

Zoetic Research

The aquaculture industry in Washington state has proven to be a total failure from the perspective of ecosystem management and conservation of native species. The latest proposal to use "native" steelhead means that genetically-modified "domesticated" individuals will, with 100% certainty, escape at some point in time. These inevitable escapees will contaminate native endangered runs of unique steelhead strains and threaten their survival. Steelhead have already been suffering from a reduction in genetic diversity and this will only accelerate the problem.

While the threat of domesticated strains of native fish escaping and damaging endangered runs of steelhead is a new threat, the old problems of high fecal bacteria pollution and low-oxygen benthic zones remains. Worse still, aquaculture fish pens are proven reservoirs of deadly disease and parasites that quickly jump to wild fry, smolt, and adults that pass too close to the pens.

Apart from the glaring biological problems, players such as Cooke Aquaculture have proven to be bad faith actors. They have a long history of failing to perform basic maintenance and preventing escapee. They should be prohibited from participating in any aquaculture activities in Washington state.

Aquacare Environment Inc

We support Cooke Aquaculture Pacific in their application to convert the sea cage sites to Steelhead grow-out. We know CAP to be a conscientious and environmentally sensitive operator with a very qualified and dedicated team of Washingtonians to operate the farms.

ProFish International Inc

My comment letter is attached in the uploaded files (2 pages)



October 26, 2020

Laurie Neiwolny, Water Quality Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA.98504

Re: Comments on Ecology Draft Permit Modifications for Cooke Aquaculture Pacific

Dear Ms. Niewolny:

This letter is in full support of the request by Cooke Aquaculture Pacific (Cooke) to modify its existing permits to allow the company to switch the species it is cultivating from Atlantic salmon (*Salmo salar*) to triploid rainbow trout, also known as steelhead, (*Oncorhynchus mykiss*).

I am the sole owner and Chair of ProFish International Inc., a Washington State corporation which was founded in 1983. Our principal involvement has been in the Bering Sea pollock fishery. In 2008 we expanded our involvement in the seafood industry with the formation of a tilapia farm in Peten, Guatemala. Our grow-out operations are conducted in cages situated in a large lake, Lago Izabal. We have successfully operated in full compliance with environmental permit requirements required by the Ministerio de Ambiente y Recursos Naturales (MARN).

I am a certified fisheries biologist who was employed by NOAA for fifteen years prior to entering the seafood business. I also have served 9 years on the North Pacific Fishery Management Council, six of which as Vice Chair.

It is noteworthy that following a full review of public comments and statements by leading scientists in response to the posting of Cooke's request for its permit modifications, the Department has concluded that *little or no difference exists in feed utilization and nutrient waste production between Atlantic salmon and rainbow trout/steelhead*. Considering that both species are Salmonids and have strikingly similar nutritional needs and metabolic processes, it would be surprising if a contrary conclusion were reached. Certainly, the conclusion of *little or no difference* fully supports the species change requested by Cooke.

In looking to the future, it should be noted that there currently is considerable research being conducted by feed companies and those raising fish in cages and elsewhere directed at improving feed conversion rates (FCRs) and further reducing metabolic and excrement waste. This research is being driven by efforts to improve the economics of aquaculture operations themselves, but also in response by aquaculture companies themselves to be good stewards of our environment and produce nutritious protein for an expanding world population. Cooke has been a leader in these efforts for which we can expect continued improvements in feed utilization and waste reduction.





It is truly unfortunate that we still see opposition to aquaculture operations in Puget Sound from those who do not want to see them in our waters under any conditions. This opposition is largely based on false information, hearsay and untruths devoid of sound science and objective reasoning. The development of aquaculture in Washington state is vital to our food security and public health. Denying the development of aquaculture in Puget Sound only hurts our regional economy, particularly in rural areas, and our native tribes that are trying to develop responsible aquaculture operations to support their communities and replace salmon production lost over the years.

In conclusion it is quite apparent that the scientific literature clearly demonstrates the remarkable similarities of Atlantic salmon and rainbow trout/steelhead in feed digestion, growth and excretion of excess feed nutrients. Therefore, on the basis of these important metrics the request by Cooke Aquaculture Pacific to modify its existing permits to allow the company to switch the species it is cultivating from Atlantic salmon to triploid rainbow trout/steelhead should be approved.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter Pereyra".

Walter Pereyra, Ph.D.
Principal and Chair
ProFish International Inc.



Cooke Aquaculture Pacific

Please see attached comment file. Thank you.

Comments to Washington Department of Ecology (ECY)

Draft NPDES Permits for Cooke Aquaculture Marine Sites

October 26, 2020

Jim Parsons, General Manager

Cooke Aquaculture Pacific, LLC (CAP)

Dear Ms. Niewolny,

Thank you for the opportunity to comment on the draft NPDES permits for our facilities. Please accept the following comments as supplemental to those submitted to you recently by Mr. Kevin Bright, Permit Coordinator for our operations.

By the time these permits will be issued, should ECY approve them, over a year will have passed since we first notified ECY of our interest in a simple modification to culture an animal in our operations that is raised and released into public and private waters throughout the state of Washington by a variety of private, governmental and tribal entities. When coupled with the year spent obtaining permission from the Department of Fish and Wildlife to do so, we are now faced with a nearly untenable situation. As an entity we chose to follow the guidance given us by the State Legislature and cease the rearing of Atlantic salmon in Puget Sound, even though we would still legally be able to do so until the expiration of our leases in 2022. The farming of aquatic animals in the locations for which the draft NPDES permits are being considered has occurred for over three decades under an assortment of owners. Previous ownership, a Chicago-based venture capital company, had unfortunately allowed the marine farm infrastructure to fall into disrepair.

In 2016, Cooke Aquaculture Pacific purchased the farms, retained all its workforce, and began investing to modernize the operations. In the short year between asset purchase and the unfortunate Cypress Island facility collapse, new containment nets were purchased and installed at each facility, state-of-the-art feeding equipment guided by visualization of underwater fish activity was installed at the Clam Bay and Hope Island facilities, and the legal processes for facility (cage) replacements were initiated. These improvements alone were accomplished with investments of millions of dollars and planned investments of much more.

Cooke Aquaculture Pacific is staffed, managed, and operated by local Washington residents who pay taxes, purchase goods and services, and contribute to the local and state economy. Many of these folks have been part of the operations here for many years, and care deeply about local food production and the local marine jobs that it provides. The direct and indirect employment income and supply chain spinoffs generated from these operations contributes to the social and economic benefit of the communities in which we operate in many ways.

It must be noted that this community commitment is the operational standard that CAP's parent company, Cooke Aquaculture Inc. strives for as a global seafood leader working to help build vibrant working waterfronts. Cooke's commitment to sustainability, science-based marine practices, and forward-thinking innovation has afforded them many certifications and recognition in recent years.

In September of this year, Cooke was selected by SeafoodSource.com as one of the Top 25 Seafood Suppliers in North America for Sustainability & Conservation (<https://www.seafoodsource.com/news/environment-sustainability/the-top-25-seafood-sustainability-conservation>). All divisions within the Cooke family of companies have mandated sustainability, environmental and biodiversity policies enshrined within their operating and reporting practices.

Many of the assertions regarding the so-called “negative impacts of farm operations” that are being made by various individuals and groups are completely false and are unsupported by science. In the previous comment period I have provided ECY with summaries and complete references of recent science regarding discharge characteristics from cage operations and I thank you for considering them in your finding that there are no significant differences in discharge characteristics between Atlantic salmon and rainbow trout. We have worked transparently with ECY to also change operational aspects of our activities and will continue to do so to make certain that our operations perform to the highest standards.

Many commentators inaccurately state that the culture of aquatic animals in open-water marine environments is no longer a water-dependent use given advancements in upland and indoor finfish farming facilities. What needs to be understood here is that both upland and indoor systems depend not only on water but also on having sufficient energy to pump this water and space on which to do so.

While the Recirculating Aquaculture System (RAS) technology has indeed advanced over the past few decades, it is important to point out that CAP already operates a state-of-the-art Danish-designed RAS facility near Rochester, WA, that supplies juvenile animals for our marine operations.

In fact, the production cycle is such that our fish spend half of their lives in this RAS environment due to the security, environment, and control that it provides. This facility has a production capacity of approximately 90 metric tonnes of production with 95% or greater water reuse, and we are extremely proud of its success and positive impact to our operations. If, however, we were to expand this to produce the equivalent tonnage of harvest-size fish produced by our in-water farms, we would quickly exhaust the aquifer water supply even at this high rate of re-use, and we would consume massive amounts of electrical energy, thereby greatly expanding our carbon footprint and the ecological impact of our operations.

We at CAP, like other companies are doing, will continue to adapt and implement new RAS improvements as they develop; however, recent research is showing that this technology is not yet the panacea espoused by its proponents and will indeed cause its own set of problems related to land use, loss of biodiversity, and exacerbation of climate change. We would welcome the opportunity to host a visit to our Rochester site so that you might view the realities of RAS production and better understand its opportunities and limits.

The Bainbridge Island City Council recently affirmed that it “supports local, sustainable food production and acknowledges that sustainable, well managed net pen operations can safely produce local affordable seafood into the future, and that there is a place for farmed fish in the mosaic of sustainable local food choices in our community in the future”. This is indeed consistent with countries around the world who have recognized that many wild capture fishery stocks are at risk due to overfishing and farmed seafood is the answer for local healthy, sustainable food. In fact, the United Nations Food and Agricultural Organization is placing a major emphasis on aquaculture in an effort to solve world hunger.

Indeed, if the pandemic has taught us anything, it is that we as a nation can no longer rely on imports of any food items to sustain our people. Seafood has been consistently shown to be vitally important for human health. Currently, the US imports ~90% of the seafood it consumes. Over half of that is produced through aquaculture in countries that are much less regulated than our own.

With the understanding that all food production has some form of environmental impact, we owe it to ourselves to seek the truth on the real impacts of our protein production systems. No longer is it sustainable to make acquiring food “someone else’s problem” by ignoring where and how our food is produced. We owe it to ourselves to work together to find solutions to production and environmental hurdles.

The remaining comments are targeted primarily at sections in the draft permits that could be viewed as ambiguous. As you may well understand, given the litigious nature of environmental NGO’s it is important that specific requirements are well laid-out and easily understandable by all.

S. 3. A. 1 (and elsewhere) states that reporting will occur for a variety of parameters, including “..., percentage of nitrogen in feed, ..., feed conversion rates, ...”. Nitrogen in fish feed is a product of the amount of protein in the feed. Modern feed manufacturing requires that protein sources vary by time, amounts, and composition based upon a large number of external and economic factors. If ECY hopes to estimate the amount of elemental nitrogen being excreted from the cage rearing systems a simple arithmetic calculation of nitrogen percentage in the feed and food conversion efficiency will not provide an accurate estimate. Protein utilization and conversion efficiency of various feed ingredients will vary from feed batch to feed batch and is only estimated by understanding the digestibility of the various sources of protein, usually through in vitro analytical processes (see “Application of in vitro digestibility methods in aquaculture: Constraints and perspectives.” Moyano, F. J., et al. 2015. Reviews in Aquaculture, 7: 223-242. doi:[10.1111/raq.12065](https://doi.org/10.1111/raq.12065)). Over a given month (reporting period) several manufacturers and batches of feed within manufacturers may possibly be utilized. While feed manufacturers utilized by CAP generally conduct analyses of digestibility on ingredients, they may or may not be available for each specific batch and we may only have the “minimum guaranteed level of protein” to inform our report. We ask that ECY specify how they plan to use this data so that we can work with ECY, our manufacturers and our staff to better provide the information that will serve its intended purpose.

S3.G. Reporting Permit Violations. Several instances under this section are ambiguous. For example, under the requirements for 24-hour notification it is stated that CAP must report, “Any noncompliance that may endanger health or the environment, unless previously reported under immediate reporting requirements.”. However, no explanation is given on what must be reported “immediately”, only what action CAP must take immediately (reporting is not mentioned). We ask that this be clarified.

S. 8. B. 13. Notification of Unusual Events. This section remains ambiguous. As an example, the circumstances leading to the low water position of one support pontoon at the Orchard Rocks- South facility lead to the development of this section. However, the definition provided in this section, “An unusual event can create or lead to an increased potential for accidental fish escapement, structural failure of the net pen array, or spill” (**please note: the definition is somewhat different in S9**), was clearly never the case in this instance. The only containment nets that held fish at the facility were on the far end of the cage system, which was supported by five other pontoon systems that had normal buoyancy. Moorings were sound (which was why the system dipped) and there was never any danger

of accidental fish escapement, structural failure of the net pen array, or spill. Company records show that the condition had been noted the previous week, was determined to not be a hazard to fish escapement or structural integrity by staff, and was scheduled to be further analyzed early that coming week, confirmed by DNR in subsequent review. It was only upon a frantic reaction to the situation by well-meaning but ill-informed visitors to nearby houses and subsequent reporting to news media that this situation even became an issue. Further clarification of the definition of an Unusual Event is needed to prevent accusations of non-reporting, particularly since it is a condition within the discharge permit.

On behalf of our farm employees throughout the State and contracted processing workers based in Seattle, along with our many suppliers, buyers, and consumers of our products we request that the modifications we seek to the NPDES permits should be granted. We believe that the scientific literature, combined with the track record of CAP's NPDES performance and demonstrated willingness to work with ECY to constantly improve our operations speaks loudly and, we hope, convincingly toward that end.

Respectfully submitted this 26th day of October, 2020.

From: [Steven Hedlund](#)
To: [Niewolny, Laurie \(ECY\)](#)
Subject: Comments for Cooke Aquaculture
Date: Tuesday, October 27, 2020 5:48:55 AM
Attachments: [image816000.png](#)
[image993001.png](#)
[GlobalAquacultureAlliance_CookeAquaculture.pdf](#)

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Laurie,

Please consider the attached comments for the public comment period for Cooke Aquaculture.

I tried to submit yesterday, but your site seemed to be down:

<http://wq.ecology.commentinput.com/?id=HEdBM>

Thank you,
Steve Hedlund



Steven Hedlund
Communications & Events Manager

P: 603-317-5085

E: steven.hedlund@aquaculturealliance.org | W: www.aquaculturealliance.org

85 New Hampshire Avenue Suite 200, Portsmouth, NH 03801



From: [carol truex](#)
To: [Niewolny, Laurie \(ECY\)](#)
Subject: Cooke aquaculture
Date: Tuesday, September 22, 2020 12:48:46 PM

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I couldn't get the online comment portion online to respond. I'm now using this method to register my dissatisfaction with any plans to farm fish of any kind in the Salish Sea. I am a resident of Guemes Island and a member of the Samish Indian Nation. Thank You, Carol Truex

Sent from my iPad

From: [Kevin J. Bright](#)
To: [Niewolny, Laurie \(ECY\)](#)
Cc: [Jim Parsons](#); [Rod Gould](#); [Douglas Steding](#)
Subject: Cooke comment letter Draft NPDES Permit Modifications to raise all-female triploid steelhead
Date: Friday, October 23, 2020 8:07:32 PM
Attachments: [Cooke NPDES draft permit modification comment letter to Ecology Oct 23 2020.pdf](#)

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Hello Ms. Niewolny

Please find the attached comment regarding the draft NPDES permit modifications to raise all-female triploid steelhead.

Regards, Kevin Bright

Kevin Bright, Permit Coordinator
Cooke Aquaculture Pacific
Kevin.Bright@CookeAqua.com
(360) 391-2409



From: [Garbush, Gayle \(ECY\)](#)
To: [Niewolny, Laurie \(ECY\)](#)
Subject: I will be scanning your mail this morning
Date: Wednesday, October 28, 2020 9:21:24 AM

If I don't get interrupted I will scan a one-page letter to you now. Otherwise, I have a Skype call with Rachel at 9:30 a.m. The letter is written in cursive from Annabella House Fox, 2014 27th Pl, Anacortes, WA 98221

Best regards,

Gayle Garbush

Office Assistant 3

Department of Ecology | SW Regional Office | Water Quality Program

(360) 584-6507 cell | Email gayle.garbush@ecy.wa.gov



Kristopher Johansen

No Net-Pens of any kind in Washington State!

Net-Pens are not environmentally friendly, even ones with Native species being raised.

If we want more Salmon, manage the populations better. Reduce/cut the quota, close more fisheries for longer periods of time or indefinitely until the populations are restored to much higher, truer sustainability levels.

Encourage people to eat less Salmon, so we HAVE more Salmon.

Joseph Jauquet

The first three items in your revisions above address escape, and the remaining three address pollution and net maintenance. This implicitly acknowledges the major problems you and Cooke expect from the so-called revised plans. Thus, one or more of those events is certain if Cooke gets it's permits. The fact of sterilized steelhead is just a slick end-run around the Legislature's short-sighted bill.

I am strongly opposed to any net pens by any entity for any specie(s) anywhere in WA waters, including the San Juans and the open Straits. I am completely disappointed with WDFW (a former employer) and DOE for not understanding the spirit of the law and rejecting the net pen application forthwith.

Thank you for your consideration,
J. Jauquet

Scott Morrison

I am concerned for water quality and fish diseases. Caged cultured fish are susceptible to many different fish diseases and parasites, and my concerns are for wild fish, during all of their life stages, that may swim near these structures, could get infected. Also, and cultured fish that get out could also infect our wild fish. How will this be addressed?

Ryan Viers

Raising net pen Steelhead anywhere in the Pacific Northwest is an absolute disaster waiting to happen. Raising net pen Steelhead outside of the Skagit River watershed should have been shoot down long before it got to this stage.

The Skagit River was once a fabled Salmon and Steelhead river. Now it is a fraction of what it once used to be. There are many reasons of why the Skagit River saw declines of Salmon and Steelhead. That is not the point, the point is that there is, and has been, an active move to conserve these fish in this river (and others in the Puget Sound). There was a full on cancellation of Steelhead fishing season for a decade, that has only re-opened twice in the last 3 season, and one of those openings was a partial opening. The reason, to let wild Steelhead recover and repopulate.

Now lets rewind a couple years when Cooke had a net pen failure that saw tens of thousands of Atlantic Salmon (which are non-native to the Pacific Ocean and it's watersheds) swimming freely in the Sound and making their way up the Skagit River, as far as Rockport. A failure which by the way, Cooke tried to initially blame on big tides caused by an eclipse. Nice job on stepping up and taking ownership. Ultimately, if net pens with farmed Steelhead are allowed in Puget Sound outside of the Skagit River...it will fail, at some point. And, when it does fail all of those farmed Steelhead will do exactly what the Atlantic Salmon did, find a river to swim up. When that happens the farmed Steelhead will try to spawn with wild Steelhead. Maybe the farmed Steelhead are all sterile, that's what we are told anyway. But, how do we really know? A failure like this from a company that we already know tries to deflect responsibility could undo years, decades, of recovery of the fish that made the Skagit River known world wide.

Having farmed Steelhead on my plate is not a compelling enough argument to put a net pen, any net pens, in Puget Sound outside of the Skagit River. The state of Washington should not even be considering this. What should be considered is eliminating net pens altogether in Puget Sound, removing dams and hatcheries, and letting the fabled wild Salmon and Steelhead that made the Pacific Northwest what is, recover.

Jean Thompson

I have continued concerns that Cooke Aquaculture can be relied upon to comply with the requirements of the permits they seek. It was non-compliance that led to the collapse of the Cypress Island pens and release of Atlantic Salmon, which we witnessed first hand from our home here in Anacortes.

Additionally, I am not convinced there is a way to conduct aquaculture that does not pollute/harm the seabed below and the surrounding waters. Excess feed and concentrations of fish poo pile up on the seabed and smother all naturally occurring living organisms.

Thirdly, I have seen multiple documentaries showing how fish farms attract an over population of sea lice. Whereby sea lice occur naturally, these concentrations attach to the smolt of wild fish runs in the area in numbers so great that they kill them before they reach the open sea, thereby reducing the survival rates of our wild fish runs.

Aqua culture is a threat to our wild fish runs and should not be allowed for anyone, anywhere.

L Wayne

Washington is the only state on the Pacific coast that permits these facilities. At the beginning of 2020, Canadian Prime Minister Trudeau announced plans to transition all open-water industrial aquaculture in British Columbia to land-based facilities by 2025.

Many of these farmed fish would still be capable of interbreeding & exchanging pathogens & parasites with endangered wild Puget Sound steelhead. With this permit Cooke will be able to exploit a loophole in the legislative phaseout by raising steelhead rather than Atlantic salmon. Our state government needs legislation to get rid of any type of net pens! Our ocean, sea life, and the public's healthy consumption of fish is at risk.

William Bryden

The methods allowed by the permits are dated and do not reflect "best available technology to reduce impacts and wastage". Zero discharge land based RAS is available and must now be the new standard by which pollution acceptance is measured. Spill-over and spill-back of contagions (viruses, bacteria, parasites, and fungi) has driven the economic shift of investment money to RAS. Cooke, holding a large market share of net pen production in N.A. has refused such changes due, in part, to their inevitable loss of market share if they retrofit to RAS land based tech. The permits, as they are written, fail to prevent or monitor impacts to wild resources impacted by the mega pollution resulting from open net pen use. History and the weight of scientific evidence has shown this, has it not? Using current technology, monitoring impacts from open net pen effluent (which unnaturally amplifies contagions) is impossible. In fact, new to science contagions are found constantly and increased virulence is the order of the day in these unnatural unmoving populations of naturally migrating and predator strengthened anadromous fish. With all due respect, please do your jobs and stand up against this ecocidal use of our marine ecosystems and the ecocidal transference of expense from Cooke bottom line to our shared environment.

PS I have an ecology degree and more than 10 years experience watch-dogging this method of protein reduction for profit. I have reviewed and testified during discharge permit applications in Maine and throughout Atlantic Canada as an expert witness. I have also been involved in numerous law-suits that I initiated and reviewed ALL of the open net pen EPR and EIS's filed in Atlantic Canada since 2012. In fact, most of them were triggered due to my work on this issue.

I can go on and on about predatory migration disruption and attraction, contagion amplification and increased virulence, a lack of effective monitoring, escapes and genetic introgression (triploidy is not 100%), effects of triploidy on salmonid health and predator preference/attraction, impacts from escapes, antibiotic/neurotoxin use/abuse and illegal toxin use by Cooke (multiple convictions), sea lice, cleaner fish abuse and disease/escapes/morts, coastal nutrification, etc All of which is avoided by RAS systems with zero effluent (eg the license-able tech offered by Sustainable Blue in NS Canada, and Superior Salmon in Wisconsin)

But will you even listen....will your grandchildren ever eat an economical wild salmon due to their abundance?

Be better than the managers before you....the ones that allowed and facilitated our current mess. If you chose to ignore my warnings and pleas...at least fin mark or pitt tag every fish, allow eNGO over-sight for disease and lice monitoring, and set limits on lice and drug/toxin use, increase escape/disease/parasite monitoring and reporting...do it better and Cooke too will shift to land based....for the money.

Mike Brinkley

I am strongly against any kind of aquaculture in the sound. Feeding the fish depletes natural food sources and the waste products and disease from crowded net pens pollutes everything around the pens. Passing wild fish are adversely affected. the only kind of fish farming that is acceptable is in land pools. Even then I would personally never buy a farmed fish.

NO NET PENS!!!!

