new regulation and policies. The 19.15% growth increase applied to 585,026 pounds results in an additional 112,052 pounds or a subtotal of 697,078 pounds. Multiplying that figure by 1.25 for the new regulations and policy, yields 871,348 pounds as the projection for 2011. In other words, it is more likely than not that the Region 2E recreational harvest will increase by 48.9% in the first year of the new regulations and policy..

80. The following years' growth in Region 2E will be at 19.15% as follows:

<b>Year</b>	<b>Region 2E Recreational Harvest</b>
2012	1,038,181, exceeding 1,000,000 state share, not allowed.
2013	1,236,893, exceeding 1,000,000 state share, not allowed.
2014	1.5 million, exceeding 1,000,000 state share, not allowed.
2015	1.8 million, exceeding 1,000,000 state share, not allowed.
2016	2.1 million, exceeding 1,000,000 state share, not allowed.

81. It is more likely than not the new regulations and policy thus eliminate the commercial fishery in this region by 2013, that is in just two years, simply by using up the entire State share.

82. Any augmentation in the state share for this region could not accommodate the substantial recreational growth projected.

83. The commercial shares for the years 2007 through 2010 based on actual harvest numbers are as follows:

<b>Year</b>	<b>Region 2E Commercial harvest</b>
2007	504,688
2008	542,265
2009	565,156
2010	612,030

The above data for 2007-2009 is from Exhibit F; 2010 data is from Exhibit H.

84. For future years, the 2E commercial catch is to be (under the new regulations and policy) the state share minus the recreational share. The state share, recreational share, and commercial catch for Region 2E from 2011 into the future are thus as follows:

<b>Year</b>	<b>State share</b>	<b>recreational share</b>	<b>Commercial share</b>
2011	1,000,000	871,323	128,677
2012	1,000,000	1,038,181	0
2013	1,000,000	1,000,000	0
2014	1,000,000	1,000,000	0
2015	1,000,000	1,000,000	0
2016	1,000,000	1,000,000	0

85. More likely than not the new regulations and priority policy extinguish the commercial fleet in Region 2E within two seasons. This is economic devastation and instability.

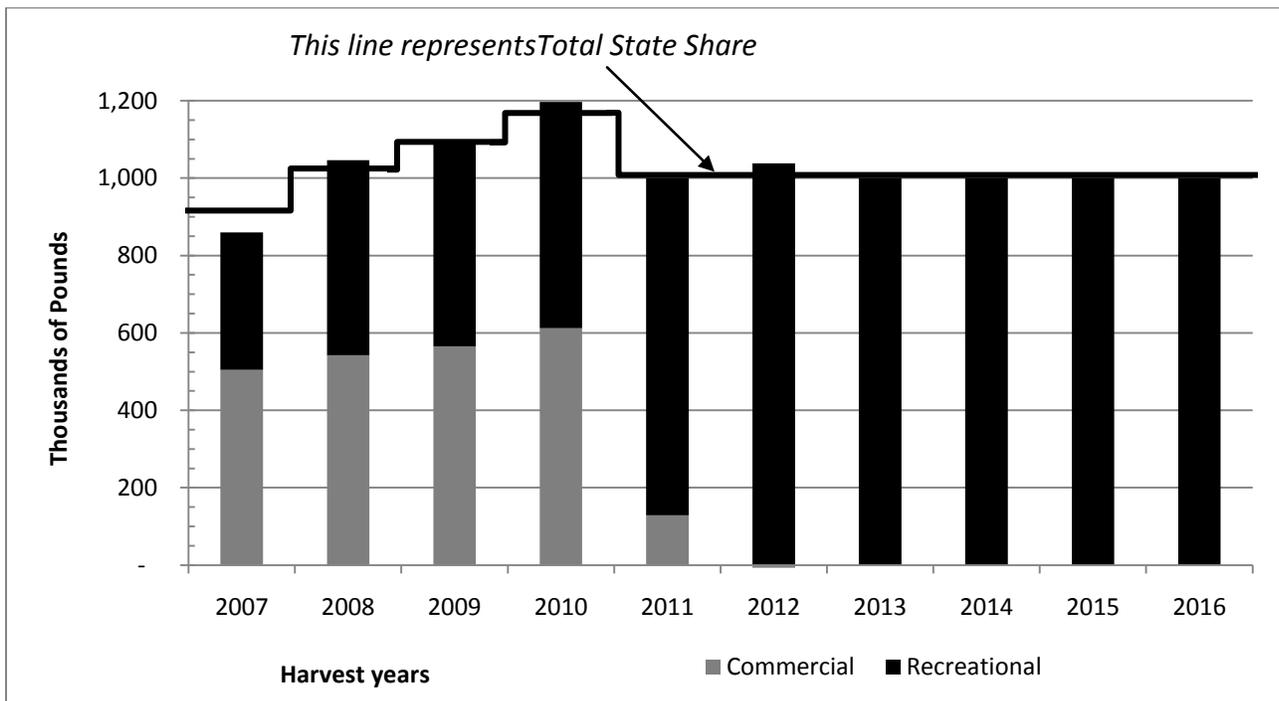
**The above table shows a decline in the commercial catch in the first season (from 2010 to**

**2011) of 79% (483,353 pounds drop, from 612,030 to 128,677).** The final decline is the next year, 2012, from some 128,677 pounds to no pounds. This is extinction of the commercial fleet in this region within two seasons. This 79% decline in poundage in the first year in this region and extinction the second year are far greater impacts and instability than suggested by the overall 14% drop in poundage or 16% drop in revenue Childers stated; by not looking at a regional picture, one arbitrarily understates the great economic changes and instability the new regulations and policy will create. To only look at one year's impact, and only look at the overall picture, arbitrarily obscures the fact the new regulations and policy will wipe out the commercial fleet in one of the two key regions.

86. This will also cause economic harm and instability in other regions as the 40 boats from this region go to Region 1 or go out of business.

87. The 2E numbers are illustrated in Chart 2 below.

**Chart 2: The Commercial Catch Will Be Eliminated in Region 2E.**



**Region 1.**

88. I will consider Region 1 first without the impact of the 40 boats shifting from Region 2E. Even without those additional 40 boats, Region 1 will suffer foreseeable declines and be seriously reduced within a few years.

89. In Region 1, there is a sizable allocation of crabs and it is more susceptible to fluctuation than the smaller regions. It is not uncommon for the state share to fluctuate. It is not likely that the overall State share will increase significantly in future years with recreational priority as the challenges of accurate accounting of harvest is too great. For many years the overall catch limit for recreational and commercial crabbers in Region 1 was set at 2.2 to 2.3 million pounds; in the 2009 season there was some increase, but this appears temporary as the 2010 season is faltering towards the later part of the season for both treaty tribes and state commercials.

90. The actual recreational harvests (from Exhibits F and G) are shown below with corresponding poundage increases and percentage growth:

<b>Region 1 Recreational growth</b>			
<b>Year</b>	<b>Pounds</b>	<b>Increase in pounds</b>	<b>% growth</b>
2007	433,762		
2008	464,857	31,095	7.2%
2009	511,671	46,814	10.1%
2010	567,428	55,757	10.9%
Average growth rate			9.38%

91. The recreational harvest in this region for 2011 will result from natural growth plus the impact of the new regulation and policies. The 9.38% growth increase applied to 567,428 pounds results in an additional 53,225 pounds or a subtotal of 620,053 pounds. Multiplying that figure by 1.25 for the new regulations and policy yields 775,816 pounds as the projection for 2011. This is a 36.7% first year increase.