Andrew Stevenson

Lipstick on a pig. You continue to dance around the edges of the problems, instead of addressing them directly. Your statement that "the change from Atlantic salmon to steelhead is not likely to change the effect to water quality" is demonstrably false with respect to pathogens, and presupposes that your original water quality determination is correct and supportable, which is not the case. Instead of trying to leverage off a false and inadequate original finding of dubious applicability I DEMAND you "begin at the beginning" and execute an entirely new NPDES permit investigation that specifically addresses steelhead and incorporates and accounts for all the new science that has evolved around net pens as a source and dispersal point for viruses, parasites, and other pathogens to native species. It is irresponsible in the extreme to allow cultivation of a native species in an environment that is proven to foster disease and parasites harmful to wild stocks.

NO NO NO!

Katherine Marshall

No! Please do not approve this reckless plan. Cooke Aquaculture has demonstrated its unreliability, its past failure to follow rules it has agreed to, its inability to keep its own operations from despoiling Puget Sound. I spend big parts of the year on the Sound, and it is my fervent hope that it becomes a cleaner home for its native species. Thank you

Gerard Stromberg

Do not allow fish farming in our inland waters; Support salmon & steelhead hatchery programs.

William Fitzsimmons

If the truth is told you have a foreign corporation that wants to exploit a local resource for profit without knowing whether or not the presence of their facilities will have a deleterious effect on a cherished and valued environment. Cooke Aquaculture has already proven they are not to be trusted with the operation and maintenance of their facilities. How long is it going to take the state of Washington to recognize the obvious. We do not need net pens. We need a healthy Puget Sound.

Jeff Waldron

This is still garbage. It is a permit to allow pollution from feed and fish feces. Reporting and monitoring does nothing to prevent the release of fish into a fragile environment. If Washington state cared about protecting natural resources such as salmon and orca no fish farms would be allowed. Revising a permit so they can raise native fish is a joke. This is still a dangerous operation. Easier to continue to limit salmon seasons and enforce closures while allowing private enterprises to utilize public resources to make a buck. Way to go Inslee minions or is that morons

Eleanor Mattice

Please do NOT allow fish farming in the Puget Sound. Fish farms pose a danger to native fish stocks with infections that are easily passed from the farmed fish. Please help our native salmon/steelhead fish improve their numbers. This, in turn, will help the orca survive. Fish farms have caused a lot of problems around the world. I do not want fish farms polluting the waters of the Puget Sound.

Rob Schmaus

Please stop this!! If you had a house guest, and that house guest caused irreparable damage to your physical home, damage that could not be measured and who's repercussions will be felt for years, all because they directly defied you house rules, WHY WOULD YOU LET THIS HOUSE GUEST BACK INTO YOUR HOME?!?

It is absolutely ridiculous that This is even being considered...

These people have no respect of our waters, they have proven that. What has changed?

This is about money. Lobbyists and back door meetings. Don't let that sway you from doing what is so clearly right. STOP COOKE AQUACULTURE.

Renew the faith in our system and do what's right for our environment.

Bye Felicia!

Steve Salonen

I do NOT want to see Cooke's steelhead pens in Puget Sound. Their poor track record of safety and containment of farmed fish is sufficient reason to deny their request.

Melissa Belz

I'm opposed to any net pens in WA. There is always change of escape, contamination, and use of antibiotics in the fish. Make habitat not pens.

Thank you

Aileen Jeffries

The proposed continuation of net pens in the Puget Sound will have a detrimental effect to the marine ecosystem. The concentration of so many fish will promote fish disease, sea lice and contamination of the waters as well as many other negative effects. Aquaculture should be done on land where it will not affect the marine waters. Litigation has already made the point that this is not a public benefit.

Jon Steeves

I approve and encourage growth of the aquaculture industry anywhere in the country, including these projects submitted by cooke aquaculture. we as a nation import 85%-90% of all seafood consumed and to not have our own production secured as a nation is criminal. As we have seen throughout this covid crisis our reliance on other countries to meet our production demands can have serious implications. Aquaculture is scientifically proven to be sustainable and profitable and will help meet the need of increasing demand on locally sourced seafood. it creates good paying careers for people that would otherwise be left behind due to lack of skills or education and helps relieve the burden on the state.

Cooke though large in size has always operated in areas that often get forgotten or left behind, i suspect this will be no different and the areas of their operations will see an influx in demand to other local business and indirect spending by the business, its employees and other contractors and providers.

I fully support this growth industry and encourage governments country wide to get behind the industry to see it able to grow and become competitive with other nations.

christina conte

The Ft Ward fish pens are directly in our view and it's a shame that it's marred by them. I think our passage is much too narrow for the pens to be located here. They are a visual blight and the noise made by the operation is offensive. Not to mention that I don't trust Cooke after their 2018 spills.

Recently I complained to the DNR, Fish & Wildlife, the Bainbridge Police and Cooke about the 100-200 sea lions that were hauling out on their pens for approximately 2 months this summer. All they needed to do was install more fencing to create a barrier. First they lied in an email to me and said it would cost \$100K to fence the pens off. When several neighbors complained they installed simple fencing in 2 hours! But it took them months to respond and then act.

I'd like to see the passage returned to its indigenous state.

Mike Freeze

The use of all female sterile rainbow trout in Cooke's net pens is an excellent idea and should be permitted. This demonstrates Cooke Aquaculture's commitment to protecting the environment, while also providing much needed employment opportunities in this area of the state. As a producer of sterile triploid grass carp for over 35 years, I can attest that the use of non-reproducing fish can have tremendous ecological benefits and is a win-win for all sides involved. To not allow Cooke Aquaculture to use such environmentally safe fish is to ignore science completely.

Megan Taylor

I am sad to see state agencies wasting yet more time trying to gather public input, review a plan, or insure that plan is followed by Cooke Aquaculture through monitoring by WA State agencies. They have been a very poor and irresponsible tenant in WA State waters in the past and have lied about actions that they had taken or would be taking -- when they were caught. They should be prohibited from having any net pens or operations in WA State waters.

James Beck

I am very concerned about the waste produced by the massive number of fish raised and kept in net pens. There is no way for the massive amount of waste produced by the fish to be "flushed" out to sea, so it accumulates in the canals affecting water quality. I beg you not to allow more net pen permits.

Charles Ballard

Net pens are never acceptable in Puget Sound waters as they concentrate droppings into a small area of the water and therefore pollution is concentrated . Steelhead are protected and in very short supply and should never be sold because people will be lead to thinking they are now plentiful and could be buying poached wild fish.

Penelope Benz

There is no reason in the world why a for-profit company should be able to lease a section of Puget Sound that belongs to the Public. I find it very offensive that ANY company can profit from using our public waterways. It should also be known that there is a HUGE amount of sludge at the bottom of the pens on the bottom...after years and years of dumping fish food DAILY which we can smell at very low tides. There is no actual accountability for their negative impact on the environment or else we would see a clean-up effort from all of the damage caused over the years.

Any company wishing to grow fish should be required to purchase land and create their own fish pens- much like the Salmon Hatchery near Kingston.

Please DO NOT continue to allow this company or any other company to profit from using any part of Puget Sound!!

Neal Hoffberg

Cook Aquaculture nor any other artificial company should never be allowed to build new or maintain existing fish pens in the Puget Sound or other Northwest waters. Existing pens have already done irreparable damage to the environment and more importantly, native fish.

Terry Sullivan

Open water net pens for fish farming spread disease among wild fish, pollute the immediate environs, pose a threat to the genetic purity of local wild fish, and are not a solution to the environmental loss of local fish stocks. If we want to improve fish stocks, we will need address the systemic environmental causes of their decline. That will require human lifestyle change: something we are reluctant to do, but for this and many reasons, we **MUST DO!** We can't continue settling for half baked solutions that worsen the problem in the long run. Please make an honest long term decision on this and deny the permit on these facilities.

Jeffrey Norman

I am appalled that WSDOE would consider granting Cooke Aquaculture a permit to raise "Steelhead" in net pens. Steelhead are anadromous Rainbow Trout, *O. mykiss*. What distinguishes it from its fluvial and lake-bound brethren is the sea-going life-cycle, and the return from the salt to spawn in its natal waters. These captive trout cannot be called Steelhead. Labeling issues aside, you still have the same, terrible environmental consequences of net-pen-rearing of a non-native species, or at least a species raised in an unnatural manner. The same issues of pollution, disease, escape, and inter-mingling with wild stock exist, just as it has with Atlantic Salmon. Take a big hint from Alaska, Oregon and California: these nets do not belong in our waters. Shame on you for prioritizing revenue over the environment.

Matthew Steinwurtzel

I strongly disapprove of the decision to allow Cooke Aquaculture to farm native steelhead in Puget Sound. For one, Cooke has proven that their track record in aquaculture does not support a healthy Puget Sound ecosystem, and they have proven that they cannot adequately and safely manage their facilities.

Secondly, allowing Cooke Aquaculture to farm native steelhead works against a regional approach to restore our native populations of steelhead and other anadromous fish. With recent years of poor returns, this decision is incredibly concerning given how it will affect our wild fish.

I implore you to reject Cooke's permit and to focus on regional ecosystem-based solutions that will allow for the restoration of our prized fisheries.

Thank you for your time.

Katherine Scott

I'm appalled that this permit is even being considered.

Seriously?

Why would we trust Cooke Aquaculture now in view of their criminal past actions and the lies they told?

Mitigations may be made, good intentions may be promised, but pollution remains inevitable and when their freak fish escape again into our waters the damage will be done.

Wendy Feltham

I have heard that Cooke Aquaculture hopes to switch from raising non-native salmon to steelhead trout in Puget Sound. I am writing strongly opposed to permitting Cooke Aquaculture to raise any kind of fish in their net pens or any other pens. Despite the addition of requirements to (hopefully) stop fish from escaping, that cannot be guaranteed. Additionally, the inadvertent release of food, waste from the food, antibiotics, and decayed nets into the sea will only cause harm to the fragile ecosystem, including our native wild fish. Past practices by Cooke Aquaculture terrify me, as our top priority should be to protect our local waters and environment.

Ben Bauermeister

Cooke does not have a reputation of being a good actor in this field. Their pens have collapsed, their pollution above regulated levels, and their responsiveness slow and recalcitrant. I believe that their application should be denied based on past infractions.

Susan Alotrico

I do not support this project and neither can they prove it will be safe. Farmed invasive species are already in the Salish seas from failed net pens. How wild species will survive interacting with farmed species is not known and I don't believe it serves the native fish. I stand with the Wild Fish Conservancy, Center for Biological Diversity, Center for Food Safety and Friends of the Earth that argue allowing Cooke Aquaculture to raise steelhead in floating net pens would jeopardize the region's wild steelhead, salmon and endangered Southern Resident orca whales. I agree that "Puget Sound steelhead, including those from the Skagit River, have been listed as threatened under the federal Endangered Species Act since 2007." Furthermore, Cooke has a bad track record, "In August 2017, one of the company's farms near Cypress Island in Skagit County collapsed under the weight of debris the company neglected to clean off, and the majority of the 300,000 fish in that net pen escaped." ...these quotes take from The Columbian article:
<https://www.columbian.com/news/2020/feb/13/groups-sue-washington-wildlife-agency-over-steelhead-farms/>

I vote NO!

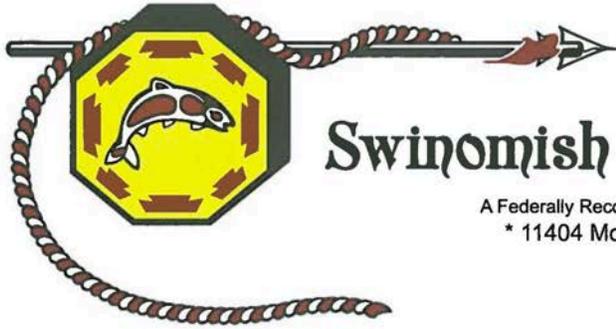
Austin Franklin

I fully support the Cooke Aquaculture NPDES permit modification to change the species being raised in net pens. I believe they are trying to do things the right way and are making their operations as transparent as possible. The DOE is providing oversight and will be closely monitoring Cooke's water quality reports. All water quality testing must also be done by a DOE approved laboratory. The community should allow Cooke the opportunity to prove net pen operations can be done in a sustainable and environmentally safe way.

Janet Alderton

I am dismayed that public comments opposing aquaculture of finfish in confined feeding operations in our marine waters do not appear to have any effect on whether such negatively impactful projects are allowed to go forward. I agree with all the comments submitted by the Swinomish Indian Tribal Community that oppose just such a concentrated feeding operation being carried out immediately off-shore of their land. I have attached their comments. It is clear to me that the proposed steelhead rearing operation could be more safely carried out on land -as proposed in the Swinomish comments. But this would not solve all the negative impacts, including the problem that such finfish concentrated rearing facilities will feed the steelhead food derived from smaller fish species in the marine food web. This disrupts the marine food chain for salmon and other threatened and endangered animals.

Must further legislation be adopted to specifically ban this new misguided proposal?



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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

June 8, 2020

Ms. Laura Watson, Director
WA Department of Ecology
Via email: lnie461@ecy.wa.gov

Re: Cooke Aquaculture Pacific, LLC NPDES permit modification application

Dear Director Watson:

Thank you for the opportunity to review the request for a NPDES permit modification submitted by Cooke Aquaculture Pacific, LLC (Cooke) for its proposal to rear domesticated native Rainbow trout/Steelhead at the Hope Island net pen facility. Cooke's proposal to rear 350,000 domesticated native Steelhead poses new and different risks than rearing non-native Atlantic salmon. After reviewing the NPDES application materials that Cooke submitted to the Department of Ecology (Ecology), we believe it is necessary for Ecology to engage in a new permit process that includes new SEPA threshold determination and a public hearing. We have a number of concerns with Cooke's NPDES permit application, about which we offer the following comments.

Introduction

The Swinomish Indian Tribal Community is a present-day successor in interest to the tribes and bands that signed the 1855 Treaty of Point Elliott ("Treaty") with the United States. One of the core rights reserved by the Treaty is the Tribe's right to fish in our adjudicated usual and accustomed fishing areas (U&As) in and around the Skagit River system, the Samish River system, and marine waters in northern Puget Sound. *United States v. Washington*, 459 F. Supp. 1020, 1049 (1975). The Swinomish Tribe and WDFW are co-managers of fisheries and fisheries

resources within western Washington and the Tribe's right to take fish under the Treaty of Point Elliott is a legally protected interest.

The Tribe's reservation is located on Fidalgo Island in northern Puget Sound, in Skagit County, Washington. The reservation's southern boundary is the north fork of the Skagit River, which is the only river in Washington that still supports six species of wild salmon. The DNR aquatic lands lease for Cooke's Hope Island net pen contains an official survey showing the lease area to be approximately 1,010-feet wide and 1,358- feet long, or approximately 31.5 acres. According to a January 2018 engineering inspection report of the Hope Island net pen facility, that structure is currently comprised of ten (10) 26-meter square net pen cages, as well as a feeding shack, walk ways and other infrastructure around the periphery of the facility. These cages were installed in September 2010, and have a lifespan of 10-15 years. The 2018 inspection report's Attachment A contains plans and drawings of the net pen structure showing that the net pen cages, facility, anchors and anchor lines expand across an area approximately 787- feet long 700-feet wide, or extending coverage over 12.65 acres.

Since time immemorial, the Tribe has lived, hunted, fished, and gathered in and around the Skagit River basin, the Samish River basin, and marine waters in northern Puget Sound. Anadromous fish, and particularly salmon, have played a central role in the Tribe's subsistence, economy, culture, spiritual life, and day-to-day existence. For thousands of years, our homeland contained no impediments to the Tribe's ability to fish and gather shellfish throughout our adjudicated U&As. Historically, much of the Swinomish Tribe's subsistence needs were met through fishing and shellfish gathering in and around the Skagit River basin, the Samish River basin, and marine waters in Skagit Bay. The Bay is historically and currently an important fishing place, both because it is where the mouth of the Skagit River meets Puget Sound, and because of its extremely close proximity to the Swinomish Reservation, making for ease of access by the Swinomish Tribe's fishing fleet. Tribal fishers have fished Skagit Bay and throughout the San Juans, for a variety of fish or shellfish species, including Chinook, coho, steelhead, halibut and Dungeness crab. Lone Tree Point on the Swinomish Reservation and directly across from the Hope Island net pen, has historically been a place for tribal members to gather in the summer, with the beach at Lone Tree Point serving as a fishing village with fishing shacks lining the beach with unimpeded views and access.

Tribal leaders want to ensure that their grandchildren and seven generations from now have the opportunity to fish in the same way that they have for decades and to restore the cultural import and use of Lone Tree Point. The Swinomish Tribe's Treaty Rights, and the cultural, historic and subsistence significance of Lone Tree Point depends, in large part, on salmon have clean waters that are free from chemicals or other introduced man-made substances.

Pursuant to WAC 173-220, no pollutants shall be discharged to any surface water of the state from a point source, except as authorized by an individual [NPDES] permit.¹ All discharges authorized by a NPDES permit shall be consistent with the terms and conditions of the permit.² Discharge of pollutants not expressly authorized by the NPDES permit is prohibited. The permit holder must report discharges and will be subject to CWA violations and penalties for discharges not covered under the permit.

Permits are issued for a fixed term not to exceed five years.³ During the five-year permit term, the facility's effluent discharge conditions may change from those conditions reported in the permit application and the permit holder must notify Ecology if significant changes occur constituent with 40 C.F.R. § 122.42(a). Any facility expansions, production increases or process modifications which would result in new or increased discharges of pollutants causing effluent limitations in the permit to be exceeded must be reported to the department by submission of a *new* application or supplement thereto; or, if such discharge does not violate effluent limitations specified in the permit, by submission to Ecology notice of such new or increased discharges of pollutants.⁴

Ecology's stated role is to consider how the proposed new species effects the discharges from the operation and what is required to protect water quality as a result. It is Ecology's duty to ensure that discharges will not endanger human health or the environment.⁵ It would be appropriate for Ecology to consider the availability of land-based, environment-controlled aquaculture systems and compare the water quality discharges from land-based aquaculture operations to the those proposed in Cooke's NPDES permit application. The reality is that the technology exists, and it is commercially viable, to grow fish in land-based, environmentally

¹ WAC 173-220-020.

² WAC 173-220-150(a).

³ WAC 173-220-180(1).

⁴ WAC 173-220-150(b).

⁵ WAC 173-220-150(d)(iv).

sustainable farms.⁶ As a result, *there is simply no reason to continue allowing concentrated animal feeding operations that emit hundreds of thousands of pounds of fish feces, fish food, dead fish, and antibiotic-laced food into ecologically sensitive marine areas and designated critical habitat – particularly at the mouth of the Skagit River.*

As you may know, Demographically Independent Populations (DIPs) of both Skagit River Steelhead and Chinook are listed under the Endangered Species Act. Cooke’s net pen proposal to rear 350,000 domesticated native Rainbow trout/Steelhead presents a host of new, potentially adverse water quality impacts. These potential adverse impacts include antibiotic treatments for diseases like Rainbow trout fry syndrome, which has no vaccine but is pervasive. Adverse impacts also include the potential for increased spilled fish food, which acts as chum for native wild fish, attracting predatorial pinnipeds and birds, caused by an overall higher number of individual fish in the net pen facility.

An additional important point to note at the outset is the age of Cooke’s Hope Island facility. According to DNR Aquatic Lands Net Pen Lease for Hope Island, Cooke’s net pen cages were replaced in 2010 and have “an average expected service life of approximately 15 years.”⁷ Given that the Hope Island net pen cages are entering the last one-third of their life expectancy, we believe it is necessary for Ecology to impose more stringent below-surface inspection requirements for this cage if a permit modification were granted. We address this concern in more detail in Section 2.B.

To protect water quality, human health and the environment from pollution emanating from Cooke’s Hope Island net pen facility, Ecology must analyze and address specific concerns including but not limited to the fact that Cooke has submitted an:

1. Incomplete and Deficient Pollution Prevention Plan, including Unaddressed Adverse Impacts on Water Quality and Ecosystem Health from Antibiotic Use.
2. Incomplete and Deficient Fish Escape Prevention Plan.
3. Incomplete and Deficient Fish Escape Response and Recapture Plan.

⁶ For example, AquaCare Environment is a company based in Bellingham, WA that “was established in 1987 dedicated to developing and marketing cost-effective equipment and systems for modern, intensive land-based fish farming.” www.aquacare.com

⁷ DNR Aquatic Lands Net Pen Lease 20-B12356, Exhibit B, p. 2.

Additionally, we believe that, given Cooke's history of Clean Water Act and NPDES permit violations, including –

- the 2017 catastrophic net pen collapse at Cypress Island that released over 200,000 non-native Atlantic salmon,
- the summary judgment ruling against Cooke on April 26, 2019 for Clean Water Act and NPDES permit violations, and
- the Orchard Rocks net pen facility partial sinking incident in late October 2019,

that Ecology must take Cooke's history of permit violations into account as it considers how to handle this application.

Specifically, Cooke has lost any benefit of the doubt that it may have once enjoyed due to its failures to follow basic procedural safeguards in prior NPDES permits. The stakes could not be higher for protecting water quality in Skagit Bay, and a worst-case scenario analysis for ESA-listed Steelhead and Chinook must be included in Ecology's water pollution calculus. Given these concerns and the new information in Cooke's NPDES permit application as highlighted below, we believe that Ecology should engage in its own SEPA analysis under RCW ch. 43.21c.

Ecology should engage in its own SEPA analysis because (1) Cooke's Pollution Prevention Plan is incomplete and deficient, (2) Cooke's Fish Escape Prevention Plan is incomplete and deficient, and given Cooke's history of non-compliance should have more accountability measures, (3) Cooke's Fish Recovery and Recapture Plan is incomplete and deficient, and (4) New Tier II analysis should be required in accordance to Washington's Antidegradation Policy.

The new information contained in Cooke's NPDES permit application materials was not included as part of Department of Fish & Wildlife's (WDFW) SEPA analysis. In order for Ecology to perform its duty to ensure that discharges will not endanger human health or the environment, it must take a thorough analysis of Cooke's application and should engage in its own SEPA analysis to determine if the NPDES modification without a new threshold determination. Some of the new and/or deficient information provided by Cooke in its NPDES permit application materials includes, but is not limited to, the following.

1. Incomplete and Deficient Pollution Prevention Plan

A Permittee is required to develop and implement a pollution prevention plan under WAC 173-221A-110(4)(c).⁸ The plan must contain operating, spill prevention, spill response, solid waste, and stormwater discharge practices to prevent or minimize the release of pollutants from the facility to the waters of the state.⁹ A Permittee is required to submit the plan within six months of permit issuance, and review the plan at least annually. If changes occur, the permittee must update the plan and inform Ecology.

The pollution prevention plan must address how solid and biological wastes are collected, stored, and ultimately disposed of at an upland facility. Solid wastes of concern for marine salmon net pens include fish mortalities under normal operations, fish mortalities due to a fish kill involving more than five percent of the fish, blood and waste from harvesting operations, and sanitary waste and operational debris.

The draft pollution prevention plan submitted by Cooke in the 2020 application does not address changes in procedure related to raising native domesticated trout/steelhead. Therefore, it is likely the pollution prevention plan does not take into consideration any differences involved in native steelhead versus Atlantic salmon. The permit modification application states that Cooke is in the process of updating the pollution prevention plan, spill prevention control and response plan, and fish escape prevention plans, which will be submitted to Ecology and WDFW. None of the drafts mention steelhead or address differences in steelhead versus Atlantic salmon, and Ecology should not grant the permit until it closely examines the differences.

A. Increased Numbers of Fish Equals More Fish Food, Antibiotics and Fish Feces

Cooke states that growth projections for the triploid steelhead stock and the smaller targeted average harvest size may shorten the saltwater growth cycle by several months in comparison to Atlantic salmon. Yet when comparing the 2020 NPDES permit modification application to the 2017 NPDES permit application, the pounds of fish and pounds of food is estimated to be the same or greater in the 2020 application compared to the 2017 application. If steelhead are harvested at a smaller size than that of Atlantic salmon, then to achieve the same poundage rate, more fish would need to be in the net pen. If that is true, then more feed and antibiotics will be required. This, in turn, will result in more discharge of fish feces. Given harvest size for steelhead is different from that of Atlantic salmon, Ecology should expect

⁸ The Permittee is also required to review, update, and maintain a fish escape prevention plan and a Fish Escape Reporting and Response Plan in compliance with WAC 220-370.

⁹ WAC 173-221A-110(4)(c)(i).

discharges to be greater for raising steelhead versus Atlantic salmon and therefore should take this into consideration when evaluating the permit modification application.

The information provided by Cooke about fish feed consumption rates and the amount of excess feed spilling out of the net pen facility is indeterminate. Section 4 of the pollution prevention plan states that:

4. "... The feeding strategies prioritize the minimization of uneaten food, thus minimizing the amount of food that falls through the cages and onto the ocean floor below. Cooke has developed Feeding Strategies to provide standards for the initial startup feeding of new smolts when they arrive on site, the size of the feed pellets, the duration time of the feeding process and the types of feed diets. As the fish grow, the Site Managers will adjust the feeding schedules ..."

This language is well-intentioned but insufficient for purposes of a NPDES permit. Cooke provided an estimate of the monthly fish feed at maximum production.¹⁰ It should be required to provide an estimate of the amount of feed that is uneaten. This uneaten fish food that falls through the net pen into surrounding waters is a recurring discharge that also serves as chum to attract native fish, as well as predatorial birds and pinnipeds. Until Ecology establishes with reasonable certainty the amount of fish feed released from the net pen facility, it cannot perform an adequate assessment of the adverse impacts to water quality, human health and the environment.

Further, there is no mention in Cooke's application materials about the differing feed conversion rates between domesticated Atlantic salmon and rainbow trout. Generally speaking, science has shown Atlantic salmon to be generally more efficient at converting feed to biomass than trout, the latter being more variable in feed conversion rates and more susceptible to environmental controls (temperature and salinity) on growth.¹¹ As such, more feed is likely to be needed for trout/steelhead, which would produce more waste into the marine environment. Even though this issue is not addressed in the NPDES permit modification application Ecology should consider how the new species would increase the level of discharges.

¹⁰ Cooke January 2020 NPDES permit application, p. 9.

¹¹ Jillian P Fry *et al* 2018 *Environ. Res. Lett.* **13** 024017. <https://iopscience.iop.org/article/10.1088/1748-9326/aaa273/meta>

B. Antibiotic Harms to Aquatic Life and Human Health

Ecology determined discharges may contain chemicals of concern for human health, specifically federally-approved antibiotics for fish.¹² Antibiotics have the potential to create antibiotic resistant bacteria in the sediment, and that resistance could be transmitted to human bacteria. Antibiotics are widely found in surface waters across the country,¹³ and they cause known, antimicrobial-related adverse effects on both wildlife and human health at the pollution levels currently found in our waterways.

1. Harm to Aquatic Wildlife

In a recent nationwide study of stream sites, maximum antibiotics concentrations ranged from 12 nanograms per liter up to 1.8 micrograms per liter (parts per billion), with many sites hosting multiple antibiotics.¹⁴ Concentrations of just 0.5 micrograms per liter have been shown to change aquatic microbial communities.¹⁵ One risk of these microbial changes is that the antibiotics suppress beneficial bacteria in the water, thereby harming aquatic organisms that rely on healthy levels of “good” bacteria.¹⁶

Furthermore, the presence of antibiotics in the water has led to increases in the growth of antibiotic resistant bacteria in surface waters. Studies have found that aquatic organisms also contain these antibiotic resistant bacteria. For example, studies of orcas in the Salish Sea have found antibiotic resistant bacteria in orca blow (respiratory exhalation) and feces.¹⁷ In the orca feces study, 100% of samples showed resistance to at least one antibiotic, and over 70% of samples showed resistance to multiple antibiotics.¹⁸

There is a commonly occurring disease in farmed rainbow trout at the fry, fingerling and juvenile life stages requiring the use of anti-biotics because there is no vaccine.¹⁹ *Flavobacterium*

¹² Hope Island Net Pen Fact Sheet 08-10-19

¹³ Bradley, Paul M et al. “Expanded Target-Chemical Analysis Reveals Extensive Mixed-Organic-Contaminant Exposure in U.S. Streams.” *Environmental science & technology* vol. 51,9 (2017): 4792-4802, at 4799.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ James P. Meador et al., *Contaminants of Emerging Concern in a Large Temperate Estuary*, ENVIRONMENTAL POLLUTION 264 (2016), at 263.

¹⁷ Sara L. Potter, *Antimicrobial Resistance in Orcinus Orca Scat: Using Marine Sentinels as Indicators of Pharmaceutical Pollution in the Salish Sea*, Thesis for The Evergreen State College at 78 (Dec. 2013).

¹⁸ *Id.* at 78.

¹⁹ Nejdet Gultepe and T. Tansel Tanrikul, 2006. Treatment Methods of *Flavobacterium psychrophilum*: Cause of Rainbow Trout Fry Syndrome (RTFS) and Bacterial Cold-water Disease (BCWD) in Turkey. *Journal of Fisheries International*, 1: 102-105.

psychrophilum is the causative agent of Rainbow Trout Fry Syndrome (RTFS).²⁰ Both living and dead fish can be a source for the bacterium but “dead fish show a higher rate of bacterial release into the surrounding water.”²¹ The principal infection control measure is to administer the antibiotic florfenicol, which is one of the three anti-biotics listed for use by Cooke.²²

Despite the legal framework of Washington’s water pollution control laws, dilution of point source pollution emanating from a marine-based concentrated animal feeding operation is still seen as the solution to pollution, regardless of the impacts on known ESA-listed fish. Ecology must consider a worst-case scenario for the use of antibiotic medicated feed and extra-precautions taken to find diseased fish, treat diseased fish, and regularly dispose of dead fish.

2. *Harm to Human Health*

Aside from potential concerns about humans consuming low levels of antibiotics in their drinking water, aquatic antibiotic pollution poses the most substantial health threat to humans because it increases the rate of antibiotic resistance. At least two million people are infected with antibiotic-resistant bacteria in the U.S. each year, and 23,000 of those individuals die from the infection.²³ Studies have linked pharmaceutical water pollution to the growth of antibiotic resistance, including a recent EPA study which found that current antibiotic levels in water could inhibit some naturally occurring and potentially beneficial bacteria and trigger some antibiotic resistance.²⁴ One example of this link is provided by the common antibiotic ciprofloxacin, a drug that was recently found at about a quarter of studied stream sites across the country at concentrations up to 400 nanograms per liter.²⁵ Ciprofloxacin has been found to select for resistant bacteria at levels of only 100 nanograms per liter (parts per trillion) – well below the levels actually found in the recent nationwide stream site study.²⁶ Therefore, studies have already demonstrated that the current levels of aquatic antibiotic pollution are contributing to increasing levels of antimicrobial resistance.

²⁰ Bebak JA, Welch TJ, Starliper CE, Baya AM, Garner MM. Improved husbandry to control an outbreak of rainbow trout fry syndrome caused by infection with *Flavobacterium psychrophilum*. *J Am Vet Med Assoc*. 2007;231(1):114-116. doi:10.2460/javma.231.1.114.

²¹ <https://thefishsite.com/articles/rainbow-trout-fry-syndrome-rtfs-explained-1>

²² Cooke Aquaculture Pacific, LLC NPDES Permit Modification Application, pdf p. 10.

²³ Centers for Disease Control and Prevention, Antibiotic/Antimicrobial Resistance, <https://www.cdc.gov/drugresistance/>.

²⁴ See, e.g., Meador et al., *supra* note 16.

²⁵ Bradley et al., *infra* note 6 at 4799.

²⁶ *Id.*

3. *Bioaccumulation of Pharmaceuticals*

Pharmaceuticals have a high potential to bioaccumulate through the aquatic food chain, with corresponding adverse impacts for aquatic and non-aquatic species alike. Even non-aquatic species that eat fish or insects can be harmed by the bioaccumulation of pharmaceutical pollution in water.

The concern that scientists have been underestimating levels of contamination in fish was reinforced in a more recent study of 150 contaminants of emerging concern in three estuaries in Puget Sound, two of which receive effluent from waste water treatment plants (WWTPs).²⁷ The study analyzed the levels of these emerging contaminants (including pharmaceuticals) found in wastewater effluent, estuarine water, and two species of fish: Pacific Staghorn Sculpin and juvenile Chinook.²⁸ The fish in this study had higher levels of contamination than would be expected based solely on the levels of contamination present in the estuarine waters, suggesting there were either upriver sources of contamination in addition to the wastewater effluent or bioaccumulation impacts through the food web, or both.²⁹ Additionally, the authors noted that there is a larger potential for bioaccumulation in water with a higher than neutral pH, such as marine waters.³⁰ In all, forty-two contaminants were found in fish tissues, including nine contaminants which were absent from both the wastewater effluent and estuarine water samples.³¹ Importantly, juvenile Chinook had significantly higher levels of contamination than the Pacific Staghorn Sculpin, perhaps because of their high rates of ingestion and gill ventilation.³² Therefore, some species such as Chinook may be especially vulnerable to pharmaceutical bioaccumulation. This variability in bioaccumulation rates between species, as well as the variability in bioaccumulation rates between specific contaminants, underscores the need to protect aquatic wildlife from foodweb magnification of pharmaceutical pollution.

In sum, bioaccumulation is likely occurring from the existing discharges and with the anticipated increase in fish and feed involved in raising steelhead bioaccumulation is likely to increase. The true amount of pharmaceutical pollution in Puget Sound is relatively unknown, and during a time when disease is causing a national pandemic, Ecology should be extra cautious

²⁷ Meador et al., *infra* note 16.

²⁸ *Id.*

²⁹ *Id.* at 263.

³⁰ *Id.* at 263.

³¹ *Id.* at 258.

³² *Id.* at 263.

when evaluating increased discharges of antibiotics under Cooke’s NPDES permit modification application.

C. New Fish Mortality Information

Cooke’s pollution prevention plan includes new quantitative fish mortality information that was not provided by Cooke to WDFW in its SEPA materials. It is unclear whether this significant new information is based on Atlantic salmon mortality. The new fish mortality information includes the following.

- a) Expected average monthly fish mortality at the Hope Island net pen is 5,000 pounds of fish biomass, or 0.17% of the total 2,800,000 lbs of annual fish biomass that Cooke expects to rear at Hope Island.
- b) These dead fish are collected three times per week by divers, except in the event of adverse weather conditions, and disposed of in landfills or compost facilities.
 - It is unclear from Cooke’s application what happens when divers are not able to retrieve the dead fish – if are they left to decay at the bottom of the net pen, what is the maximum threshold for this type of pollution discharge?
- c) Divers make what amounts to an educated guess by noting the “presumed cause of death” in their weekly reports as to the cause of the fish mortality, yet no specimens are required to be sent to a lab facility for testing.
 - Is this what Cooke considers as having a “licensed veterinarian monitor the health of fish stocks raised at the facilities” as referenced in the plan’s section 5.2?
 - Why are these fish not regularly tested at a lab for diseases, pathogens and parasites?
 - What exact training to staff have to diagnose the cause of death for several thousand pounds of fish mortality each week?
- d) The WA Department of Health (DOH) is only notified when a “large mortality event” occurs, defined as 5% mortality (140,000 pounds of fish biomass) in a one-week period. This is 28-times more than the “average” expected weekly mortality rate, but there is no information or explanation provided for why DOH notification is not required until an event of such magnitude occurs.

- Stated another way, why does an event that is 5- or 10-times the normal mortality not require DOH notification?
- Is a lower threshold for DOH engagement appropriate given the potential for disease in a net pen to infect native wild Steelhead?
- What is the plan for handling a medium-sized or large mortality event when inclement weather prevents divers from retrieving the dead fish?
- There do not appear to be notice requirements to the Tribes – why not?

- e) With respect to section 5.2, it is unclear from the plan under exactly what circumstances Cooke would engage a licensed veterinarian. Section 5.2 reads:
A licensed veterinarian monitors the health of the fish stocks raised at the facilities. The veterinarian is used to identify the type of pathogen causing disease and the effective course of management to control the pathogen.

The claim that a licensed veterinarian “monitors the health of fish stocks” is contradicted by other statements in Cooke’s permit application. If Cooke is not required to regularly test the weekly batches of dead fish, then it seems that a veterinarian is not “monitoring” the health of the fish stock, particularly if a veterinarian does not engage until a massive fish mortality event. All indications are that it is up to technicians with completely unknown or unquantified technical training to make judgment calls about fish mortality. If veterinarians actually do “monitor” the health of fish stocks at a net pen facility, what specifically does this entail, how often do they consult with local staff, what tests are run and under what circumstances?

- f) With respect to section 5.3, the words in Section 5.3 are phrased more as a goal rather than permit conditions. It fails to state specific steps that Cooke will take to ensure the minimization of medicated feed into the environment. Section 5.3 reads:

5.3 Site Managers are responsible for the administration and keeping records of disease control chemicals used at the facilities. Site Managers work closely with the attending veterinarian to ensure that medicated feed is administered appropriately and used in a manner that minimizes the discharge of uneaten medicated feed into the environment.

Ecology needs to include some measure of quantification to direct this, rather than granting Cooke this vague, discretionary decision-making authority. Why aren't there additional requirements imposed to protect water quality from medicated feed, like an additional net, or pumping out each net pen cage of fish to treat them on land? The prevalence of antibiotics and potential adverse impacts to native wild Steelhead must be taken seriously. These are basic questions that are not answered in Cooke's pollution prevent plan and for which we request an in-depth analysis as part of SEPA review and/or a full permit modification process.

2. Fish Escape Prevention Plan

This plan is dated January 27, 2020, was not included with Cooke's permit application to WDFW, and as submitted is incomplete and deficient. Cooke's escape prevention plan must be reviewed in the context of Cooke's previous Clean Water Act and NPDES violations.

A. Cooke is Not a Trustworthy Permit Operator

Any NPDES permit can be revoked or modified in whole or in part during its terms for: violation of any term or condition of the permit; obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or a determination that the permit activity endangers human health of the environment, or contributes to water quality standard violation.³³ The department shall modify or revoke permits only after public notice and opportunity for public hearing in those instances where changes are proposed which lessen the stringency of effluent limitations.³⁴

The state agency report on the investigation into Cooke's August 19, 2017 catastrophic net pen failure is damning. The report highlights outright lies and misinformation that Cooke told state agency officials and tribal governments. The 2018 investigation report found, among other things, that:

- The "probable cause of both the July incident and the August failure was the failure of Cooke to adequately clean the nets containing the fish."³⁵

³³ WAC 173-220-150(1)(d); WAC 172-220-190.

³⁴ WAC 173-220-190(3).

³⁵ 2017 Cypress Island Atlantic Salmon Net Pen Failure: An Investigation and Review. WA Departments of Ecology, Fish & Wildlife, and Natural Resources. January 30, 2018. P. 6.

- “Cooke did not provide accurate and complete information to the state about the July incident. Consequently, the state agencies did not investigate further.”³⁶
- “In August and September, Cooke reported harvesting/extracting 145,000 fish from the collapsed net pen. The Panel (of state agency investigators) concluded that Cooke could only have extracted 42,000 to 62,000 fish, 43% of what Cooke reported.”³⁷
- “The Panel estimates that between 243,000 and 263,000 fish actually escaped. Previous estimates, based on Cooke’s reports, put that number at 160,000 fish.”³⁸
- “Of the escaped fish, 57,000 have been caught (recovered). Between 186,000 and 206,000 Atlantic salmon remain unaccounted for.”³⁹
- “Cooke removed the surface portions of the net pen by September 24. Although Cooke stated by letter that it had removed all debris from the bottom of Deepwater Bay, an inspection by DNR on October 27 showed that substantial debris remained. DNR required further cleanup that lasted into January 2018.”⁴⁰

On October 20, 2019, there was an incident at Cooke’s Rich Passage net pen facility where a corner of the facility became partially submerged as a result of Cooke’s inaction. Cooke failed to adhere to regulatory provisions in its fish escape prevention plan that were specifically enacted in response to Cooke’s net pen failure in 2017. While the investigation was ongoing, Ecology issued a letter dated October 25, 2019 that directed Cooke to review the provisions of its escape plan, and in particular, pointed out “that one technology to minimize fish escapement is the routine repair and maintenance of cage structures and mooring equipment, individual actions of which you (Cooke) outlined in the plan. From the lesson learned in the boat collision at Clam Bay in November 2018, Cooke was expected to use the Emergency and “Unusual Events” Call Down List to phone agency staff of an unusual event.”

Apparently neither of these things occurred as they were supposed to. In the end, no action was taken against Cooke despite the determination that the Cooke’s Orchard Rocks

³⁶ Id. At p. 8.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

facility did experience an “unusual event”⁴¹ and that there was significant repair work needed to fix two of the net pen facility pontoons that keep the cages and structure afloat.⁴² The reality is, Cooke waited and watched the Orchard Rocks facility slowly sink for multiple days before it took any action, and when it did act, it sent emails rather than making a simple phone call.

From the Swinomish Tribe’s perspective, it is clear that Cooke has lost the confidence of the public to be a trustworthy steward of our marine waters. Most of the new regulations enacted in 2018 by state legislature rely on unbiased self-reporting. Ecology needs to consider Cooke’s continued failure to comply with permit conditions in assessing whether Cooke will actually implement the permit conditions it may impose. Because Cooke has shown repeatedly that it is not capable of being a trustworthy, reliable net pen operator, the presumption on this critical question should go against the applicant. More than a listing of permit conditions is needed. Ecology must also assess whether Cooke should be granted the privilege of operating in Washington’s waters. An unbiased review of the track record supports denial on that basis alone.

B. Deficient Notification Provisions

Cooke’s draft escape prevention plan relies on a deficient threshold for notification to state agencies and tribal governments, and there are no procedures listed for monitoring the implementation of the plan components as required in WAC 220-370-110 (1)(e). The “Responding to Structural Integrity Emergencies” of Cooke’s escape prevention plan states in Section 2.1 that:

Cooke facility staff who observe an actual or potential structural integrity issue that poses an imminent risk of structural collapse and the release of fish into the environment shall implement the following procedure:

This section sets out the threshold for when Cooke’s staff must invoke the internal chain of emergency calls and then calls to state agencies and tribal governments, but the threshold is far too high. It is unacceptable to allow Cooke - particularly given the recent partial sinking of the net pens at Cooke’s Orchard Rocks facility – to make a unilateral judgment call about when and whether it believes there is an “imminent risk of structural collapse” before invoking the

⁴¹ October 2019 Unusual Event Summary, Orchard Rocks South, Rich Passage Atlantic Salmon Farm Operated by Cooke Aquaculture Pacific, Version 10/301/19.

⁴² Assessment of Orchard Rocks SE pontoon repair, DSA, by Colin Wilson, Peng, Nov. 21, 2019.

notification provisions of the Prevention Plan. Cooke's judgment cannot be relied upon or trusted.

The specific trigger for invoking notification to state agencies – Ecology, WDFW and DNR – should be much lower; in order to meet Ecology's duty to protect water quality and prevent ecological harm, Cooke cannot be trusted to self-regulate any longer. There is simply no basis for that given its past behavior. There must be unequivocal language that would require Cooke staff to initiate emergency notification procedures at the outset of any potential emergency or unusual situation, regardless of whether Cooke believes it poses an imminent risk of structural collapse. This is particularly important in light of Cooke's failure to follow procedures last October with the Orchard Rocks net pen incident, as documented by Ecology in its October 25, 2019 letter.

C. Net Pen Life Expectancy

As noted above, the DNR lease clearly states that the existing net pen cages were replaced in late summer 2010, and that they have a life expectancy of approximately 15 years. Section 9.4 of the plan contains an error by stating that Cooke's "cage systems may have a life of 20 years" when the facts do not support that statement. Given age [10 years] and life expectancy of net pen cages [10-15 years] more frequent below surface inspections should occur for the entire mooring system, marine engineering inspection, and ultrasonic surveys if in fact Cooke is ultimately granted a new or modified NPDES permit. More frequent inspections are especially important and necessary considering Cooke's 2017 and 2019 net pen failures. Cooke's failure to increase monitoring inspections given the life expectancy is another example of the plan's deficiency.

3. Fish Escape Reporting and Recapture Plan

Cooke's Recapture Plan, dated January 27, 2020, was not included with Cooke's permit application to WDFW and is an incomplete and deficient plan as submitted. It contains multiple sections that raise concerns, including fish recapture procedures that purport to rely extensively on tribal fishermen and tribal fishing vessels despite a complete lack of communication from Cooke on this matter.

The recapture procedures in Cooke's recapture plan apparently conflict with statutory requirements. WAC 220-37-120 unequivocally states, "[i]t is the responsibility of aquatic farmers to report an escape of marine finfish and to attempt to recapture escaped fish." However, Cooke's recapture plan grants Cooke's Emergency Management Team full discretion regarding

the order in which it proceeds to secure the net pen site, all the while feral fish are escaping.

Section 4.1 on the recapture procedures states that:

4.1 Recapture Procedures In the event of a catastrophic structural failure of the equipment, securing the net pen structure may be necessary in order make the site safe for employees and subsequent fish recapture actions. The safety of Cooke employees and contractors takes priority over fish recapture. This determination is made at the discretion of Cooke EMT.

While the safety of human life is undoubtedly a priority, securing the net pen should happen *simultaneously* with the emergency notification and recovery of feral fish, not afterward, and not at the discretion of Cooke.

Section 4.1 goes on to state that:

The next priority is to determine and attempt to correct the cause of the accidental fish release by repairing the breach or implementing some form of secondary containment, if possible.

Cooke EMT maintains an Emergency Work Vessel Contact List. The contact list is provided in Appendix B. The Permit Coordinator will update this list annually. The operators of emergency work vessels will keep Cooke apprised of changes in personnel or contact information.

This last provision is problematic both procedurally and substantively. Cooke should be required to keep a list of willing vessel owners who have agreed ahead of time to be on call to come under contract at a pre-arranged and agreed upon rate and terms. In the event of another net pen failure, there is no time for contract negotiations. Further, Cooke should not be allowed to require work vessels to have to update their information to Cooke – this responsibility should rest solely with Cooke.

Section 4.1 Recapture Procedures continue as follows:

Upon receiving authorization from WDFW, the Cooke EMT will commence recovery of escaped fish through one or more of the following actions:

- a. Deploying Cooke skiffs and seine nets to recapture escaped fish.
- b. Contacting the Northwest Indians Fishery Commission and nearby tribal Natural Resource managers to help facilitate the recapture of escaped fish.
- c. Contacting and engaging the services of local vessels of opportunity to facilitate the recapture escaped fish.

We believe it would be imperative that Cooke engage in all three of those actions simultaneously, and that WDFW, Ecology, DNR and the affected tribal governments work together in making these decisions. Cooke should have no discretion in making these types of important decisions that would impact fishery resources.