92. The following year's growth will occur at the average rate of 9.38% as follows:

<b>Year</b>	<b>Region 1 Recreational Harvest</b>
2012	848,587
2013	928,185
2014	1,015,249
2015	1,110,479
2016	1,214,642

93. The commercial harvests in Region 1 for the years 2007 through 2010 (see Exhibits F and G) are as follows:

<b>Year</b>	<b>Region 1 Commercial harvest</b>
2007	1,919,995
2008	1,942,366
2009	2,029,437
2010	1,632,600 (estimate based on best available data)

94. The large decline from 2009 took place despite the commercial fleet's intense efforts to find and harvest crab. Prices in that season were in line with historical prices. The large decline indicates that the WDFW projections and targets are not very well founded and are an indication of overfishing by recreational fishers (including those who report, and those who

do not report, a subject addressed below). This decline is also a reason why it is unlikely the overall State share for this region would be increased in the future.

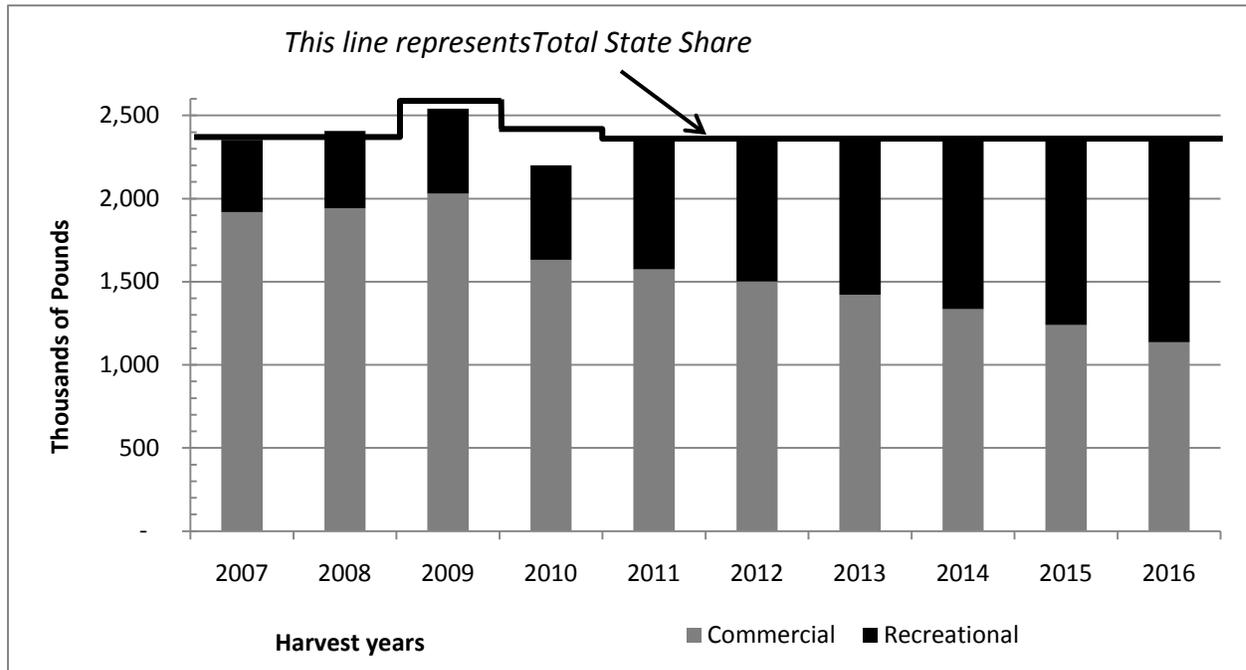
95. For future years, the Region 1 commercial catch is to be (under the new regulations and policy) the state share minus the recreational share, as shown below:

<b>Year</b>	<b>State share</b>	<b>minus recreational</b>	<b>= commercial catch</b>
2011	2,350,000	775,816	1,574,184
2012	2,350,000	848,587	1,501,413
2013	2,350,000	928,185	1,421,815
2014	2,350,000	1,015,249	1,334,751
2015	2,350,000	1,110,479	1,239,521
2016	2,350,000	1,214,642	1,135,358

96. The 2010 to 2016 decline in the commercial harvest, is from is from 1,632,600 to 1,135,358 pounds, a drop of 497,242 pounds or 30%. As indicated above, the corresponding decline in revenue and profits is even greater. This level of decline is a substantial economic loss, and creates great instability. The 40 boats from Region 2E will also be competing for the reduced harvestable crab in Region 1. There will be more boats chasing fewer crabs. The ultimate impact on the average catch per boat would be far greater than 30% and the result is severe economic decline and elimination of many individual fishers from this fishery.