Section 4.2 addresses recapture vessels, gear, and methods, and includes that:

Cooke will work with nearby tribes to review appropriate fisheries and gear types and identify the key natural resource contacts in the areas near each of the marine net pen farming locations. The tribal contact list is presented in Section 2.

This is a huge assumption on the part of Cooke. In essence, they are relying on tribal fishery expertise, boats and gear, yet have not approached anyone at the Swinomish Tribe about this potential. Thus, we are a cornerstone of Cooke's recapture plan yet they do not believe it is important to start by asking whether and how we may want to engage with them in these efforts.

Section 4.2.2 discusses potential contractor equipment, yet contains a fundamental error.

Commercial fishing contractors can employ the following methods of capturing and removing fish:

1. Purse seining - These vessels allow the nets to be gathered and the captured fish to be pumped onto a harvest vessel using the vacuum pump.
2. Gill netting – These vessels capture fish by encircling them with nets that the fish become tangled in. This method is effective if the fish are within the size range that gill-net vessels target. Target fish size for most gillnets is between three pounds and 15 pounds.

According to Swinomish Tribe fishermen, only gill netting, and not purse seining, would work to try and recover escaped fish in Skagit Bay. This further highlights Cooke's failure to work with nearby tribes to review appropriate fisheries and gear types, although it claims that it will.

Section 7.1 discusses the reliance upon a Unified Command system in the event of an emergency. We find the provisions in this plan particularly inadequate and believe this plan is fundamentally flawed and incomplete. Cooke must ensure that Swinomish Tribe representatives are included in the Unified Command system as an equal partner and decision maker.

Finally, we respectfully request that Ecology refrains from issuing the NPDES permit for Hope Island unless and until Cooke has initiated, and has reached agreement with all parties on, the requirement in the January 21, 2020 WDFW permit to develop a "no-recovery option" for escaped fish with numerous state agencies, tribes and NOAA. The WDFW permit requirement states:

"3. It is conceivable that an attempt to recover fish after an escape event might negatively affect native Pacific salmonids more than no attempt to recover fish. Cooke is required to work with WDFW, Ecology, DNR, affected treaty tribes, and NOAA to include a no-recovery option in the 2021 Fish Escape Prevention, Response, and Reporting Plan, to be

finalized December 2020. This option should include when, where, and under what conditions a recovery effort should not be attempted. A no-recovery option would be triggered by the state, in consultation with co-managers and federal agencies for the purpose of protecting native Pacific salmonids.”

We believe it is incumbent upon Ecology to require that Cooke initiate this process and reach agreement with all appropriate state and federal agencies and tribal governments on the “no-recovery option” *prior to* any steelhead being placed in the Hope Island net pen.

4. New Tier II Analysis Required

The Clean Water Act requires that water quality standards protect existing designated uses by establishing the maximum level of pollutants allowed in surface water. Washington requires extra protections for water that is already cleaner than the standards. The Washington State Antidegradation Policy⁴³ functions to restore and maintain the highest possible quality of the surface waters of Washington. The policy applies to human activities that are likely to have an impact on the water quality of the surface water.⁴⁴

The Policy applies three tiers of protection for surface waters of the state and the proposed facilities are under Tier I. Tier I requires dischargers maintain and protect existing and designated uses.⁴⁵ Ecology must not allow any degradation that will interfere with, or become injurious to, existing or designated uses, except as provided for in chapter 173-201A WAC. Tier II review is required when a physical expansion of the facility (production or wastewater system expansions with a potential to allow an increase the volume of wastewater or the amount of pollution) or activity. New or expanded actions that are expected to cause a measurable change in the quality of the water may not be allowed unless the department determines that the lowering of water quality is necessary and in the overriding public interest.⁴⁶

In 2017 Ecology made a determination that Tier II analysis was not required because the receiving water quality constituents had not been demonstrated to be higher than the criterion designated by state water quality standards. Now that Cooke is planning to raise an increased number of fish, which is likely to lead to an increase in discharge, Ecology should make a new

⁴³ WAC 173-201A-300 - 173-201A-330.

⁴⁴ *Id.*

⁴⁵ WAC 173-201A-310.

⁴⁶ WAC 173-201A-320(1).

determination as to whether Tier II analysis is required to protect existing and designated uses of the receiving water.

Conclusion

For the foregoing reasons, we believe that Ecology should perform its own SEPA analysis to ensure the health and safety of Washington state waters and people. In doing so, Ecology must take into full account Cooke's pattern of violations of the Clean Water Act and requirements of its NPDES permits.

Thank you for your consideration of our comments and concerns. We look forward to our government-to-government consultation with you on Thursday, June 11th.

Sincerely,

A handwritten signature in black ink that reads "Amy Trainer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Amy Trainer, Environmental Policy Director
Swinomish Indian Tribal Community

John Pauli

I do not support raising of hatchery steelhead in net pens in Puget Sound in any capacity. Cooke Aquaculture and any other fish farming companies should be banned from Puget Sound permanently.

John Pauli,

President

4MSigma Corp. (VOSB--Wash St. Certified)

Cage: 0BC31

Keith Shimizu

It's stunning that Ecology is even considering permitting an operation with the history of Cooke!
Ecology and Cooke are another environmental accident waiting to happen while it allows disease and parasites to impact native marine life.

Jeff Redburn

NO NO NO....We don't need another accidental release for the fish to go up the green and everywhere else. Generate money some other way.

Laura G Medbury

I do not believe it is in the best interest of our waters or resident orcas regardless of pen raised finfish species. Discharges from pens such as fish feces, uneaten fish food, disease control chemicals milled into fish feed, biofouling organisms displaced from routine net cleaning, and escaped fish benefit no one except those who are making money on this process. We do not want penned fish farms in our waters! We oppose any fish farming especially from a company that has failed to show good stewardship of our waters.

Erik Kingfisher

I was pleased to finally see a moratorium on net pen aquaculture in Puget Sound after the 2017 incident, and I disagree with the effort to continue with net pen aquaculture, even with native species. The water quality and disease threat to the ecosystem and wild salmonids is abundantly clear, and the benefits of these net pens is not proportional to the impact they have on the public values of clean water and healthy functioning marine systems. Please reject this permit application based on the clear science that demonstrates the pollution from this kind of farming in our public waters.

Richard Ereth

I absolutely do not support ANY permit to culture Steelhead Trout in ANY LOCATION in the marine waters of the Salish Sea. PERIOD.

Paul Buehrens

The benefits here accrue largely to Cooke, and the risks accrue to the environment, and may be largely externalized to the taxpayers. There are better ways. We should be focussed on improving the environment for ALL species, not adding another risk.

Greg Abel

I have no problem with what is proposed providing it applies to all others raising fish in net pens including the state. If that is not the case I would deem your conditions unreasonable and unfair. What applies to one must apply to all.

Elizabeth Sawyer

It is unacceptable that after seeing the amount of disease and parasites affecting our wild fish that come from allowing open-net fish farms - regardless of the species - that this department would even consider opening another one. It flies in the face of science, it flies in the face of conservation, and it flies in the face of public goodwill. You are tasked with ensuring our ecosystems remain healthy, and you would risk increased sea lice infections in our already critically endangered salmon runs? Unacceptable. Deny the permits. To do otherwise is to be blind to your very mission as a department.

SARAH HANSON

I am opposed to all permits for Cooke Aquaculture in Puget Sound.

Phil Gere

Please, no net pens in Puget Sound.

Danny Beatty

Once again, I am writing in opposition of any specie change for the Puget Sound Net Pens. In fact, I am in favor of eliminating now. Past operation by Cooke Aquiculture caused a reduction (Example - Cypress Island) in the number of net pens. It also brought needed attention to the problems of net pens and set an end date to their operation. Many Wild Salmon and Steelhead river stocks are already in fragile condition. It seems unfathomable that some sort of lab developed and unnatural form of steelhead be allowed near the mouth of the Skagit River. What in the world is our Department of Ecology "scientists" thinking? Certainly not in favor of Wild Fish.

Patrick Townsend

It is shocking that Cooke would be considered for yet another net pen operation in Puget Sound following the ecological disaster they created previously. It is also shocking that WDFW and ECY would be considering another net pen operation in Puget Sound given the global trend away from these types of operations. Many countries are now banning these operations due to the negative environmental impacts. This is from Denmark:

"Saying that Denmark's coastal and inland waters have become "overloaded" with nitrogen, the country's current environment minister Lea Wermelin, recently announced that licensed fish farms will be only for land-based operations."

Reference:

<https://www.rastechmagazine.com/ireland-fisheries-chief-sees-trend-towards-onshore-fish-farms/>

Even traditional Northern European net pen operators are now moving to onshore operations to avoid the environmental impacts:

<https://salmonbusiness.com/these-are-the-leading-land-based-salmon-farms-in-the-world-right-now/>

The future for net pen and shellfish aquaculture is clearly with onshore, land-based operations. Just one facility currently in development in Florida will meet more than half the demand for salmon in the US. Washington State is in danger of becoming the dumping ground for unsustainable aquaculture operations with negative effects on our native fish populations and on our Southern Resident Killer Whale populations.

Just say No to all net pen operations in Puget Sound.

lance magnuson

Dear Ladies and Gentlemen,

I'm am unclear why we are being asked once again for comments on Cooke's change to steelhead. The evidence is clear from past performance that Cooke is incapable of successfully maintaining a farm salmonid site.

The failure of Cooke's Cypress Island farm site was based upon lack of maintenance, the inability to invest in vital infrastructure and lack of humility. Cooke's excuse was strong tides caused by the solar eclipse - really?

Changing to another salmonid (steelhead) does nothing to indicate a change in corporate culture. While the fish may be all female triploids, based upon pen density, the risk of disease is greater. If and when the fish escape (and they will escape), there is risk of these fish intermingling with native stocks and spreading disease. This is an unacceptable risk.

Cooke hides behind the Jamestown S'Klallam Tribe, using their First Nation's status as a smokescreen of corporate responsibility. Cooke is intentionally using the natives to gain sympathy for this cause. Do not fall for this ruse.

I am unable to forgive Cooke for their unmitigated disaster at Cypress Island. Cooke is a hugely profitable Canadian company, with a long history in Canada. If they want this business with steelhead to succeed, move it to Canada. The Canadians seem to be more tolerant of corporate irresponsibility.

Sincerely,

Lance Magnuson

Keith Drynan

The modifications to these permits show a progressive approach by DOE to working with a professional aquaculture company and implementing workable guidelines to ensure a high standard of operations and protection of the environment in which they operate.

After the collapse of the pens and subsequent escape of significant numbers of non native salmon in 2017 the most vocal opposition to the operation was based on the species being raised.

The move to a sterile version of a native species should be accepted as environmentally sensitive and progressive move to local high quality food production via sustainable aquaculture, providing local employment and support of other local businesses.

Shannon O'Sullivan

Are you kidding me, When are you people going to put the people and fish of this state before money. Keep the poison out of Puget sound.

Ken Wood

Cooke Aquaculture has long since proven it's utter disregard for the law and it's utter incapacity to follow regulations. There is NO WAY to raise ANY fish in a pen without concentrating pollutants and spreading parasites to wild fish. NO. JUST. NO. No pens, no permits, no Cooke Aquaculture! REVOKE the permit!

Anonymous Anonymous

I feel that there would be no difference in the environmental impact if Cooke was allowed to farm steelhead. Cooke should be allowed to move forward.

Annie McIntyre

Please do not allow Cooke Aquaculture Pacific to lease any further areas in the Salish Sea. Cooke Aquaculture Pacific has proven themselves to be horrible stewards of their own fish pens and the environment surrounding those pens in the leases that they have held in the past. In 2017 a ten-cage net-pen rearing 305,000 salmon off Cypress Island in northern Puget Sound collapsed. They lied about the reason it happened. They seem to scoff at regulations and the laws that govern them. They have consistently had sick fish and have sickened wild fish as well as polluted the sea beds under and around their pens with the fall out of the feed and drugs they have given to their fish. This unnatural habitat fosters disease which can not be contained in their pens. To consider leasing them any areas on the PNW coast, let alone in the Salish Sea would compound the issues and disasters that they have been directly linked with. When examined their fish pens and fish have been environmentally disastrous, and have led directly to the decline of our wild salmon. They do not deserve another chance to pollute and disrupt our fragile ecosystem. Please say no to Cooke Aquaculture Pacific.

Patrick Baumann

Cooke Aquaculture Pacific has proven again and again that they are poor stewards of the Salish Sea. In the past, when breaches have occurred, their only response was a litany of excuses. Before any new permit is granted, please verify new processes are in place to protect our sea. Based on history alone though, I recommend rejecting the permit request.

STEVE KNUTZEN

When Cooke lost all those salmon, due to lack of maintenance and incompetence, they lied to the state and public on a daily basis for months. They have no right to be in business in our state, as they will no doubt continue to lie , break the rules, and break the laws. They have not changed their nature. Deny them.

Larry Jones

The oceans can no longer support the fishing needed to provide Food for the amount of people in this world. Aquaculture is the future whether people like it or not. The last thing this state should be doing is getting rid of more jobs

CULP 2020

SEND COMMON SENSE TO OLYMPIA

RECALL

KSHAMA SAWANT

Duffy MCKENZIE

NO! NO! NO! Your industry has already proven itself incapable of securely containing your disease ridden faux food. Your industry is single handedly the greatest detriment to our wild salmon populations. Your permits should be revoked outright! The Atlantic salmon you currently raise have been proven unable to survive and reproduce in the wild here. I DO NOT TRUST YOU WILL ONLY HAVE STERILE FEMALE STEELHEAD! Viable fish and males will certainly slip thru the cracks into the tanks. Posing yet another threat to our wild fish populations. Your use of antibiotics in your cesspools of filth, riddled with sea lice and abhorrent living conditions are appalling and ought be illegal. Your abuse and pollution of our waters should be illegal! Take your industry on to land and quit destroying our natural habitat!

Anyone who is interested, please watch the documentary Salmon Confidential. It is free on YouTube.

https://youtu.be/ftCQ2IA_Zss

Jeremy Maldonado

This should not be allowed.

Kristine Holm

Will the permit explain how the level of PCBs in the fish feed will be assessed and reduced as required by state regulations concerning PCBs in products? How will PCB assessment and treatment in feed be addressed as part of the AKART requirement? I don't see any reference to impacts on water quality from PCBs in feed, waste, wastewater discharge or in fish as a discharge. This issue needs to be part of any AKaRt analysis for feed waste or related discharges.

Jacob Manning

Please do not allow these people to keep polluting our waters. Cooke is in the business of disease introduction. Raising Steelhead is worse than Atlantic Salmon as our native Steelhead are on a path to extinction.

Owen Fairbank

The track record of Cooke Aquaculture and other firms shows that disease from the concentrations of fish spreads to wild populations, and also that no net pens can reliably contain fish 100% of the time. These unavoidable consequences mean that salt-water net pens are detrimental to the surrounding environment and native species.

The responsible solution is to require all net pens to be situated on land with comprehensive treatment of the circulating water before it is returned to the ocean.

Is not the role of the Department of Ecology to protect the environment and ecology of the natural world? Is that not more important to us and future generations than short-term corporate profit for a few individuals?

Thank you for your consideration of the people and wildlife of Washington and the world.

Cindi McNabb

This is a horrific idea. Cooke aquaculture has proven they do not maintain their nets. The tragedy that befell our native fish at their hands is shameful. The oceans do not belong to them and NO PERMIT SHOULD BE GIVEN to them for steelhead

John Corso

Generally, I support aquaculture as a means of reducing the harvest of wild fish and especially endangered and threatened species. However, I am concerned about the threat of disease and parasites in farmed stock infecting wild fish especially threatened and wild species like steelhead. Please ensure that there is a strong clause in the permits requiring recurring testing of farmed steelhead for all known infectious diseases -including bacterial, fungal, and viral - and parasites. Further, please incorporate the cost of testing into the cost of the permits and require an independent business to collect and analyze samples and publicly report the results. If Cooke can demonstrate that it can raise disease and parasite-free steelhead, please consider rewarding them with a renewed permit. However, if testing reveals that Cooke is unable to keep its stock free of infectious disease and parasites in any one of its pens, the permits must strongly and clearly state that they must immediately remove all steelhead from all of their pens to reduce the likelihood of the disease and/or parasite infecting threatened and endangered wild steelhead. Finally, if Cooke demonstrates that it is unable to keep its stock free of disease and parasites, the permit must clearly and strongly state that all of the pens must be shutdown and Cooke must present their plan for controlling the disease and/or parasites for public review, comment and approval before they are permitted to restock the pens.

Thank you for considering my concerns and suggestions.

John Corso

Nick Falls

To whom it may concern. This company should never be permitted to raise farmed non-native fish in the first place. Now they swing money in front of politicians and officials to keep they're profits up and pockets stuffed. They care not of our fragile eco system they helped destroy by neglecting the nets. Changing the type of fish won't change the company's way of operating. They caused irreparable damage to our sea with the release of thousands of Atlantic salmon. They knew about the torn nets but wouldn't fix the issue. If you allow them to continue it only proves my point that our government doesn't care about us or the environment. The only thing that matters to them is the money.

Cynthia Livingston

Cooke Aquaculture should be denied any permits to operate fish farms. Their negligence that led to the net breach and release of Atlantic salmon will likely be causing harm to our ecosystem for decades to come, in ways we may never understand. They have proven their incompetency. I suggest their corporate charter be revoked, their assets seized, and put toward remediation for the harm caused. It is pure folly to allow them to continue to operate.

Allan Holmes

The problem here is that for at least the last 30 YEARS we've been living here Cooke Aquaculture has promised and promised, but seldom, if ever, performed. It's time to end the charade. They've never been good neighbors for the 33 years we've lived here so there's no reason to believe they will change their mushroom theory business plan which amounts to "keep 'em in the dark and feed 'em a bunch of shit". Excuse my language, but enough is enough and we feel powerless. PLEASE shut down this operation asap and let them return to Canada with their business venture and leave us alone. Thank you.... Allan Holmes

Ruth LeBrun

I STRONGLY DO NOT SUPPORT any further operations by Cooke Aquaculture in Washington State waters. No further permits, no further changes in their operations, nothing. They have proven quite clearly that they are unable to manage net pens or have any consideration for the environment. Our waters are fragile. Our native fish are decreasing constantly. The Orca whales are gravely endangered. How much longer are we going to despoil our land and water for private gain? Think about PUBLIC gain! We need waters that are unspoiled, for all citizens to enjoy and appreciate. We are talking about the public trust here, land and seas.

No further Aquaculture - Cooke or other companies.

Thank you for your consideration.

Ruth LeBrun, Anacortes WA

BRIAN COWAN

Hi

I am writing to express my opposition to net pens operating in Washington State. The irresponsible management of the pens by Cooke should not be rewarded with more opportunities to adversely impact our ecosystem. There is too much at stake for our wild salmon and steelhead. Please remove the pens and do not allow any more. Help us avert a future disaster.

Brett Wedeking

Do not issue new permits or modify existing permits for any fish farming in WA marine waters. Raising sterile rainbow trout is not any better than Atlantic salmon. They present the same problems with waste and pollution and sea lice that negatively affect surrounding waterways and the wild species that live there, including ESA listed species.

I am a fishing guide on Puget Sound and I see first hand the lack of fish that live near the Orchard Rocks pens. Bluntly, the fishing always sucks near those pens.

Rainbow trout present the same escape risks, and possibly worse, than Atlantic Salmon. Escapes are unavoidable and when fish escape they compete for food and space with wild species, again some of which are ESA listed. These pens must be in violation of both the ESA and Clean Water Act.

There is no guarantee that all these fish will be sterile. When those fish escape they can migrate up local rivers and interbreed with ESA listed, wild steelhead and dilute genetic diversity, contributing to further declines in survivability of wild steelhead.

The net pens are not worth it. The science is clear, it all points to net pens as bad for wild species and bad for people. WA is the last state or province on the West Coast to allow marine fish farming. All marine net pens need to be banned in this state as soon as possible.

Philip Forve

I am a private citizen who wants to go on record opposing these fish pens and any extension of the leases currently in force. We need to protect our natural environment and not destroy it with industrial fish farming methods. We are blessed in the PNW with great abundance. Let's not repeat the environmentally damaging mistakes of the recent past.

Peggy Most

Cooke has a terrible track record leading me to assume they care little for the environment of Puget Sound. How will they address the sea lice which are prevalent on pen fish? Those lice move freely from the pens to wild species.

Keep net pens out of Puget Sound altogether.

Lynda Cole

Why would the DOE and WDFW set themselves up for a class action suit by issuing a permit for pen raised fish? Why would you sell out the State by allowing the desecration of Puget Sound? Why are you selling out the salmon fishery of Washington state and hundreds of it's fishermen who have fished for many generations? What doesn't the DOE understand about PCB's, viruses, parasites, bacteria, fungi and toxins? Does this not define your job description? Do you really want to be a part of the destruction of Puget Sound? What gives the DOE the right to lease public waters to a proven deceitful, polluting, non-compliant, foreign company. What is the payoff?

There are many ways to enhance not only water quality, quality of life and salmon production. Look to Alaska's fish production and how much revenue it produces. The West Coast of the USA has the potential to feed a lot of the world. Why should we ever have to import fish?

Please be honest about the destruction of Puget Sound, it's natural stock, and water quality. What would issuing this permit make better? The revenue received is tantamount to prostitution. Who will pay for the clean-up??? the tax payers of Washington State. Who will pay when it's all gone? Most criminals get thrown in jail.

Cornelis Bakker

I applaud the aquaculture company rearing native steelhead instead of Atlantic salmon. I consider this a good use of the 4 areas and an appropriate response to the net pen collapse.

Katherine Kirchhofer

Under no circumstance should we be opening another fish farm in Washington state. Beyond the violation of treaty right as stated in the Boldt decision, this can cause increased disease rates, decrease genetic diversity for fish best suited for the net pen life, and harm our wild salmon populations. As a naturalist that works on the water I beg that you halt this project and support dam removals, and modeling after the Alaskan fisheries. Do not do this. This is almost as bad as the Pear Point fish farm idea. Cooke aquaculture should be ashamed of themselves after the harm they have already done! Move along and support wild salmon instead!

Polly Derr

Farmed fish lack the nutritional value and flavor of naturally grown fish in the wild. They also have a much higher fat content than normal. It is certainly not advisable to put farm pens anywhere there is an even remote chance that the farmed fish or their nutrients could infiltrate our fish grown naturally in local rivers or the Salish Sea anywhere! To experience another "oops" could change our sea life forever!

Sarah Kuh

Aquaculture provides a safe and sustainable food source as well as many living wage jobs. This change is minimal, and I believe Cooke should be able to move forward.

Cathleen Burns

Please deny permits for more Cooke aquaculture! We already know the disasterous results of their last attempt to make \$ at the expense of our environment. No matter the supposed safeguards required, more disasters are bound to occur. This is a detriment to our waters, to our fish and ultimately ourselves. People need to stop buying fish. There are plenty of other options for food. We have exhausted this resource and this attempt to make more will have dreadful, unintended consequences. Please deny more aquaculture experiments at our expense.

Janet Marx

Has Ecology ever conducted a survey of the sea floor (benthic layer, micro sea life, forage fish populations, etc.) prior to installation of a net pen operation and then conducted a follow-up survey four or five years later to determine changes to the water quality and sea-life health?

If not, how can you approve an open net pen permit?

Jamie Kitson

I believe there should be no permits issued for net pen fish farms in the Puget sound or any of the interconnected waterways. The threat of disease and interference with migration of endangered Pacific salmon and steelhead is too great. These populations must be recovered. There is no need for farm raised steelhead in the Puget sound.

Duane Edwards

I am against all farm raised fish but especially Atlantic salmon

John Dentler
8920 Franklin Avenue
Gig Harbor, WA 98332

Laurie Niewolny, Water Quality Program
Washington State Department of Ecology
PO Box 47600, Olympia, WA 98504

Dear Ms. Niewolny

I am writing in support of the issuance by the Department of Ecology (DOE) of final NPDES permits for the rearing of steelhead (*O. mykiss*) in net pens by Cooke Aquaculture at all four sites (Clam Bay, Fort Ward and Orchard Rocks (all in Rich Passage) and Hope Island in Skagit County).

I have been involved in fisheries science, research, policy, and law since the late 1970s. During that time, I have worked for state, federal and multi-jurisdictional agencies as well as in private industry in fisheries and aquaculture. I have worked in North and South America in these endeavors and I am knowledgeable regarding the practices of the salmon and trout aquaculture industry. I support efforts to ensure a sustainable environment in the Puget Sound area and throughout Washington. I support efforts to ensure that efforts are made to preserve and sustain wild salmon stocks. I also support efforts to support sustainable aquaculture in Washington and efforts to produce healthy seafood whether through wild capture fisheries or aquaculture – whether finfish, shellfish, or marine and aquatic plants.

As noted by the DOE -- the public should keep in mind that the draft NPDES permits involve a proposal to rear *sterile* native steelhead in *substitution for* Atlantic salmon previously reared at these sites. From an environmental perspective there is, to my knowledge, no evidence that this change will result in any substantive change in feed quality or quantity that will be used or effluent quality or quantity from the baseline condition – which was through the rearing of Atlantic salmon. Moreover, on an absolute basis the issuance of the revised NPDES permits will, in my view have no probable significant adverse effect on the environment.

The trout proposed to be reared will be sourced from Troutlodge, a trout egg production company located in Bonney Lake, Washington. I am now retired but I previously worked at Troutlodge hatcheries from 2007 through 2018. I thus have knowledge of Troutlodge procedures and practices. The sterile eggs produced by Troutlodge are made using organic measures, (pressure) to create triploid eggs. The resulting batches of eggs are virtually 100 percent sterile (greater than 99.5% sterile) based on years of testing results at Washington State University. Further, trout at Troutlodge have been domesticated and bred over many decades for hatchery production and in the event any trout should escape from the net pens, these trout will not fare well in the wild environment. They will likely be caught by anglers, seals, sea lions, or orcas or die from starvations as they are very unlikely to identify and capture wild prey items.

Moreover, the broodstock at Troutlodge is subject to a robust fish health and biosecurity program. Each year thousands of samples are taken and analyzed for a suite of pathogens and parasites. The analyses are conducted independently at the Washington Animal Disease Diagnosis Laboratory (WADDL) at Washington State University. The samples and preparations thereof are supervised by a USDA-approved veterinarian. If WADDL identifies any reportable pathogen, those results must be reported to the U.S.D.A. Animal Plant Health Inspection Service (APHIS) and Washington Department of Fish and

Wildlife (WDFW). Fortunately, the biosecurity and fish health program at Troutlodge has been instrumental in preventing the introduction of aquatic animal pathogens at Troutlodge. Based on the sampling and diagnostic results at WADDL and the facility inspections conducted by APHIS itself, APHIS has been able to certify that the eggs Troutlodge complies with the pathogen-free standards and criteria of the World Organization for Animal Health pathogen standards and that Troutlodge meets the requirements set out by WDFW.

The United States and the State of Washington have robust environmental laws and regulations that are rigorously enforced. Moreover, many private aquaculture companies such as Troutlodge and Cooke Aquaculture and others aquaculture companies meet additional environmental performance requirements through independent private entities -- GLOBALGAP, Global Aquaculture Alliance BAP, and others. These organizations establish best practices and standards for environmental sustainability as well as labor and community/social practices. To be awarded certification, companies must undergo third party independent audits to demonstrate adherence to applicable laws, rules, and standards. Both Troutlodge and Cooke Aquaculture have met either or both GLOBALGAP and BAP certification.

Moreover, for a number of other reasons, enumerated below, DOE should support aquaculture in all its forms, whether finfish, shellfish, kelp or seaweed and whether at-sea, in the shoreline, whether on land in traditional flow through operations or recirculating aquaculture systems.

1) WORLD POPULATION GROWTH AND THE LAND WATER AND FOOD GAP:

Currently, the world's human population is about 7.5 Billion. Already, land-based agriculture uses 75% of the world's developed land. Land-based agriculture uses 70% of the world's freshwater resources. By the year 2050, the U.N. estimates the world human population will reach 9.8 Billion and they are will have a higher life expectancy. See World Resource Institute ¹.

Planet Earth is sometimes referred to the "Blue Planet" and it would be more aptly named, Planet Water. Over 70% of the earth's surface is covered by water, more specifically, salt water. Of our planet's water, by volume, 97.5% is seawater and only 2.5% is freshwater and of that freshwater only 1% of that water is easily accessible. Of the 30% of the land surface on our earth, only 11 % is arable and capable of growing crops. As our population grows, less land per unit population is available for food production.

A significant and critical worldwide food and land gap is growing. We will need to increase by food calories by 56% and protein production will need to increase by 70% to meet this gap. To do this with land-based agriculture, an additional 2.3 million square miles (roughly equivalent to 74% of the contiguous U.S.) of agriculture land is needed. Clearly, we cannot manufacture new agricultural lands. However, we can take advantage of our oceans and brackish water -- right here in Washington State -- to grow healthy seafood. The growing land, freshwater and food gap is a fundamental reason why the DOE should approve the four draft NPDES permits under consideration.

2) CLIMATE CHANGE -- GLOBAL WARMING AND SEA LEVELS ARE RISING

The land, water and food gap referenced above will only worsen due to global warming. The Intergovernmental Panel on Climate Change (IPCC), the World Resource Institute and U.N. FAO have

¹ <https://www.un.org/development/desa/en/news/population/world-population-prospects-2017.html>

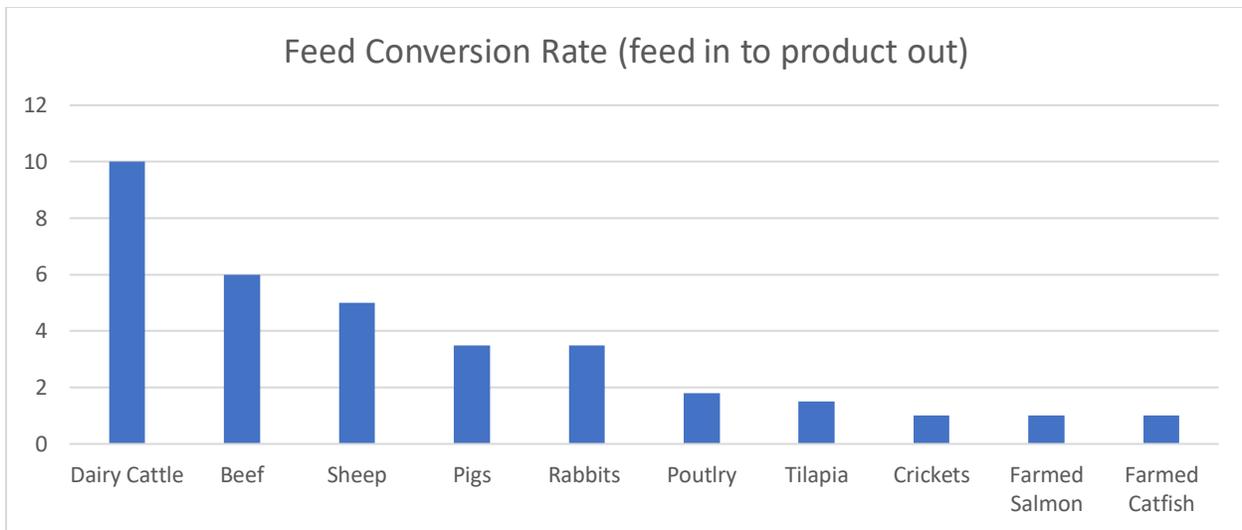
documented that the worldwide food crisis will continue to grow, not only because of population growth, but for several other reasons. These other factors include climate change, rising sea levels, salt water intrusion, extremes in rainfall and temperature, snow, wind, floods, intense heat waves and droughts, colossal forest fires, more and stronger hurricanes and generally less freshwater where it is needed. For example, a sea level rise of only three feet is expected to destroy 40% of the Mekong Delta, Vietnam's rice basket. In terms of temperatures, five of the warmest years recorded from 1880 to 2019 all occurred after 2015 and nine out of ten of the warmest years ever recorded occurred since 2005. Global warming is widely expected to adversely affect land-based agriculture. In view of global warming and anticipated effects on agriculture, Washington State needs a State aquaculture plan. Further, in view of the anticipated effects of global warming on land-based food production, DOE should approve the four draft NPDES permits under consideration.

3) ENVIRONMENTAL FOOTPRINT OF AQUACULTURE IS RELATIVELY LOW

It is widely acknowledged that human-caused Greenhouse Gases (GHGs) are responsible for global warming. However, the global appetite for reducing GHGs is quite low. In part, this stems from our dependence on fossil fuels and because the lag time from GHG emissions and their effects on the environment are on the scale of a century. This makes the politics of reducing GHG emissions very difficult.

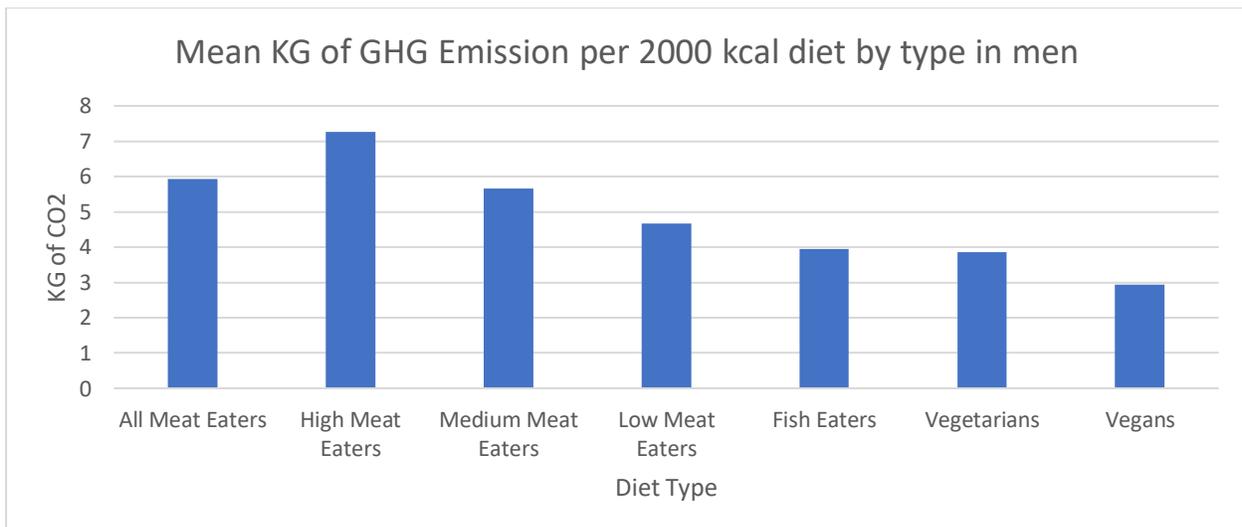
However, we know that various types of activities do result in GHG emissions. All food production systems result in environmental impacts including GHG emissions. Traditional land-based agriculture accounts for about 12 percent of methane emissions, a potent GHG.

Fortunately, aquaculture is the most efficient form of animal protein production. Aquaculture is environmentally efficient for several reasons but primarily because fish and shellfish are ectotherms -- they do not spend energy to maintain a constant body temperature (like most mammals). Secondly fish and shellfish do not fight gravity. Fish are neutrally buoyant and movement in the water column is almost effortless and most shellfish, through most of the life cycle, are sessile, affixing themselves to once place and staying there. Because these animals do not fight gravity, they either do not have an internal bony support structure or have a very small one. For this reason, the edible portion of fish is very high -- say 70%-80% for trout and salmon as opposed to only 40% for cattle. Moreover, the feed conversion efficiency in fish is very high relative to other forms of animal protein production.



Aquaculture and finfish aquaculture in particular require very little water consumption. For example, to grow 1 kilogram (2.2 lbs) of salmon requires about 900 liters (240 gallons) of water whereas 1 kg of beef requires 15,000 liters (4,000 gallons) of water.

The graph below shows that consumers who eat fish produce much lower carbon emissions on a dietary basis than say, meat eaters.²



Aquaculture is also spatially efficient. Because fish and shellfish can be grown throughout the water column, a very small surface footprint is needed to produce large numbers of finfish or shellfish.

Moreover, if fish are produced locally, either in the wild or via aquaculture, then the carbon and environmental footprint of that production is even lower, as the fuel cost and emissions produced when transporting seafood from local areas to local markets is much lower than importing such products from, for example, Norway, Chile or China.

² Data summary Scarborough et al. 2014

The State of Washington is committed to reducing GHG emissions and combating global warming – as it should be. Consequently, DOE should support aquaculture as the most efficient means of producing animal protein and having a low environmental and carbon footprint – particularly when we raise the seafood products are produced right here in Puget Sound. For this reason, DOE should approve all four of the finfish aquaculture draft NPDES permits.

4) U.S. CONSUMERS SHOULD EAT MORE SEAFOOD

Seafood is high in protein which is critical for our body composition and the building of muscle, bone, cartilage, other tissues. This protein comes from amino acids, nine of which are considered “essential” amino acids. All plants lack at least 1 amino acid. However, by eating a balanced diet of vegetable matter, sufficient protein can be obtained. In addition to being high in protein, seafood is high in vitamins A, B12, and D; and seafood is comprised of many micronutrients like iron; zinc; magnesium; phosphorous; and potassium. Seafood, particular oily fishes, like salmon and trout, are high in Omega-3 fatty acids, (e.g., eicosapentanoic acid and docosahexaenoic acid) and these nutrients are critical for fetal development, heart health, cognitive performance, etc.

Salmon and trout reared via aquaculture are also be high in carotenoids, which give them the red color of the flesh. These carotenoids (astaxanthins), are the same natural compound that causes leaves to turn red and yellow in the fall. The astaxanthins are also an antioxidant and are found in most health food stores as an antioxidant intended directly for human consumption. The astaxanthins are typically harvested from algae and added to the fish feed and is naturally taken up by the fish. In short, the astaxanthins are good for the fish and good for humans.

Many epidemiological and nutrition studies have shown that eating finfish produces many health benefits. Among them are the following:

- a) 84,000 premature deaths could be avoided if more seafood was eaten in the U.S.
<https://hms.harvard.edu/news/burden-calculated-preventable-causes-death>
- b) Increased cognitive scores, reduced ADD hyperactivity disorder, better academic performance in children whose mothers at between 4 oz and 12 oz of seafood per week during pregnancy. Almost all of the studies on seafood consumption during pregnancy and lactation reported beneficial outcomes for children, including five that found that compared to children of mothers who ate none, those whose mothers ate more than 12 ounces of seafood a week had significantly higher verbal I.Q. scores. In children, the benefits of eating seafood were apparent as early as 14 months. The studies variously found that seafood eaters had lower risk of attention deficit hyperactivity disorder, better school grades, and higher I.Q. by as much as 9.5 points compared with their peers who ate no fish. The highest intakes — more than 8 to 12 ounces a week — were associated with the greatest benefits.
[https://www.plefa.com/article/S0952-3278\(19\)30192-9/fulltext](https://www.plefa.com/article/S0952-3278(19)30192-9/fulltext) Relationships between seafood consumption during pregnancy and childhood and neurocognitive development: two systematic reviews. Hibbeln, CAPT Joseph R. et al. (Journal of) Prostaglandins, Leukotrienes and Essential Fatty Acids, Volume 0, Issue 0, 2019. [https://www.plefa.com/article/S0952-3278\(19\)30192-9/fulltext](https://www.plefa.com/article/S0952-3278(19)30192-9/fulltext) see also <https://www.nytimes.com/2019/10/30/well/eat/children-pregnant-women-eat-fish-seafood-brain-smarter.html> We conducted two systematic reviews, evaluating the relationship between seafood consumption in pregnancies and in childhood on neurocognitive development using methodologies detailed by the Dietary Guidelines for

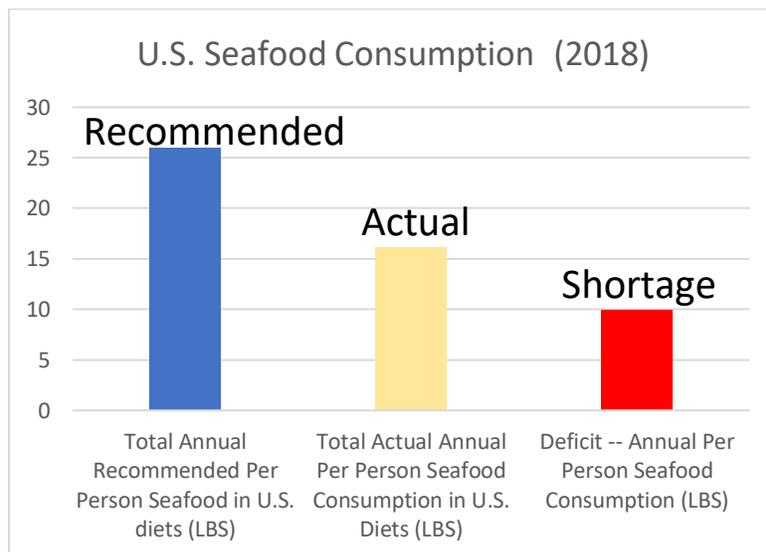
Americans Scientific Advisory Committee 2020-2025. •This evaluation of seafood inherently integrates any adverse effects from neurotoxicants, if any, and benefits to neurocognition from omega-3 fats, as well as other nutrients critical to optimal neurological development. •No adverse effects of seafood consumption on neurocognition were found in 44 publications reporting on 102,944 mother-offspring pairs and 25,031 children. •Benefits to neurocognitive development began at the lowest amounts of seafood consumed in pregnancy (~4 oz/wk) and up to >100 oz/wk, with benefits to age appropriate measures of neurocognitive development including an average increase of 7.7 IQ points. •Consumption of >4 oz/wk and likely >12 oz/wk of seafood during childhood had beneficial associations with neurocognitive outcomes. •A clear understanding of the effects of seafood consumption on neurocognition can have significant public health implication

- c) Reduced incidence of heart attack and strokes (40,000 men in study had 15% lower risk of heart disease by eating one serving of seafood per week) L Diouise et al. Fish consumption, omega-3 fatty acids and risk of heart failure: a meta-analysis J. Clinical Nutrition (Dec. 2012). An analysis of 20 studies involving hundreds of thousands of participants indicates that eating approximately one to two 3-ounce servings of fatty fish a week—salmon, herring, mackerel, anchovies, or sardines—reduces the risk of dying from heart disease by 36 percent. Mozaffarian D, Rimm EB. Fish intake, contaminants, and human health: evaluating the risks and the benefits. JAMA. 2006; 296:1885-99. <https://www.hsph.harvard.edu/nutritionsource/fish/#1>
- d) Fish contains nutrients crucial during neural development. Omega-3 fatty acids are essential for growth and development. The omega-3 fat docosahexaenoic acid (DHA) is especially important for brain and eye development. changes in brain concentrations of DHA are positively associated with changes in cognitive or behavioral performance. “Is docosahexaenoic acid, an n-3 long-chain polyunsaturated fatty acid, required for development of normal brain function? An overview of evidence from cognitive and behavioral tests in humans and animals”. J.C. McCann and B.N. Ames Am J. Clin. Nutr. Aug 2005. Caution for some fish species high on food chain due to mercury.
- e) Increase seafood consumption slows rate of mental decline. Many studies suggest that people who eat fish have slow rates of age-related mental decline. Fish consumption and cognitive decline with age in a large community study M.C. Morris et al. Arch Neurol. Dec 2006. And they have more gray matter – the brains functional tissue. “Weekly consumption of baked or broiled fish was positively associated with gray matter volumes in the hippocampus, precuneus, posterior cingulate, and orbital frontal cortex even after adjusting for covariates. These results did not change when including omega-3 fatty acid estimates in the analysis”. Regular fish consumption and age-related brain gray matter loss. C.A. Raji, et al. Am. J. Prev. Med. Oct. 2014.
- f) Less depression in those who regularly eat fish Omega-3 Fatty Acids and Depression: Omega-3 Fatty Acids and Depression: Scientific Evidence and Biological Mechanisms. G. Grosso et al. March 2014 Oxidative Medicine and Cellular Longevity. Also improves treatment results when antidepressive medicines used.
- g) Reduced risk of autoimmune diseases, like Type 1 Diabetes; T1D occurs when immune system attacks cells in beta cells Pancreas. Several studies link Ω 3 or fish oil with reduced risk to T1D in children and autoimmune diabetes in adults. L.C. Stene et al. Use of cod liver oil during first year of life is associated with lower risk of childhood-onset type 1 diabetes: a large, population

based, case-control study. *Am J Nutrition*. Dec. 2003; J.E. Lofvenborg et al. Fatty fish consumption and risk of latent autoimmune diabetes in adults. *Nutrition & Diabetes* Oct. 4(10) 2014

- h) Seafood consumption may help prevent asthma in children. Studies show that regular fish consumption is linked to a 24% lower risk of asthma in children. Y. Huan, X. Pengcheng, and H Ka. Fish and Fish Oil Intake in Relations to Risk of Asthma: A Systematic Review and Meta-Analysis. *PLoS* 2013 (8)11. Other studies generally show, even in adults, that vegetable oils substituted for marine oils in the diet increases the risk of asthma by 67%. Shahieda et al. **Relationship between Serum Omega-3 Fatty Acid and Asthma Endpoints.** *International Journal of Environmental Research and Public Health*, 2018; 16 (1).
- i) Fish and related Ω 3 fatty acid consumption may protect adults from age-related macular degeneration and vision impairment and blindness. Regular fish consumption can decrease risk of AMD in women by 42% - 53%. Dietary ω -3 Fatty Acid and Fish Intake and Incident Age-related Macular Degeneration in Women. Christen, W et al. *Arch Ophthalmol*. 2011 Jul; 129(7) 921-929. Further eating oily fish at least once per week compared with less than once per week was associated with a halving of the odds of AMD. Oily fish consumption, dietary docosahexaenoic acid and eicosapentaenoic acid intakes, and associations with neovascular age-related macular degeneration. C. Augood, et al. *Am J Clin Nutr* Aug 2008 88(2) 398-406.