97. As with Region 2E, not looking at future years arbitrarily understates and obscures the substantial, sustained, and permanent reductions in catch, revenue and profit in Region 1. The Region 1 numbers are illustrated in Chart 3 below.

**Chart 3: Commercial Catch Will Substantially Decline in Region 1.**



**The Unreported Catch**

98. The above numbers are based only on the reported recreational catch. There is a large unreported catch. This is an ongoing problem, and the new regulations and policy make it worse. Expanding access to recreationals who already fail to report in great numbers will result in even larger unreported catch, in effect reducing the opportunity for the commercials as well as the Tribes. Consideration of the unreported catch indicates declines in the commercial sector will be even greater than as estimated above.

99. As per the State Auditor report dated January 15, 2010 the unreported catch taken by recreationals is a threat to the resource. (“Violations by some recreational crabbers may jeopardize the fishery”; Exhibit A, page 16). The recreationals have a near fifty percent violation rate in reporting their catch. Only 52% of the recreationals who take catch record cards turn them in or report on line. See Dec. 3, 2010 memorandum from Rich Childers and Eric Kraig,

“2010 Dungeness crab summer recreational catch estimates” at page 2, paragraph 1. A true and correct copy of this memo is attached hereto as **Exhibit J**.

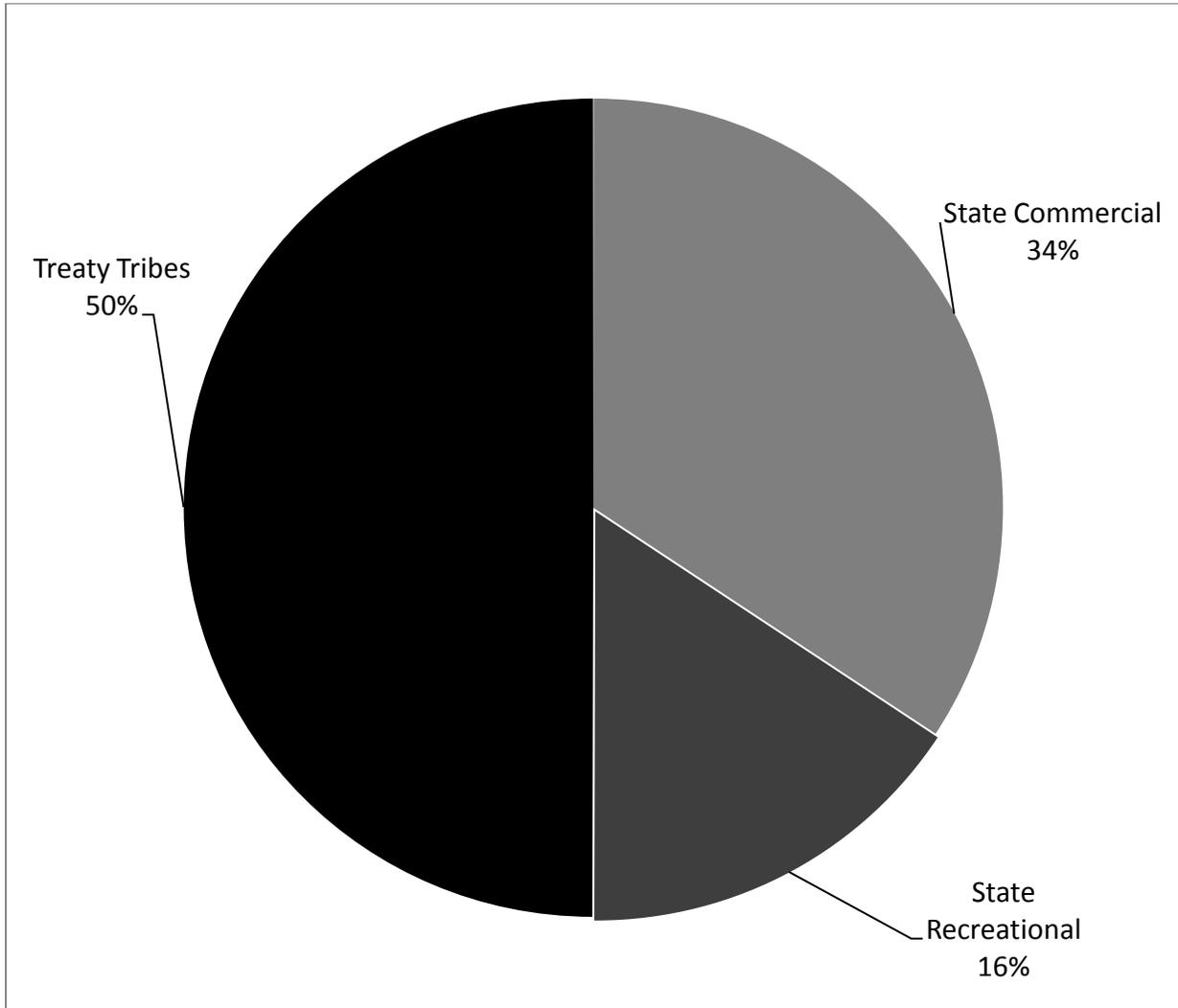
100. Because of those violations and failure to report, the WDFW projections of the recreational catch are inherently flawed and understated. As a result, all of the economic projections in this declaration -- which took the growth in the recreational catch based on reported numbers -- are highly conservative.

101. In 2007, WDFW had 382 enforcement encounters with recreationals, and found some 45% were fishing but not reporting while 55% were fishing and were reporting. State Auditor report, Exhibit A, at page 11. Thus there is a basis to believe that the taken but unreported catch of recreational harvesters is substantial, and is about as great as the taken but reported catch.

102. Using the 45%/55% ratio found in the relatively “random” survey based on enforcement encounters, the taken-but-unreported-recreational-catch is 45/55 (or 81.8%) of the taken-but-reported-recreational catch. By using that percentage and available data, I can roughly estimate the order of magnitude of the illegal (unreported catch) taken by the recreationals.

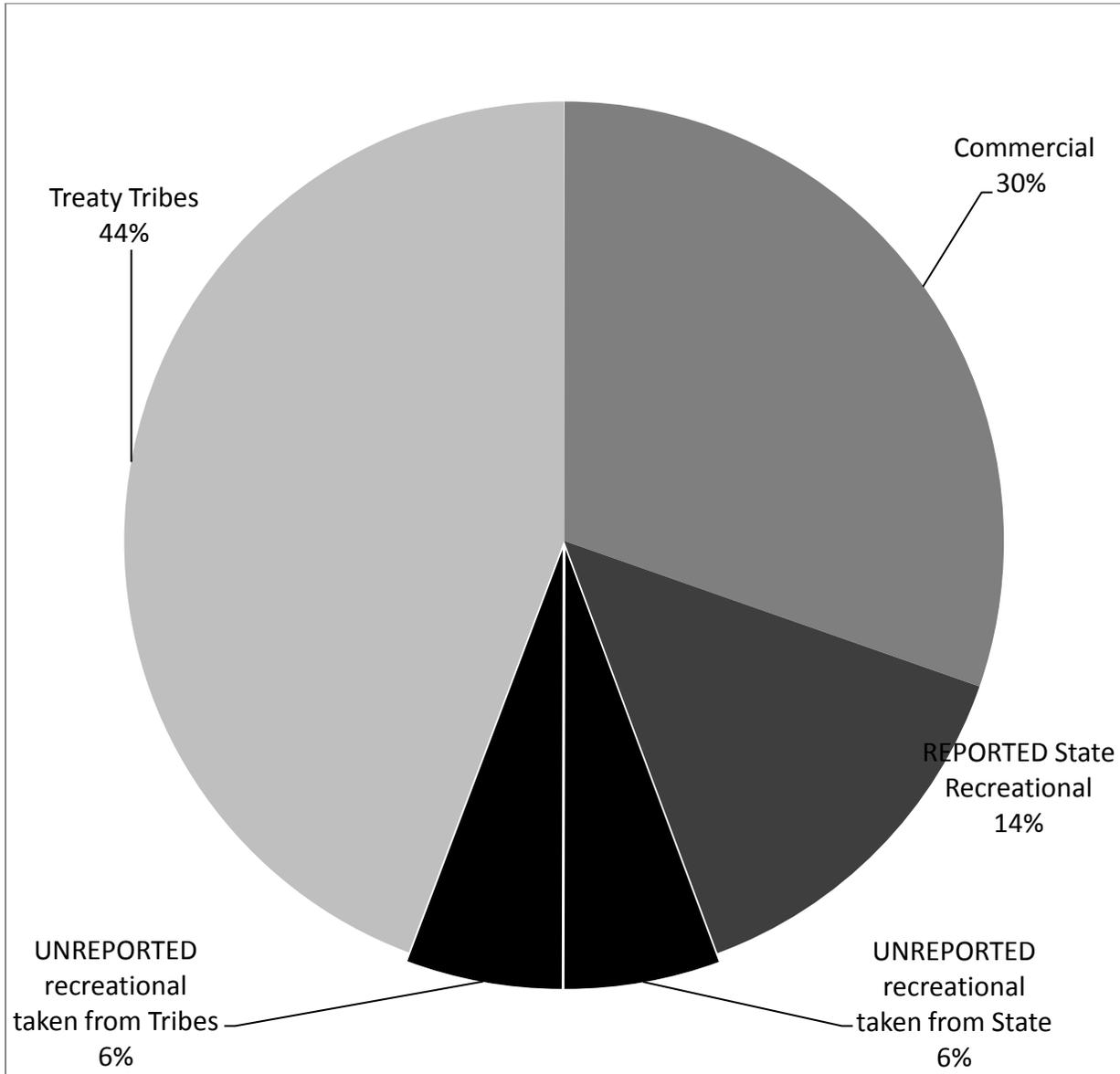
103. I start with the reported catch data. The pie chart below shows the division between Tribal, reported recreational and State commercial catches for the average of years 2007 thru 2009 considering the reported catches only. Exhibit F.

**Chart 4: Division of the Reported Total Catch.**



104. Then, I consider the **unreported** recreational catch (which is not included in the above chart). If the unreported recreational catch is added in, and if it is 81.8% of the reported recreational catch, the actual harvests are as shown in Chart 5 below:

**Chart 5: Division of Reported and Unreported Catch:**



105. The above data is based on 2007 to 2009 averages. See Exhibit F. The math is as follows. The reported recreational catch is some 1,316,929 pounds; 81.8% of that for the unreported recreational catch is 1,077,248 pounds. This is 12% of the total overall catch (Tribal and State) of 9,439,288 pounds. Because of the 50-50 allocation between the State share and the Tribal share, the 12% of the total harvest representing the recreational illegal harvest (their unreported harvest) is shown as belonging half (6%) to the Tribes and half to the State.

106. **Effect on Tribal and Commercial fishers.** Half of 1,077,248 pounds is 538,624 pounds. This is the half of the unreported and illegal recreational catch that belongs to the Treaty Tribes. The economic value for those pounds based on a late season average price of \$3.75 per pound would be \$2,019,840 a year in lost revenue for the Treaty Tribes. The total lost revenue over a period of 3-4 years would be well over \$5 million and could be \$8 million or more. The lost profits would be in the millions.

107. The impact of the unreported catch on the commercial sector is also in the millions of dollars over a period of several years. Chart 4 shows the commercial share at 34% of the overall catch; Chart 5 shows it as 30%; the illegal uncounted harvesting is reducing the commercial catch by 4/34 or almost 12%. Where gross revenues are about \$8 million for 2009, this is nearly a million dollar loss for the commercial fleet.