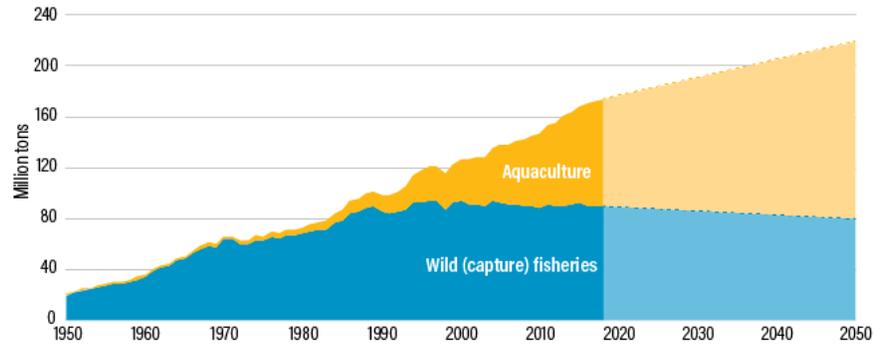
The U.S. Department of Agriculture (USDA), based on nutrition and epidemiological studies like those cited above, recommends that consumers should eat two 4-ounce seafood meals per week. The USDA weekly seafood consumption recommendation equates to about 26 pounds of seafood per year. However, U.S. consumer eat only about 16 pounds per capita (2016) so the per capita seafood consumption needs to increase by about 10 pounds. The graph below reflects the USDA seafood consumption recommendation vs. actual consumption and the shortage of seafood consumption.



However, there is not enough wild seafood to meet this need. Data collected by the UN FAO show that most wild fisheries are completely exploited, with some of these fisheries over-exploited. On the other hand, aquaculture is growing everywhere at very high rates -- except the United States. The graph below shows that on a worldwide basis, aquaculture accounts for half of all seafood produced

worldwide and, in the future, we need more aquaculture to meet the worldwide nutritional demand for seafood.

Aquaculture must increase to meet global demand for fish



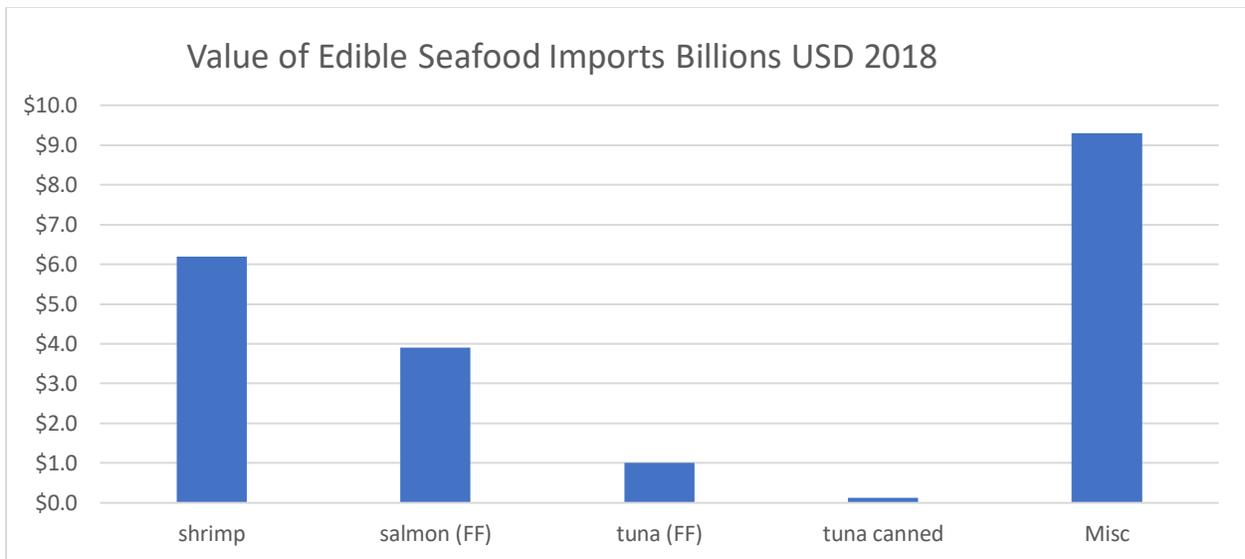
Sources: Historical data, 1950–2016: FAO (2017b) and FAO (2018).
 Projections to 2050: Calculated at WRI; assumes 10 percent reduction in wild fish catch from 2010 levels by 2050, linear growth of aquaculture production of 2 Mt per year between 2010 and 2050.



To increase U.S. consumption of seafood to meet U.S.D.A. standards, seafood must be more accessible and affordable to those of modest means. To achieve this goal and facilitate making the U.S. population healthier through seafood consumption, DOE should approve all four of the finfish aquaculture draft NPDES permits.

5) U.S. IMPORTATION OF SEAFOOD AND THE RELATIONSHIP TO JOBS IN RURAL AREAS

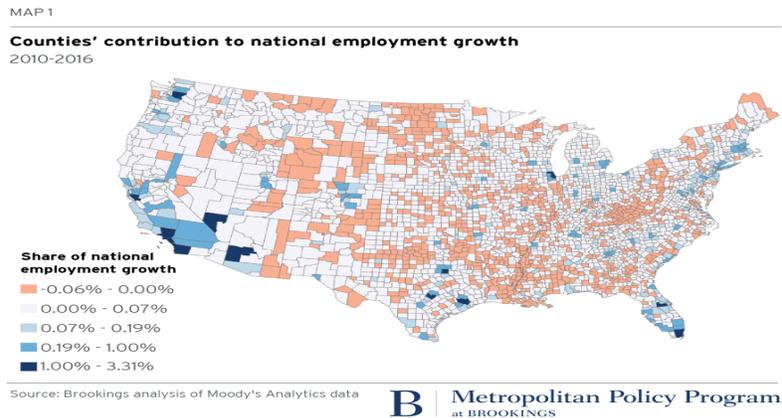
According to data supplied by NOAA, the U.S. imported nearly \$4 billion worth of salmon in 2018.



While importation of seafood is currently very much needed, the U.S. and Washington State in particular, have the know-how, the desire, the resources, and the workers ready and willing to raise seafood. Consequently, reliance on the importation of salmon to meet our needs represents a forgone

opportunity. Aquaculture is typically carried out in rural areas where family wage jobs are rare and even rarer in the CV-19 environment. If salmon aquaculture were to be actively promoted in Washington, hundreds if not thousands of new and good-paying jobs could be created where they are desperately needed – in our rural counties.

While much pre-CV-19 job growth occurred in Seattle and Redmond corridor, Washington had virtually no job growth in the rural areas such as Clallam County. Moreover, Tribal Governments have been hard hit by the lack of jobs and opportunities to make good on federally guaranteed Treaty rights to harvest fish and shellfish in their usual and accustomed areas. The graph below demonstrates the lack of job growth in rural areas.



If the DOE is interested in improving the health of Washington's residents and U.S. consumers, and helping Tribal communities, then it should support sustainable aquaculture and DOE should approve all four of the finfish aquaculture draft NPDES permits.

6) CONCLUSION

In conclusion, for the reasons set out above, the DOE should approve each of the four revised NPDES permits at four locations to allow Cooke Aquaculture to raise all-female, sterile rainbow trout.

Sincerely,

John Dentler

John Forster

I have worked in the the aquaculture industry and related research activities since 1965, including 31 years in Washington State where participated in several different aquaculture activities, including management of the salmon farm in Port Angeles Harbor from 1984-1994 and as part owner and president of Columbia River Fish Farms from 1995-2003.

I believe Cooke Aquaculture's plan to switch production to sterile Steelhead Trout in its Washington farms makes good sense. If approved it will keep alive an industry in Washington that started in the 1970's and has grown worldwide so that fresh farmed salmon and trout are now readily available year round to most U.S. consumers. During this time the industry worldwide has innovated and made great improvements in its practices and the design and operation of the equipment used.

Cooke Aquaculture is a global leader in the salmonid farming industry and Washington State is fortunate to have such a company willing to invest in and develop the salmonid farming industry there. In the years ahead there is no doubt that the salmonid farming industry will continue to innovate and grow and with Cooke Aquaculture as it's leading producer the State is in a good position to benefit from this growth.

Martine Springer

The aquaculture industry in Washington state has proven to be a total failure from the perspective of ecosystem management and conservation of native species. The latest proposal to use "native" steelhead means that genetically-modified "domesticated" individuals will, with 100% certainty, escape at some point in time. These inevitable escapees will contaminate native endangered runs of unique steelhead strains and threaten their survival. Steelhead have already been suffering from a reduction in genetic diversity and this will only accelerate the problem.

While the threat of domesticated strains of native fish escaping and damaging endangered runs of steelhead is a new threat, the old problems of high fecal bacteria pollution and low-oxygen benthic zones remains. Worse still, aquaculture fish pens are proven reservoirs of deadly disease and parasites that quickly jump to wild fry, smolt, and adults that pass too close to the pens.

Apart from the glaring biological problems, players such as Cooke Aquaculture have proven to be bad faith actors. They have a long history of failing to perform basic maintenance and preventing escapee. They should be prohibited from participating in any aquaculture activities in Washington state.

Caroline Armon

Please do not permit Cooke Aquaculture Pacific to raise steelhead or any fish in Washington State waters,

based on their previous neglect, deception, WDFW statement

"After scientific review, WDFW determined that raising steelhead trout in the existing net-pen facilities would carry similar or less risk than raising Atlantic salmon.", and that these nets are in our public waters.

Washington State Department of Ecology are caretakers of our public waters and lands, our representatives, and the majority of we public do not support our waters being used and decimated for corporate profit.

I support, WSDE please also support

Wild Fish Conservancy seeking to restore the sites to their natural states and to restore full access for public use. As Executive Director Kurt Beardslee said "Leasing these lands for the purpose of restoring Puget Sound is consistent with the will of the public and will provide broad cultural, social, and economic benefits for all citizens while restoring direct access to 130 acres of public waters for the first time in over thirty years.

Buying the rights to the sites and removing the pens would, cost-to-benefit-wise, be one of the best restoration projects in 30 years."

Sincerely,

Caroline Armon

Marine Ecology Educator

Field Research

Lauralee Carbone

Friends don't let friend buy/eat farmed fish. Polluting. Can effect wild fish. Just say no and do the right thing.

Doug Simms

I fully support Cooke Aquaculture Pacific's move to produce triploid steelhead at all their marine sites.

As we have endured covid 19 over the past several months, the importance for locally produced foods from both land and sea has become more apparent than ever. Also, considering the underwhelming footprint it takes to produce 10,000 metric tonnes of sustainable locally grown healthy protein in Washington waters and the local jobs it provides makes this a no brainer.

Andrew Wynne

To whom it may concern:

We tend to hear about loopholes when they involve money (loopholes in tax codes, energy permits, and land).

Now fish

Steelhead vs Salmon. This loophole is the only reason we are still having this conversation. This is not what the voters want (the city of Bainbridge Island as recent as October 14, 2020 City Council Meeting is publically supporting other uses for the location). **THIS IS NOT WHAT THE PEOPLE WANT.** Except for the people and organization who benefit - which is a foreign corporation!

Jobs will be created with the proposed land use from Wild Fish Conservancy plan which will support the cleanup and resulting dock use.

The current jobs at the facility are skilled workers (welders, divers) who have the skills to find employment at other facilities. This is not about losing work.

This is about stopping a foreign corporation from exposing a loophole.

Stop this permit, and stop this loophole.

Laurie Sander

Fish farms do not contribute to the health and well being of Puget Sound and its wildlife. With all the stresses already on our oceans from increased population, acidification and other climate-related changes, the last thing we need is a fish farm with the known potential to further degrade water quality and jeopardize already federally-listed species like salmon and Orcas.

Cooke Aquaculture has a documented history of lying: they lied about the number of fish that escaped in 2017, they didn't report diseases in the escaped fish, and it is in their interest to continue lying about the health of any fish in the future. We can't afford to give them another chance to injure Washington's waters and wildlife.

Whether the farmed fish are fertile or infertile, Atlantic or native, the risk of any adverse effects on wild fish and the environment is too high.

Thank you for considering this layperson's opinion.

Jayni Detrick

As the closest neighbor to Cooke Aquaculture Pacific, the latest owner of the fish farming operation on Rich Passage, Bainbridge Island, we have witnessed their (and past owners) farming of Atlantic salmon in an artificial environment for 25 years. Although there are many reasons why fish farming in the Puget Sound should not be allowed, water quality is the most important. We see the pollution that occurs from the fish feed, full of questionable ingredients such as antibiotics, artificial coloring, vitamins, etc. It is a wasteland on the sea floor under the fish pens. It doesn't matter what type of fish that are being farmed artificially in fishnets, as they all will need to be fed polluting fish food! Although I am a free market, pro business and farming, citizen, fish farming businesses don't belong in our Puget Sound waters.
Thank you.

Isa Werny

It is time we stop all fish farms. Cook does not have a good record. They are not even a Washington company.

Kent Hoium

Raising Steelhead in Puget Sound will provide local seafood without harvesting the wild fish stocks which other wildlife depends on. It will also provide employment and tax revenue to the local economy. The only difference in the environmental impact of raising Steelhead vs. Atlantic Salmon will be that the "non-native species" issue will be removed.

I support the approval of the Permits allowing Steelhead to be raised here in Washington.

Martha Hall

I'm sorry that our legislature did not just ban in-water fish farms in Puget Sound in 2018. I'm sorry WDFW is issuing a permit to Cooke to raise native fish in Puget Sound at 4 sites, one near me, Hope Island. Many negative impacts have not changed because Cooke changed to a native species such as water pollution and the possibility of diseased fish and use of antibiotics because this is "factory farming" at its worse because the farmed fish will be sharing the same waters as our wild fish and some of our most important waters in Puget Sound.

I listened to the oral comments from a person who said humans must have a source of fish. He also said now and in the future more of the fish will come from "fish farms" rather than from wild salmon. I disagree with both of his statements. Humans do not have to eat fish. That's a choice. There are many other sources of protein, and far safer sources that have not been pumped full of antibiotics as they are produced. If farmed fish are not available, all fish would come from wild sources and this would be far better for the Salish Sea. It would honor our pledge to lead in protecting the Salish Sea by banning fish farms. We can then hope Canada will do this too. As our human population grows and our the Salish Sea suffers from the impacts of climate change more and more, humans will need to make some hard choices, like change our eating habits so we eat far less meat and fish. As we see more of the negative impacts of our over-use of antibiotics when producing meat and fish we will need to take them out of food production. Factory farms are not safe for the animals that must live in them until they were killed and eaten, "harvested" and their products are not safe for humans and our pets.

The pollution caused by the fish food, fish feces and antibiotics coming from pens that use the waters of the Salish Sea is just plain unacceptable to many of us who have worked hard to reduce and stop pollution. We are working hard to try to protect our declining populations of salmon and resident orcas. It seems like our state agencies should be doing the same.

Allowing factory farms, fish farms, to operate in the waters of the Salish Sea is extraordinarily short-sighted. Everything inside of the nets on these fish farms may get out including diseases, feces, antibiotics, and fish food. These create point-source pollution and the Department of Ecology is going to issue permits for this! This is shocking after all of the efforts of the people of WA State to clean-up the Salish Sea. Our cities are spending millions on wastewater treatment. We are checking our outfalls. Boats must store sewage. Farmers are being told to fence off riparian areas to keep livestock feces out of streams that flow into the Salish Sea. We've spent millions trying to "save our salmon" through dozens of efforts. Why, when our state agencies move ahead to give permits for fish farms that we do not need to have in WA State. The fish farms generate a few jobs, very few. Profits go to Cooke, not the people of WA State. We just get the pollution!

As to the so-called stricter pollution standards, I find the self-reporting by Cooke on various items like the monthly reports on fish food consumption and monitoring for escaped farmed fish totally unacceptable. Cooke clearly demonstrated that a third-party is needed to oversee all of its operation on at least a weekly basis if not daily. Cooke has a long history of not reporting and properly dealing with diseases in fish in its pens. It tried to avoid responsibility for the collapse of the net pen near my home and lied to us saying it was caused by unusual circumstances. Escapes have not been

reported. Why does the Dept. of Ecology think Cooke will operate any differently in the future? Who believes Cooke will closely monitor and report escaped fish or food consumption or use of antibiotics or anything else?

Sustainable agriculture, in the water and on land, should be our goal. Factory farming in the Salish Sea or the Skagit Valley farmland is not sustainable. It is also not humane to the poor animals, the fish, who live their lives crammed into over-crowded pens and fed antibiotics to keep them artificially healthy. This should not be part of our vision for the future in the State of WA. We don't have to have fish farms in our state. We'll be able to get enough protein without fish farms. I'm very disappointed in our legislature for not banning all fish farms and I'm disappointed in my three state agencies who have lined up to issue permits to Cooke for factory farming in the Salish Sea.

Dan Swecker

As a retired state Senator and former fish farmer, I fully understand the risks and impacts of a commercial net pen operation the environment and native stocks. In addition to our freshwater operation in Rochester, WA,. my company also applied and received a permit to raise fish in saltwater in Case Inlet near Hartstine Island in South Puget Sound.

During my tenure in the Senate, I also served on the Natural Resources Committee for 18 years, and am very familiar not only with the status of stocks in Puget Sound, but also the various impacts on them as well as the potential for threats that might cause a deleterious effect on them.

While it has been shown beyond a doubt that Atlantics cannot and do not breed with native Pacific salmon stocks, the decision by Cooke Aquaculture to switch to sterile, all-female, triploid, Rainbow Trout/Steelhead is the very best option for eliminating any possible impact on the environment or native stocks. Should any of these fish escape, they will not reproduce because they are sterile. In fact the Washington Department of Fish and Wildlife routinely stocks these same fish in freshwater lakes throughout the state.

The preference for these fish is that they grow faster than other fish (considered an advantage by sportsmen). In addition, they will not reproduce and compete with native stocks. The state uses the same process as the private sector to create triploid fish that they routinely introduce in bodies of water though out the state. There are no chemicals used to do this. Instead, at fertilization, the eggs are subjected to high pressure for a few minutes which causes them to retain three sets of chromosomes. This results in the eggs that produce only sterile fish.

With regard to disease, these stocks are certified disease-free prior to entry in saltwater. The only possible disease- transfer that might occur would be from wild fish to the commercial stocks in the net pens. If such a transfer should occur, the problem would be detected right away and appropriate action would be taken to resolve it. This would result in no additional risk to native stocks.

In my 18-year experience as a legislator, I saw no legitimate statewide policy or priority that these fish being used for commercial aquaculture would impact. Some public policies would be greatly enhanced. One of those is the need for jobs in our rural communities. In the recent past, commercial net pen aquaculture has provided up to 400 jobs at any one time. The economic viability of some of these communities is heavily dependent on commercial aquaculture.

It has been suggested that the areas occupied by the net pens would be better utilized for recreational access. It is important to remember that most of rural Puget Sound is available for this purpose. Very little of the land is set aside to use for aquaculture. Around the world other countries and making huge efforts to expand aquaculture. It is now producing most of the seafood that we consume. It is critical that our country participate and remain competitive in the international marketplace.

I would like to make a strong recommendation that this application be approved for the good of rural communities, our natural resources and the state as a whole. Let's stop importing these products from other countries and produce them ourselves.

Sincerely,
Dan Swecker
Senator, retired

Craig Clark

I am in complete favor of going forward in allowing Cooke Aquaculture to farm steelhead in our local waters.

We need seafood, jobs, tax revenues, economic activity, and to food produce more of our food locally, rather than rely on importing it from overseas. This company has proven themselves to be responsible, reliable, and good neighbors.

Support Mariculture

I am in support of the modifications Ecology has made to the draft NPDES permits for the Cooke Aquaculture operations. Cooke's transition to growing native species will be good for creating a sustainable seafood source that can be locally grown and well regulated in Washington state. We need to use scientific research and evidence based facts as we navigate towards a more sustainable future.

Ecology has put forward multiple safeguards and environmental reporting requirements that will help further minimize risk, potential impacts and maintain water quality conditions around these types of farm sites. Aquatic farms need clean, healthy water to grow healthy fish. This is true for aquatic farms just as much as it is true that land farms require the maintenance of healthy soil to raise healthy crops. To my knowledge, the fish farms have been growing fish in them for over 30 years in Puget Sound. If there was negative impacts to the surrounding water or sediments, it is doubtful they would be able to continue growing fish in these same locations. The different companies that have operated the farms over this time have all made their mistakes or had accidents happen. Fish farming is not an easy industry. It is fishing and farming combined. Both require you to work in and with Mother Nature and as anybody that fishes or farms already knows, she can be a harsh teacher at times. Like anything we humans do, we learn from our mistakes and try to do things better the next time. In my opinion, Cooke needs to be given a chance to try to do things better. Transitioning to sterile steelhead native trout is a step in the right direction.

- Seafood production will need to increase to provide more food for the expected increased human growth in the human population that is forecasted to occur in the next 30 years. The United Nation global demographic data shows an increase of 2 billion additional people will inhabit the planet by the year 2050. Most of this population growth is expected to occur in areas that are already poor in protein resources and/ or rely primarily on natural seafood resources that are being stretched to capacity already.
- Fishery experts agree that significant increases in the U.S. and global capture fisheries are generally unlikely to occur because most currently utilized capture fisheries have been at their maximum sustainable yield for the past 30 years or longer. Increasing, and most importantly, securing global food production resources will become even more important over the next several decades.
- Wild capture fisheries for most of the traditional northwest fish species are in decline or are currently at their maximum harvestable yields to sustain the species.
- Tribal and commercial fisheries in Washington, Oregon and California do not exist at anywhere near their historic levels. By working on the water and working with fish, aquaculture can provide locally produced seafood, employment opportunities, and help to maintain this region's cultural connection to producing food from the sea.
- There is scientific agreement that increasing mariculture (ocean farming) will have less environmental impact than a proportional increase in terrestrial food production systems. There is a finite amount of freshwater available for an increase in terrestrial agriculture and most suitable

growing areas have fully exploited freshwater resources.

- Mariculture, done correctly and responsibly, can be a sustainable resource for seafood and become a resource to help supplement salmon enhancement, recovery operations and possibly even Orca recovery.

- WDNR and the other state agencies have refocused their regulations and helped to make the necessary corrections that will guide the marine net pen industry to more environmentally sound and sustainable practices. Strict regulations continue to make Washington's aquaculture operations part of the long term, sustainable solution to increasing seafood for human consumption.

- If we want to eat it, we better learn how to grow it.

Chris Long

Net pens open to the ocean have been shown in recent research studies in BC to have negative impacts on wild salmon and steelhead. BC is removing their pens by 2025 based on this science. WA should not ignore it and jeopardize our few remaining wild salmon and steelhead. A pen near the mouth of the Skagit is an especially bad idea. Just say no!

Also, from an economic perspective, net pens exploit our natural resources to benefit only a few people who own the company. Healthy fish populations are far more beneficial to the state's overall economy, since sport fishers spend hundreds of dollars a trip at local businesses. Don't risk killing the golden goose.

Kristin Balmet

Let's work to restore NATIVE species to their natural habitats. Perhaps muscle farming would be a safer and cleaner possibility for fish farming. Thank you for all your Time and hard work.

Corinne Asher

Cooke Aquaculture has already displayed their negligence and incompetence. Please do not give them or any other Net Pen company the opportunity to endanger native fish/marine populations and pollute the water. We must do everything to guard the safety of our waters and native fish populations, or we will NO LONGER have them!!!!!!!!!!!!

Harriet Holmgren

I think all permits should be provisional given Cook's history of not ensuring that the fish cannot escape. Even though these fish are native they are not the same as the wild fish (DNA may be the same but the environment/life experience is not - epigenetics has effects). Cook's should have to prove they can follow through with what they say they are doing for the next 5 years.