108. The new regulation and policy do not address this problem, but make it worse by expanding the access of the recreational crabbers of whom some 45% or 49% are harvesting without reporting. The uncounted harvest threatens the resource, as the State Auditor noted, and also harms the Tribes and the commercial fishers to the extent of millions of dollars in lost revenues in a single season. The ongoing impact of this loss and its growth due to the new regulation and policy is millions of dollars for both the Tribes and the commercial fishers.

**The New Regulations/Policy Officially Make Recreational Harvesting Uncontrolled.**

109. For years the WDFW Commission has set a target number for the recreational share without any mechanism to hold them to that number. In other fisheries there are often quotas or allocations of shares, but when a user group exceeds the quota or allocation, that group suffers a consequence, sometimes in the form of a lower quota or allocation in the next season.

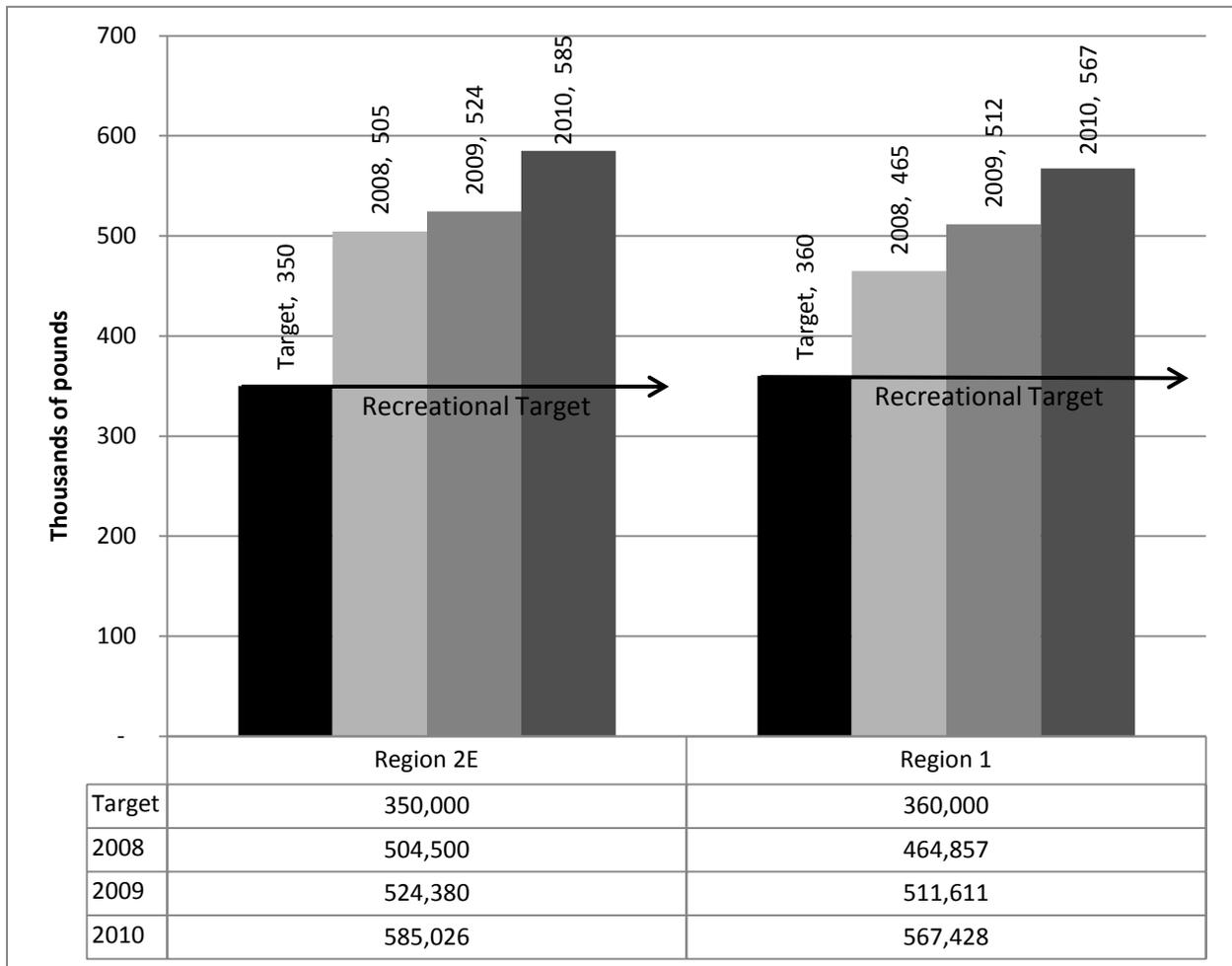
110. The table below shows the recreational target number and actual harvest in Regions 2E and 1 for the years 2008 through 2010. In each year, the WDFW Commission set the recreational target at 350,000 pounds for Region 2E and 360,000 pounds for Region 1. In each year, the recreations exceeded that target, in both regions, and they did so substantially, and in ever-growing amounts. In no year did WDFW make the recreations payback the amounts fished over the targets.

111. For 2011 going forward, WDFW has no plan to implement a quota or allocation system or to limit the recreational fishers' harvest. The new regulation and policies eliminate the target concept that previously indicated there was at least conceptually a target that the WDFW was aiming for. The new regulation and policy remove the target and create a policy of priority and expanded access for the recreations, making it official that it is open season, they can take however much they do take, and this is the permanent policy going forward. There is no limit or system or target or goal of controlling their catch which must come at the expense of the commercial catch. The new regulation and policy in making a priority official, and abandoning any target or limit, are a policy and plan to eliminate or substantially harm and reduce the commercial fleet. The existence of this new policy and regulations have already caused great uncertainty in the fleet, as any business whose supply source is planned to be cut, immediately faces uncertainty, and lower prospects and value. When the end is in sight it does not matter that much to a business whether it will take 1, 2 or 3 years. The elimination of the target concept combined with adoption of the priority for recreations causes great harm and instability to the commercial fleet, at present.

112. The table and chart below (based on Exhibits F and G) shows how growth in recreational harvesting exceeded the WDFW targets, and how the new regulations and policy implement or legitimize this uncontrolled growth in recreational harvesting and overharvesting.

<b>Region 2E</b>	<b>Target</b>	<b>Harvest</b>	<b>overharvest</b>	<b>% Overharvest</b>
2008	350,000	504,500	154,500	44.1%
2009	350,000	524,380	174,380	49.8%
2010	350,000	585,026	235,026	67.1%
<b>Region 1</b>				
2008	360,000	464,857	104857	29.1%
2009	360,000	511,611	151,611	42.1%
2010	360,000	567,428	207,428	57.6%

**Chart 6: Historical Reported Overharvest By Recreationals**



113. That the new regulations/policy accept and make permanent the full expansion of the recreational harvest up to the State share itself causes immediate economic harm to the commercial fleet, as any reasonably aware fisher can see the writing on the wall.

**Known Inaccuracy and Illegal Acts in Reporting of Recreational Harvest**

114. As discussed above, the rate of unreported recreational harvesting is very high. The WDFW has no proper and adequate system for actually counting the recreational catch, where the penalty for nonreporting is merely an extra \$10 charge, next season, for those who purchase another license next season. Half the recreationals who take cards, do not report to WDFW; beyond that population, there are others who harvest without taking a catch record card. All of the above discussion relies to a degree on reported numbers of the recreational catch. The true recreational catch is very much larger than the reported numbers and this means that the economic harm to the commercial fleet from expanding the recreational access is even greater than estimated above.

115. In sum, the new system is officially one of an open fishery for recreationals at the expense of the commercials. This produces greatly lowered asset values today and great economic harm today, as the end is now in sight. Also, historically fisheries with no limit can, and are, often fished out, resulting in collapse of the resource. The chances of harm to the resource in this manner are expanded by the new regulation and policy, which expands the uncertainty created by implementing the uncontrolled taking of the Dungeness Crabs in Puget Sound by the recreationals, at the expense of the commercial fleet.

Sworn to this 28th day of February, 2011 at Oak Harbor, Washington.

  
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Brian E. Allison