Lyn Kerschen

No steelhead! Cooke has had their chance at responsible farming and blew it. Studies have increasingly shown that fish raised in open water pens can have significant negative impacts on wild salmon populations and the environment. The practice usually sees tens of thousands or even hundreds of thousands of fish raised in close proximity to each other, where they can exchange diseases and parasites like sea lice. I strongly opposed to Cooke's permits. L. Kerschen

anonymous anonymous

This request is ONLY for a modification to the species being raised. The proposed change to raise native, sterile, steelhead trout is very reasonable, and I support this modification and the continuation of our local aquaculture industry.

Cyndy Holtz

Please see uploaded file.

Ecology should not authorize Cooke Aquaculture's modified NPDES permits for the following reasons:

1. WDFW issued a Mitigated Determination of Nonsignificance and granted Cooke permits for operating steelhead farms. The WDFW decision was challenged in court and a decision on whether to require WDFW to prepare a full EIS is pending. Ecology should not make any decisions on Cooke's NPDES permits until the court has issued its decision. If the court requires a full EIS, Ecology should not make any decisions regarding the NPDES permit until a full EIS has been prepared and vetted.
2. The SEPA determination issued by WDFW in January 2020 requires Cooke to prepare a steelhead marking plan, and a "no-recovery response" plan in the event of farm fish escapes. Additionally, Cooke is planning to replace some net pens at its Orchard Rocks location, but no plans or engineering data on the new structures have been provided. Ecology should delay its NPDES decisions until it has received and reviewed the imminent submission of additional information about Cooke's proposed operations.
3. Following the 2017 Cypress Island net pen collapse, a Washington court ruled that Cooke had violated the terms of its permits in a variety of egregious ways. Ecology should not take action on the NPDES permit until it has assurance that Cooke's emergency response plans and protocols will address the inadequacies that resulted in the Cypress Island collapse.
4. Ecology's review for issuing a modified NPDES permit to Cooke should be based specifically on whether Cooke's proposed operations will meet the state's goals, as stated in HB 2957, to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish and wildlife," instead of concluding simply that the conditions of the current NPDES application are similar to those of past permits.
5. The NPDES review should thoroughly evaluate existing data on the Cooke operations' effluents from industrial products, medicines, feed, fish waste, and dead and rotting fish. Evaluating only the difference between water quality impacts of salmon net pen operations, and those of steelhead, is inadequate and irresponsible.
6. The NPDES review should evaluate the genetic risks of the proposed steelhead farms to naturally spawning steelhead populations. The existing permit addresses genetic impacts of non-native Atlantic salmon.
7. Ecology should not issue NPDES permits until Cooke has requested and received agreement from all local, state, federal and tribal governments. At its regular meeting of October 13, 2020, the Bainbridge Island City Council unanimously voted to send to their consent agenda for adoption on October 27, 2020 [Resolution #2020-18](#), supporting Wild Fish Conservancy's application to lease the aquatic lands currently occupied by Cooke Aquaculture in Rich Passage, for the purpose of restoration and public benefit. Issuing an NPDES permit to Cooke for its Rich Passage operations would rebuke the Bainbridge Island City Council's aspiration for the restoration of Rich Passage.

Douglas Love

What may have been a good idea 30 years ago is no longer a good idea. Because farming salmon and other fish in tanks on land is now a viable, commercially profitable alternative to fish pens in open water, continuing to permit the farming of fish in Puget Sound and the Strait of Juan de Fuca no longer makes sense. The pollution caused by the pens (fish waste, uneaten food pellets), as well as the potential to spread viruses, other diseases and parasites to wild fish populations, creates too big a cost to the environment and citizens living in the Puget Sound region that outweighs any economic benefit to the state in lease payments or taxes or to citizens working at the farms. The risks of continued farming are amplified by Cooke's history of ignoring legal requirements and operating their farming activities in a negligent manner. Their reckless disregard for safety was shown by the 2017 release of hundreds of thousands of fish near Cypress Island, their failure through 2017 to keep their pens within their leased area in Port Angeles, and their failure in 2019 to notice a hole in a pontoon for one of their pens off Orchard Rocks in Rich Passage which caused a portion of the pen to dangerously sink and required Bainbridge Island residents to contact the U.S. Coast Guard to investigate.

If Cooke's modification request is granted, the State should not allow Cooke to continue farming fish of any type past 2022, with 2023 and 2024 used by them to remove the pens, remove or close facilities, and monitor environmental conditions in the area.

Helen Frances Glass

I fully support the denial of NPDES permit modifications and any further attempts to support Net Pen Fishing in our public waters. As many neighbors and citizens have already spoken so eloquently on the subject in the comments already received, I will voice my agreement with them, Senator Rolfe and the Bainbridge Island City Council.

When I first moved to the Fort Ward neighborhood in 2018, I was astonished to see that our Rich Passage waters were home to Orchard Rocks "Conservation Area" and Fort Ward Underwater Park "marine protected area". How then, could this fish farm exist right next to them?

And when observing the view from Google Earth, I was even more alarmed to see the clouds of waste and feces being transported directly to these sights by our strong incoming/high tides. For a population who seems committed to the "conservation" message and makes such efforts to pick up pet waste, spend a bit extra on green cleaning, laundry and gardening products, earnest about what goes down a storm drain and mortified by the thought of a sewage treatment mishap, I was shocked to see that we could watch the flushing of this giant toilet full of untreated waste each and every day in front of our own eyes.

It seemed so farcical at the time. What do we want to support and subsidize with our tax dollars?

I hope we will close the SEPA loop hole and end the Farce of thinking Net Pen Fishing and Conservation of our waters can ever be compatible.

Thank you for the opportunity to comment,

Frances Glass

Karen McDonell

Net pens cause discharges of effluent that flows down into Puget Sound and they must be shut down. I live on a shellfish farm in the lower Sound and we have had catastrophic clam die-offs in each of the last two years from discharges from fish pens and sewage treatment plants. These "so-called" nutrients have caused oxygen starvation and dead zones costing shellfish farmers enormous amounts of money from product loss.

Rachel Running

I am adamantly opposed to the permit modification that would allow Cooke to change species from Atlantic salmon to steelhead. It is unfathomable that Cooke's past practices with raising Atlantic salmon is not being considered. They have consistently pushed the limits in regards to being in compliance with environment standards. The only oversight of the Bainbridge Island net pens seems to come from the neighborhood, questioning what they are doing, calling them out on it and at times reporting them. Clearly the pens are in a state of disrepair. When one of the pontoons had a leak over several days the pen became lower and lower in the water. They were notified yet nothing was done until it was reported to the coastguard. By that time a corner was submerged. My family consistently picks up trash/debris from the beach that appears to come from the farm. We have had issues with noise from generators that are suppose to have noise abatement covers on them, pressure washing, and fish die off. We have witnessed seals and a sea lion in the pens eating fish. If they get in surely salmon are getting out. There were hundreds of sea lions residing on one set of pens for 8 months before any abatement was done.

Just last month they put old nets in an open dumpster for a weekend. It caused an unbearable stench throughout the neighborhood. After a complaint was made someone came and at least put a tarp over the dumpster. There have been multiple such instances. How can this company be trusted.

Their past practices must be considered when modifying any permit. What would make them take any more

care with this new endeavor, who will oversee this. Clearly they have not been good stewards in caring for the puget sound and a new species wouldn't change that.

The pending litigation needs to be resolved before the company is allowed to move forward on this.

Thank you

Rachel Running

Hello Washington Department of Ecology,

I am a Colorado School of Mines student who is doing a project over the Cooke Aquaculture crisis. I have been taking information from local tribes, Cooke's Website, Clam Bay permits, and local news sites. I have a couple questions about the solutions that I have come across that may have been proposed, where more information about some solutions that I may not know about, and some general questions about the situation.

The first question is about the switch from salmon to steelhead. Who did your department consult in order to come to this conclusion? Did you contact local tribes, and if so, which tribes? Did you take into account any of the tribes benefiting like that of the Jamestown Tribe, or did you look at the permits from a strictly environmental point of view?

You have a loose way for reporting numbers according to the "FACT SHEET FOR NPDES PERMIT WA0031526 COOKE AQUACULTURE PACIFIC, LLC CLAM BAY SALTWATER I", that is Cooke Aquaculture will be reporting the numbers directly to you, which can lead to possible fraud. Along with this, to the public Cooke doesn't have the best environmental track record. Why would they not want to report improper numbers?

So it seems that there would also be concerns over environmental degradation of the surrounding area when it comes to the fish waste. I have come across the proposal of using sea cucumbers to get around this hazard, as they are one of the most efficient bottom feeders you can use. Has your organization looked into this proposal, and do you think it is sustainable economically and environmentally?

Over the years since the accident, many foreign countries, especially Canada have taken notice of your response and solutions with the accident. Where do you see your organization playing a role on a global scale, or do you try to keep priorities only related to the problem at hand?

Finally, how under what criteria have you heavily leaned on to create solutions for this problem? Was it research, was it EPA regulations, or was it something second hand, such as Cooke Aquaculture research?

Thank you!

Stephen O'Brien

4237797606

Environmental Engineering Major at Colorado School of Mines

stephenobrien@mymail.mines.edu

Anonymous Anonymous

Ms. Laura Watson and the Washington State Department of Ecology,
Due to past malpractice and negligence Cooke Aquaculture should be denied a Pacific NPDES permit modification to raise steelhead.

I am vehemently opposed to the continuation of this project. The danger to other native salmonid species in Puget Sound through disease transmission, pollution due to the presense of the pens and the aforementioned poor maintenance by Cooke Aquaculture are proper grounds for denial of this permit. I as a Washington State resident and United States citizen do not think that we should allow Cooke, a company which has shown blatant disregard for native flora and fauna nationally and internationally, to operate any longer within Puget Sound or Washington State.

Maradel Gale

Puget Sound and the Salish Sea have had enough of industrial aquaculture, especially finfish netpens. These are loci of parasites, pesticides, fecal material and basically incompatible with the protection of our marine waters. Cooke Aquaculture should not be allowed to do anything in our waters. They have proven they are irresponsible and are not capable of managing their business to protect the public's waters and wild fisheries. I don't need to present any more information than has already been submitted to DOE by many others, both individuals and organizations. The facts are there. Deny any further permits for Cooke's operations and get them out of our waters!

To: Washington State Department of Ecology
From: Stephanie Ross, non-representational
Re: "Cooke Aquaculture Pacific NPDES permits modifications to raise steelhead"
Date: October 25, 2020

Commentator Stephanie Ross (hereafter "Commentator") attaches and incorporates in full the prior NPDES Comment on the Cooke Aquaculture Pacific (hereafter "Applicant") application for NPDES permits, mandatory pursuant to the laws of the United States, to operate Applicant's facilities while discharging pollutants into the waters of the United States. At this time, the NPDES authorization is delegated, as a matter of discretion, to the State of Washington Department of Ecology (hereafter "DOE"). This authorization, of course, can by law be removed from DOE if that unelected agency does not wholly comply with the intent and express laws of the United States, as well as the laws of the State of Washington and the financial responsibilities to the citizens/taxpayers.

As set forth in the attached Comment, "Governor Inslee's 2019-21 budget package includes over \$26 million in operating and \$300 million in capital investments for the Southern Resident orca recovery. Specifically, we will use these funds to address lack of prey, TOXIC CONTAMINANTS and vessel traffic issues." Comment at 2-3. Quoting Department of Ecology Focus on: Saving the Southern Resident Orca Financial Services_19-01-00. (emphasis added)

These toxic contaminants, as explicitly set forth, are a multitude of toxins and antibiotics, and expressly include "PCBs...THE MOST CARCINOGENIC." United States Environmental Protection Agency "Polychlorinated Biphenyls (PCBs)" (emphasis added)

Giving DOE the initial benefit of the doubt, it is assumed this agency intends to utilize this taxpayer money in full to do what was intended: protect the Southern Resident Orcas. The sole compliant legal option then, is invalidating the prior NPDES permits and denying the present applications.

Grant of the permits, however, would of course be proscribed by both the United States and State of Washington. 18 U.S.C. Ch. 47; RCW 42.20.

Moreover, the proposed "modifications" have no impact whatsoever on the multiple violations of governing and controlling laws of the United States, specifically, the Endangered Species Act and Clean Water Act.

Accordingly, Commentator submits this cover letter and the prior comment as incorporated by reference, in response to the Applicant's "permits modifications to raise steelhead."

Respectfully,

Stephanie Ross

COMMENT: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT COOKE AQUACULTURE STEELHEAD

Submitted by Stephanie Ross Commentator¹

I. OVERVIEW

Cooke Aquaculture (hereafter “Applicant”) is a foreign, for profit entity, which seeks National Pollutant Discharge Elimination System (hereafter “NPDES”) permits to discharge pollutants in the waters of United States, and Washington State, from the Washington State Department of Ecology (hereafter “DOE”). These pollutants include a multitude of antibiotics and chemicals, listed and referenced infra. Not set forth by Applicant, but necessarily included, are the polychlorinated biphenyls (hereafter “PCBs”) which are conclusive, federal and state “Toxic Pollutants.” CFR 401.15.

Applicant “operates two freshwater hatcheries...the hatcheries raise and produce the juvenile fish that are eventually transferred to Cooke’s Puget Sound marine net pens for final cultivations and desire harvest size. Eyed all-female triploid Rainbow Trout/steelhead eggs would be supplied to the Cooke hatcheries from the Troutlodge hatchery...” Applicant NPDES application, attachment D at D-2.

DOE expressly underscores that PCBs are in the fish feed for hatcheries. “EPA and Ecology are not aware of a feasible way to reduce PCBs in fish feed for hatcheries.” Fact Sheet For The Upland Fin-Fish Hatching And Rearing General NPDES Permit at 20.

It is widely recognized that farmed fish “That are fed ground-up fish have been found to be higher in PCBs compared with wild caught...” Mayo Clinic 2020. The United States government informs that “the types of PCBs that tend to bioaccumulate in fish and other animals and bind to sediments happen to be the most carcinogenic.” United States Environmental Protection Agency “Polychlorinated Biphenyls (PCBs)” EPA.gov (emphasis added).

DOE was allocated and has received public funds to mitigate the presence and impact of toxic pollutants.

Ecology’s role in Southern Resident orca recovery

Ecology works to improve and protect water quality, water quantity, fish habitat, and reduce toxic contaminants....Governor Inslee’s 2019-21 budget package includes over \$26 million in operating and \$300 million in capital investments for Southern Resident orca

¹ Commentator is a multi-jurisdictional constitutional attorney. However, this Comment is not written in a representative capacity for any past or present clients. The Commentator’s submission is personal and solely her own.

recovery. Specifically, we will use these funds to address lack of prey, toxic contaminants, and vessel traffic issues.

Department of Ecology “Focus on: Saving the Southern Resident orca” Financial Services 19-01-00; See e.g. Washington Department of Ecology Budget and Program Overview 2019-2021

The DOE cannot take taxpayer funds to protect the Southern Resident Orcas and simultaneously issue permits to a foreign, for profit entity to discharge toxic and multiple chemical and antibiotic pollutants that impact human health and endangered species. It is manifest that existing and future NPDES permits are unjustifiable.

Further, the issuance of NPDES permits for Applicants fish farms in the endangered species critical habitat in the waters of the United States and Washington, is a wholesale violation of the Endangered Species Act of 1973 (hereafter “ESA”), 16 U.S.C. §1531 et seq as pertaining to the Southern Resident Orcas. Pursuant to the laws of the United States and the State of Washington, the only applicable remedy is denying issuance of any further NPDES permits for further aquaculture operations at Applicant's Washington State fish farms (hereafter "fish farms") and voiding the existing permits. These are not permissible pursuant to the laws of Washington State, the Clean Water Act 33 U.S.C. secs 1251 et seq (hereafter “CWA”) or to the ESA, Sections 9 and 10.²

II. BACKGROUND

Commercial fish farms have been present and operated in the State of Washington for several decades.³ In 2016, Applicant purchased these fish farms from Icicle Seafoods. In only three years, Applicant has been sanctioned for a number of violations including the collapse of the Cypress Island farm, pollution and risk-related mismanagement issues at the Port Angeles farm, water quality mismanagement issues at the Port Angeles Facility and water quality violations in the operations off of Bainbridge Island. As recently as October 2019, a portion of one Bainbridge Island net pen started to sink. Department of Ecology.

Massive escapes from the fish farms in Washington State are not limited to the Cypress Island collapse. In 1997, "an estimated 300,000 Atlantic salmon escaped from the net pens, then owned by Global Aquaculture." Anderson, Ross "Atlantic Salmon Escape into Sound from Pens," Seattle Times, Tuesday, June 15, 1999. Approximately two years later in 1999, the Bainbridge Island Rich Passage facility collapsed, "releasing about one hundred thousand non-native salmon

² In the United States, citizens have a constitutionally guaranteed right "to petition the government for a redress of grievances." United States Constitution, First Amendment. Accordingly, any and all threats or retaliation, filing of a lawsuit or threat to file a lawsuit for exercise of this right shall be addressed as a civil and/or criminal matter as may be appropriate.

³ Fish farms as referenced herein specifically excludes any and all First Nation owned and/or operated commercial fish facilities.

into Puget Sound." *Id.*; <http://us.whales.org/news/1999/06/farm-raised-salmon-escape-washington-pen>; "Rough Waters for Salmon Farms", Bainbridge Review, Saturday, July 8, 2000. Many of the Atlantic salmon from the 1999 escape made their way to the mill pond at the head of Port Blakely Harbor. Port Blakely has a wild native salmon tributary. ESA threatened and endangered species have been located in the Port Blakely area.

The Center for Food Safety has reported and documented the frequency and quantity of world-wide escaped fish farmed from 1996-2012. The number of incidents is more than 30, and totals a reported amount of 25,768,729 escaped fish.

Endangered Southern Resident Orcas

All of Applicant's fish farms are located in the federally designated habitat of the critically endangered Southern Resident Orcas. Designated Critical Habitat for Southern Resident Killer Whales, November 2006, NOAA Fisheries, Northwest Region.

The Southern Resident Orcas are faced with imminent extinction if immediate, wide scale actions are not taken to alleviate the threats to them in their marine environment. Accordingly, NOAA recently has identified the Southern Resident Orca as among those few species who will become extinct without urgent and comprehensive intervention. National Marine Fisheries Service, Recovering Threatened and Endangered Species Report to Congress (FY 2015-2016) (Nov. 30, 2017), <https://www.fisheries.noaa.gov/resource/document/recovering-threatened-and-endangered-species-report-congress-fy-2015-2016>.

The Governor of the State of Washington convened the Southern Resident Orca Task Force to address the looming extinction of the extraordinary Southern Resident Orca. The Task Force cited three threats, including lack of prey and toxic contaminants. The Executive Summary specifically states Southern Residents and their prey are exposed to an ever-increasing mixture of pollutants in the marine environment, particularly in the Salish Sea. "Many of the pollutants are poorly metabolized, persist in the environment and bioaccumulate and biomagnify in the food web. These toxins can reduce salmonid survival by making them more susceptible to disease, which in turn means less food is available to the Orcas. The toxic contaminants can also reduce immunity and cause reproductive disruption in Orcas." Southern Resident Orca Task Force, November 2018, 5-6.

The Governor's Task Force further explained the impact of contaminants on the Southern Resident Orcas:

Contaminants enter the Salish Sea through . . . direct water contamination . . . and invariably enter the food web . . . At the top of the food chain, these contaminants can accumulate in long lived, high level predators including the Southern Resident Orcas.

Id. at 31.

Toxic contaminants in the water irreparably affect starving as well as well-fed Southern Resident Orcas. As the Task Force instructed "Orcas with higher contaminant levels in their blubber also have higher levels circulating in their blood, even when they are well-fed." Id. at 31, citing NOAA Northwest Fisheries Science Center.

Fish Farm Pollutants

Species sought to be introduced by Applicant are themselves a pollutant in the critical habitat of the Southern Resident Orca. Any chance of escape of any number of fish exacerbates the threat to the survival of the Orcas faced with imminent extinction. Applicant has not delineated precisely which pollutants will be introduced directly into the water, the home of the Southern Resident Orcas, but vaguely asserts that there will not be a significant change from those presently utilized.

According to Applicant's first statement in 2017 and renewed in its present NPDES application, these contaminants include the following:

Feed Additives

Canthaxanthin and/or Astaxanthin - Natural and/or synthetically produced compounds of the two types of carotenoid pigments may be added to the fish feed in levels ranging from 30 ppm to 70 ppm. Both canthaxanthin and astaxanthin are approved by the USFDA for use in fish feeds to enhance the pink to orange/red coloration of salmonid flesh. In the animal kingdom, carotenoids are heavily utilized as a source for pigmentation, a vitamin A precursor, for improving intercellular communication, enhancing immune responses, and as antioxidants in vivo [1,2] . . .

Antioxidants - Antioxidants are added to the fish feed mixture to stabilize the vitamin supplements and increase the shelf life of the feed . . .

Antibiotic Medicated Feed - Medicated feed may be periodically used to treat bacterial disease at the marine net pen sites . . .

Romet 30 (Sulfadimethazine-ormetoprim) - Romet 30 is the trade name for an aquatic animal premix containing a sulfadimethazine-ormetoprim antibiotic that is used to treat bacterial disease. When medicated feed is prescribed, the premix is added by the feed manufacturer during the feed milling process. Romet 30 is used to treat Furunculosis, Vibrio, Myxobacterial and other bacterial pathogens if they occur in the cultivated fish stocks. When a disease treatment is prescribed by a veterinarian, the Romet 30 medicated feed is manufactured at a concentration of 2.27 grams of active ingredient per one (1) pound of fish feed. The medicated feed is then fed to the fish to achieve a dosage rate of 50mg of active ingredients per one (1) kilogram of fish per day, for a treatment period of five (5) consecutive days.

Terramycin TM 200 (Oxytetracycline HCL) - TM 200 is the trade name of for [sic] an aquatic animal antibiotic premix that is used to treat Furunculosis, Vibrio, Myxobacteria and other bacterial diseases. The TM 200 pre-mix is added to the feed by the manufacturer when prescribed by the veterinarian to treat specific disease events. TM 200 is mixed to achieve a concentration of 5 grams of active ingredient per one (1) pound of fish feed. The medicated feed treatment is fed to achieve a dosage rate of 75mg active ingredient per one (1) kilogram of fish per day, for a period of ten (10) consecutive days.

Aquaflor - (Florfenicol) - Aquaflor is the trade name for the premix containing the antibiotic Florfenicol., and is approved by the USFDA for the use in freshwater food fish to

treat bacterial disease. In marine finfish aquaculture, Aquaflor can be used under the Investigational New Animal Drug (INAD) system administered by the USFWS and USFDA. When prescribed, Aquaflor medicated feed is used to treat bacterial disease and is mixed into the feed by the feed manufacturer at the active ingredient concentration rate of 0.302 grams per one (1) pound of fish food. Aquaflor medicated feed is fed to the fish to achieve a dosage of 10mg of active ingredients per one (1) kilogram of fish per day, for a period of ten (10) consecutive days.

Disease Control Chemicals - Other disease control chemicals that may be used at the farm sites are Finquel MS222, Iodophor disinfectants and sodium hypochlorite (chlorine bleach) disinfectant solutions.

Finquel MS222 - Finquel (MS222) is a USFDA approved fish anesthetic that is periodically used when the fish are sampled for weight and condition factors. A small number of fish are periodically captured by dip net from a pen and then immersed in a tote of seawater with a small amount of MS222 mixed in. The MS222 anesthetizes the fish so that they can be safely handled, inspected, weighed and then returned unharmed back to the fish pen .

Chlorine Bleach Solution and/or Argentyne Iodophor Solution - These surface disinfectants are used as a bio-security measure in footpaths at the farm sites and to periodically sterilize any shared equipment between the sites. Argentine [sic] Iodophor solutions are used in foot baths at the farm sites during the entire year. Estimated average annual consumption rates for each farming area of Iodophor solutions at the Bainbridge Island, Cypress Island, Hope Island and Port Angeles farm sites is approximately 55 gallons per facility. The use of sodium hypochlorine or chlorine bleach solutions at the net pen sites is infrequent.

Iodophor solution and chlorine bleach. Disinfectant used in footbaths and to disinfect farm equipment. Small quantities are used through out [sic] the year. Finquel MS222. A fish anesthetic used occasionally during size sampling of juvenile fish during the production cycle.

Medicated Fish Feeds – Romet 30 - Sulfadimethozine-ormetoprim. (Described in previous answer above) Terramycin TM 200 (Oxytetracycline HCL) (Described in previous answer above)

Aquaflor - (Florfenicol) (Described in previous answer above)

2017 Applicant NPDES Net Pen Permit Renewal Application Additional Information at 1-3; 2020 NPDES Renewal application.

The PCBs not only will be present in the hatchery feed of the change of species See “Overview” supra, but also will be present in the fish, the fish waste and the water column. Moreover, a substantive and expansive list of the chemicals set forth by the DOE for “fish hatching and rearing facilities” is provided in the Fact Sheet for the Upland Fin-Fish Hatching and Rearing General NPDES Permit. These include: 23 chemicals for “Internal Control”, 9 chemicals for “External Control” and 9 chemicals for “Disinfectants/Other”. Id at 9.

Applicant's Submission

The Governor's Southern Resident Task Force report was not cited by the Applicant in its NPDES permit application and attachments. Applicant's extensive bibliographies apparently have

not one study about the harm to the Southern Resident Orcas from toxins which significantly contribute to the very demise of this endangered species. As in the Washington Department of Fish and Wildlife (hereafter “WDFW”) application, Applicant sets forth only a few paragraphs generally surmising that a level of harm will not be reached by the changes of species in its farms and other commensurate actions.⁴

Incidental Take of Endangered Species

Applicant relies, in part, on the WDFW issuance of its permit issuance to Applicant on the basis of only an MDNS. 2020 NPDES Application, Attachment F. Such reliance is misplaced, because the WDFW permit issuance was a violation of governing federal law. Aside from the incorporation of the above-referenced Attachment D, consisting of a few paragraphs in total on the effects and impact to the Southern Resident Orcas, WDFW undertook no analysis of the harm from Applicant’s farms accelerating the extinction of the Southern Resident Orcas. WDFW did not incorporate by reference, cite to or discuss the Governor's Southern Resident Orca November

⁴ SOUTHERN RESIDENT KILLER WHALE

Potential Effects from Atlantic Salmon Floating Net Pen Aquaculture Southern Resident Killer Whale (SRKW) are regular inhabitants of Puget Sound. Marine net pens are insignificant in their overall size and are therefore not expected to impact SRKW habitat. Vessels that service these facilities may cause short-term and localized disturbances but are not expected to have any lasting effects. There is adequate space to accommodate SRKW passage around the existing net pen facilities so that any effects on passage are expected to be insignificant (Thom 2010).

No outbreaks of parasites related to net pen operations have been observed in Puget Sound. Therefore, NMFS concludes that the operation of net pen facilities would have insignificant and discountable effects on salmonids regarding sea lice infestation. In addition, NMFS anticipates discountable effects on prey quality because net pen operators comply with NPDES permit requirements related to maintaining water quality and sediment quality. A Not Likely to Adversely Affect (NLAA) determination was supported for listed salmonids in Puget Sound; therefore, SRKW are also not likely to be adversely affected since salmonids are a primary prey base (NMFS 2011).

Other than limited and non-lethal predator control permitted by NMFS, the technical memorandums do not state any concerns of adverse effects to marine mammals in Puget Sound in relation to Atlantic Salmon rearing facilities (Nash 2001). Furthermore, the Washington Pollution Control Hearings Board (PCHB) specifically noted in its 1997 ruling that the operation of net pen facilities in Puget Sound does not have a negative impact on marine mammals Ecology 2007. Therefore, Atlantic Salmon culture in floating marine net pens May Affect but is Not Likely to Adversely Affect Southern Resident Killer Whale. NMFS also concurs with the EPA effect determination of May Affect, Not Likely to Adversely Affect SRKW critical habitat. Existing Cooke Aquaculture Puget Sound marine net pens are required to comply with Washington State water quality standards through NPDES permit compliance. NMFS anticipates effects on prey quantity and quality will be discountable or insignificant within the action are and within designated critical habitat of SRKW. And the potential for vessels or the net pens themselves to interfere with passage within SRKW critical habitat is expected to be short-term and localized and therefore insignificant NMFS 2011. Potential Effects from the Proposed Net Pen Species Conversion

Conversion of the net pen facilities from Atlantic Salmon to triploid all-female Rainbow Trout/steelhead will not change significant threats to Southern Resident Killer Whales through reduced quantity and quality of prey, persistent pollutants that could cause immune or reproductive system dysfunction; oil spills; and noise disturbance from vessels or any other means. Therefore, the action to convert from Atlantic Salmon to Rainbow Trout/steelhead rearing is Not Likely to Adversely Affect Southern Resident Killer Whales. Applicant Submission in Support of Permit to Change Species, Attachment D, WDFW Application; Attachment D, NPDES Application 47-48

2018 report in its MDNS determination.

WDFW declined to ask a single recorded question about the harm or impact to the Southern Resident Orcas by the toxins, or the pollutant species in the subject fish farms. Attachment B, Additional Information: Response to WDFW Questions.

Direct and Indirect Harm to Southern Resident Orcas from Fish Farm Operations

Neither DOE nor WDFW applied for an Incidental Take Permit regarding the Southern Resident Orcas or operations of these fish farms. Neither DOE nor WDFW has developed, let alone received approval of, a Habitat Conservation Plan with respect to the Southern Resident Orcas. Applicant has not applied for an Incidental Take Permit regarding the Southern Resident Orcas or operations of these fish farms. Applicant has not developed, let alone received approval of, a Habitat Conservation Plan with respect to the Southern Resident Orcas.

III. DISCUSSION

A. ESA State Liability

The ESA is “the most comprehensive legislation for the preservation of endangered species enacted in any nation.” Tenn. Valley South. v. Hill, 437 U.S. 153, 180 (1978). Congress enacted the ESA “in the plainest of words, making it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities. Id. at 194 (emphasis added).

This mandate of the United States expressly encompasses all persons including, but not limited to the partnerships, companies, state agencies, officers, agents and any and all individuals. No one is permitted to act, permit, attempt to commit nor is absolved from actions which violate the ESA.

Specifically, ESA provides:

- (1) Except as provided in section s 6(g)(2) and 10 of this Act with respect of any endangered species of fish or wildlife pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to-
- (B) take any such species within the United states or the territorial high sea of the United States
- ...
- (G) violate any regulations pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act promulgated by the Secretary pursuant to the authority provided by this Act.

Id. Section 9

In holding that the definition of “take” includes incidental conduct, the Supreme Court unequivocally instructed that the legislative history of the ESA supports a broad sweep. The Committee Reports that accompanied the bills, that became the ESA, make clear that Congress

intended “take” to apply broadly to cover indirect as well as purposeful actions. The Senate Report stressed that “‘take’ is defined...in the broadest possible manner to include every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife. Babbitt v. Sweet Home Chapter, Communities for Great Ore., 515 U.S. 687, (1995). The term ‘harm’ includes “acts which annoy (wildlife) to such an extent as to significantly disrupt essential behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering. Id. 699 n. 12. (emphasis added).

The expansive reach of the ESA to incidental takes of species, with the greatest care to those listed as “endangered” on the brink of extinction, is compelled by the intent of Congress “to halt and reverse the trend to species extinction, whatever the cost.” Id. (citations omitted).

The Act provides an express exception to the imposition of penalties for violations: If the Secretary finds, after opportunity for public comment, with respect to a permit application, and the related conservation plan that –

- . (i) The taking will be incidental;
- . (ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- . (iii) the applicant will ensure that adequate funding for the plan will be provided;
- . (iv) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and
- . (v) the measures, if any, required under the subparagraphs (A) (iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

Id. (2) (B) (vi)

B. Judicial accord; Individual, state and local agency liability for incidental harm to federally listed Endangered Species

United States Courts of Appeal have underscored both the need for and imposition of equitable sanctions, specifically injunctive relief for incidental harm to listed species permitted by state agencies.

The Ninth Circuit led the way in imposing vicarious liability in Palila v. Hawaii Department of Land and Natural Resources (“Palila I”), 639 F. 2d 495 (9th Cir, 1981) and Palila v. Department of Land and Natural Resources Hawaii (“Palila II”), 852 F. 2d 1106 (9th Cir, 1981). In both cases, the listed, endangered species at issue was a tiny six-inch bird, a member of the Hawaiian honeycreeper family. The Hawaii Department of Land and Natural Resources had permitted goats and sheep in the palila’s critical habitat on Mauna Kea. The sheep and goats were instrumental in preventing the regeneration of the palila’s habitat by harming the mamane trees upon which the birds depended.

The Ninth Circuit affirmed the decision of the district court that the goats and sheep were preventing regeneration of the mamane forest upon which the birds depended for their survival. The court held that the State, by authorizing the permit for the grazing of the sheep and goats, violated Section 9 of the ESA. “Harm’ pursuant to the ESA “did not require the plaintiffs to produce actual corpus delicti of deceased birds...only that the palila population was near a biologically survivable minimum and the goats and sheep were destroying its only remaining habitat.” James c. Kilbourne, *The Endangered Species Act Under The Microscope: A Closeup Look From a Litigator’s Perspective.*” 21 Envtl. L. 499, 502 (1991).

In Palila II, the State of Hawaii had introduced feral sheep into the same critical area on Mauna Kea, damaging the endangered bird’s habitat. The court again affirmed the district court, requiring the State to remove the sheep entirely from the critical habitat of the endangered bird. In finding that the State was in violation of Section 9 of the ESA, the court reasoned in pertinent part that the sheep and the endangered bird could not co- exist, despite the increasing number of the palila. “The district courts (and the Secretary’s) interpretation of harm as including habitat destruction that could result in extinction, and findings to that effect are enough to sustain an order for the removal of the mouflon sheep” Id. at 1110.

Mandatory injunctive relief ordering the states to remove fish and animals that may harm indigenous federally listed endangered species is the requisite remedy. These cases are the law of the Ninth Circuit, which encompasses the State of Washington.

Other federal courts have followed suit. In Strahan v.Coxe 127 F. 3d. 155 (1st Cir. 1997) the federal appellate court affirmed the district court, ordering the environmental agencies in the State of Massachusetts to apply for an incidental take permit for Northern Right Whales and develop a critical habitat proposal to protect the whales from harm. The state agency, the Massachusetts Division of Marine Fisheries, had authorized permits to private parties to use gillnets and lobster pots within the critical habitat.

The court held that the State commercial fishing regulatory scheme exacted a taking in violation of the ESA. “But for” the permitting process, the actions of the private third parties that resulted in an incidental take of the Right Whales, could not occur. “A governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA.” When sections 9 and 10 are read together, these provisions prohibit “acts by third parties that allow or authorize acts that exact a taking that, but for the permitting process, could not take place.” Strahan at 159, 163. See Loggerhead Turtle v. County Council, 148 F. 3d 1231 (11th Cir. 1998) (permitted beach lighting, which harmed nesting loggerhead and green sea turtles sufficient allegation under ESA for standing purposes); United States v. Town of Plymouth, 6. F. Supp 2d. 81 (D. Mass 1998) (injunction ordered where municipality allowed off road driving that caused a take of piping plovers in violation of ESA.)

C. Harm to endangered Southern Resident Orcas from Applicant’s fish farms and State of Washington approved and pending permits

Each and every fish farm operation of Applicant occurs within the protected critical habitat of the federally listed endangered Southern Resident Orcas.

The open net pens are just that. They exist for the waters of the United States to constantly flow through, for wild fish and bio organisms in the food chain to flow through, and for fecal waste, chemicals, toxins, contaminants in fish farm feed, to enter the critical habitat of the Southern Resident Orcas and their prey. As stated by a leading scientist and researcher in WDFW, "There is something unique about the Puget Sound...what gets in the sound stays in the sound." Encyclopedia of Puget Sound, Puget Sound Institute; "New theory rethinks spread of PCBs and other toxins in Puget Sound" (May 18, 2016.) (emphasis added).

The EPA, NOAA and the Governor's Southern Resident Task Force all agree that primary threats to the very survival of the Southern Resident Orcas are lack of prey and toxins. Applicant's fish farms and the switch to the new species significantly and egregiously thwart the recovery of this endangered species and hasten the pace of their extinction.

These Orcas rely heavily on urban chinook. They will eat other fish, including the "steelhead", "but their preference overwhelmingly is chinook -- and in particular, runs that are themselves endangered or threatened, including Puget Sound Chinook." Seattle Times, "Struggling orcas heavily rely on urban chinook from Seattle area river, new analysis shows" (Updated May 13, 2019.)

As the Governor's Task Force expressly underscored, the "Southern resident orcas and their prey are exposed to an ever-increasing mixture of pollutants in the marine environment." Southern Resident Orca Task Force at 30.

High levels of persistent toxic contaminants including PCBs PBDEs and DDTs are present in the blubber of Southern Resident Orcas, potentially resulting in harmful health effects including alterations in hormone levels, reproductive distribution or miscarriages, reduced immunity to diseases, neurotoxicity, neurobehavioural disruptions and cancer. The toxic effect of these contaminants is further exacerbated by periods of weight loss, which can redistribute contaminants from fat stores (blubber) to other tissues, increasing the toxic response.

Id. at 31.

A source of these persistent organic pollutants (POP) in fish farms is the feed. "EPA and Ecology are not aware of a feasible way to reduce PCBs in fish feed for hatcheries." Fact Sheet For The Upland Fin-Fish Hatching and Rearing General NPDES Permit at 20. Significant published scientific literature has set forth the levels of these contaminants, which are uniformly recognized as contributing to the extinction of the Southern Resident Orcas. Several recognized authorities have published measurements of contaminants in fish feed and oils. P. J. Suther et al; "Occurrence of persistent organic pollutants in sediments collected near fish farm sites." Aquaculture 254, 243-247 (2006)

Moreover, the effluent from fish farms does not stay static and the blooms travel throughout the critical habitat of the endangered species. Dilution is not a solution for drifting waste in fish farm settings. Stanford Report, “For coastal fish farm waste, dilution is not an automatic solution, Stanford researchers say.” (April 7, 2011)

The use of antibiotics in fish farming – and particularly trout farming – should have set off alarms to the state of significant habitat impact. The Southern Resident Orcas in a depleted state may have a variety of needs, which this resistance may impact. There is great concern about the level of antibiotic resistance endemic in salmonid trout farming. Seafood Watch: Rainbow Trout Consulting Researchers (October 2, 2017).

Regarding the effect of such antibiotics on native fish populations, antibiotics as administered to salmonids in Chile have been reported in commonly consumed wild fish...it is concerning that several fish species affected are routinely consumed by humans. There is also the possibility that excessive levels of antibiotics in sediments and in the water column can affect the phytoplanktonic and zooplanktonic community diversity, potentially in turn affecting the health of animals and humans...

Id. at 45.

Applicant has listed a significant quantity of antibiotics that are currently, and apparently to be administered into open net pens/farm fish therein and potentially into the food chain of the Southern Resident Orcas, the food chain of the Puget Sound and waters of the United States. Seafood Watch scientific studies have necessitated a failing score of 2 out of 10 for chemical use in the famed rainbow trout due to the “high concern”. No analysis or even mention of this is included in the WDFW MDNS or DOE NPDES statements to date regarding Applicants 2020 permit requests.

The escape consequences of farmed trout, allegedly sterile or not, on the environment is potentially more harmful to the Southern Resident Orcas and their necessary food chain than that of Atlantic salmon. The compendium on farmed rainbow trout in Chile concluded that “rainbow trout are farmed in open systems and the available data...indicate large numbers (greater than 500,000) of fish have escaped since the early 1990s” Id. at 55.

It is generally agreed that escape and establishment of populations of non-native salmonids do have detrimental impacts on native fish due to predatory and interference competition and widespread ecological damage. Rainbow trout are known to be particularly detrimental in Chile due to their greater potential to establish self-sustaining populations, relative to other salmonids...feral rainbow trout (inclusive of both escaped and intentionally stocked) have been shown to significantly affect native fish populations due to competition for food. ...there is a high overlap of diets between escaped fish and native species, leading to inevitable competition.

Id. at 58 (citations omitted) (emphasis added)

There is a conclusion of WDFW and Applicant that escapes hopefully will be rare and that the trout hopefully, but not conclusively, will be sterile. The problem, however, is the competition for the food by the escaped rainbow trout to the point that those in Chile have had a significant negative impact on survival of other prey species.

Contributing to the starvation of the Southern Resident Orcas is a result entirely incompatible with federal law.

Transmission of viruses and lice themselves onto native wild populations has been extensively documented. A primary concern is that pathogens, old and new, are transferred by the lice to the native wild fish causing high native species mortalities. This is a particular threat to the Southern Resident Orcas who are starving and will eat not only native chinook, but also the threatened steelhead populations.

Species to species transmission has no barriers. Voiseett et al and Vectors "Parasitic sea louse infestations on wild sea trout; separating the roles of fish farms and temperature" (2018); Thorstad et al Aquaculture Environment Interactions "*Effects of a Salmon lice *Lepeophtheirus salmonis* on wild sea trough Salmon trout – a literature review*" (2015)

D. The DOE prior general and individual NPDES permits issued to Applicant violate the ESA

Applicant's fish farms have and will be involved in an incidental take of the Southern Resident Orcas. The toxins, pollutants, chemicals, potential for escapes, discharge and waste have and will harm the endangered species, from interfering with breeding to advancing actual starvation. The change to a new species only exacerbates the harm to the cherished Southern Resident Orcas.

The general and individual present NPDES permits for Applicant's fish farms were authorized without an incidental take permit or habitat management plan and are violative of ESA sections 9 and 10. The Constitution of the United States commands compliance with the laws of the United States, including the CWA and the ESA. The Constitution and federal laws made under its authority "are the supreme law of the land." Constitution of the United States, Article IV, Clause 2. Accordingly, DOE, WDFW and persons involved as the agents permitting the harm to the Southern Resident Orcas, are in violation of the laws of the United States and subject to injunction.

IV. CONCLUSION

For the foregoing reasons, Applicants current NPDES applications should be denied in full and the prior NPDES issued to Applicant by the DOE allowing discharge into the critical endangered species habitats and harm to the citizens, species and ecosystems of the United States and Washington State, revoked. These are the only remedies consistent with governing law.

Judith Akins

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Re: Cooke Aquaculture Pacific, LLC NPDES permit modification application.

Dear Ms. Niewolny,

Thank you for the opportunity to comment on Cooke's request to raise sterile all-female triploid Rainbow/Steelhead at existing marine net pen sites in Puget Sound . I belong to many groups that are interested in making Puget Sound waters a healthy habitat for the flora and fauna which reside there as well as for human activity .There needs to be a net gain to these waters of Puget Sound to overcome the practices of the past.

While the Washington State Department of Fish and Wildlife has approved this project under SEPA, stating that the proposal "does not warrant an Environmental Impact Statement and the proposal will likely not have significant adverse impacts on the environment",I question the non-significance of this aquaculture project. I believe there will be significant impacts to the Puget Sound by these four projects and one only has to look at the comments already submitted by The Wild Fish Conservancy, Skagit Audubon Society, Swinomish Indian Tribal Community, Evergreen Islands, Our Sound Our Salmon.

Looking at the additional requirements being placed on Cooke I find some statements which are troubling. In the modifications DOE is requiring Cooke to prohibit release. Was not Cooke also charged with this prohibition when in August 2017, they allowed 250,000 salmon to escape and did not report this incident until days later? They are required to report unusual events, Cooke had a highly "unusual event" occur in 2017 and they did not report it until after others had reported seeing the Atlantic Salmon in their nets.

Fish feeding is an issue and the requirement that Cooke increase their monitoring, however they do not plan any changes in their feeding program. Fish feed along with the antibiotics are a very real threat to our native species and the surrounding waters. Farmed triploid rainbow trout are fed antibiotics which are widely used in modern aquaculture to prevent or treat bacterial diseases in farmed fish. The Seafood Watch program suggests that people should only eat these fish from indoor recirculating tanks because of levels of these antibiotics etc. in the fish.

Ecology has required Cooke to follow AKART analysis (All Known Available and Reasonable Methods of Treatment) to avoid excessive accumulation of marine growth.This contribution to marine waters of eutrophication, feces and uneaten food pellets alter the organic matter in the sediment, which can change the consumption of oxygen and can cause local eutrophication. According to the Institute For Coastal Marine Environment, "The most common negative

environmental effect is water eutrophication, water quality, and transmission of animal diseases." (Monique Mancuso, Institute for Coastal Marine Environment (IAMC) www.journaloffisheries.com) This can cause changes in the abundance and composition of microflora. The eutrophication causes dense growth of plant life and death of animal life and the spread and outbreak of diseases. Studies by both Ecology and WDFW: the 2000 Seventh Report of the Puget Sound Ambient Update finds "Widespread evidence of the declining population of Puget Sound marine organisms suggests the importance of new efforts to protect and recover populations. Recovery plans based on an ecosystem perspective will require additional information about the specific relationships among various Puget Sound species and the influences of various natural and human-caused environmental stresses on marine populations." WA State is spending millions of dollars for salmon recovery which depends on healthy seas. Continued fish aquaculture by Cooke and their proven record of abuse will only continue the decline to these waters.

Cooke is being required to improve their Net Hygiene in accordance with DNR protocol. Although Cooke has been required to do so, it has not maintained and cleaned net pens in the past and allowed buildup of mussels and other marine organisms which led to the net pen collapse in August 2017. The Department of Natural Resources report on Cooke's net pen collapse states that the net pens were not properly designed. (Negligence caused August net pen collapse News Date January 30, 2018, dnr.wa.gov) and as Cooke is making no changes to their structures the possibility of another collapse is real.

As government agencies address the effects of fish-farming in the Puget Sound waters, there is almost no scientific evidence that supports that this a healthy addition to our marine waters and in fact there is much evidence that supports that fish aquaculture contributes to the detriment of our water quality and life within the marine environment. It is my belief that Land-based Recirculating Aquaculture Systems (RAS) are a far better alternative for aquaculture farms. These systems located upland, allow for fin fish aquaculture but would greatly reduce or eliminate the impacts to the marine environment caused by net pens.

While "WDFW has determined that this proposal will likely not have a significant adverse impact on the environment", science is proving that this proposal will have significant adverse impacts to the marine environment and waters of Puget Sound. WA State is spending millions of dollars for salmon recovery which depends on healthy seas. Continued fish aquaculture by Cooke and their proven record of abuse will only continue the decline to these waters. We must study any and all impacts of any industry that will affect the Salish Sea and cannot allow any industry to threaten an already threatened environment and do further harm. I strongly urge that a new permit process be conducted on these projects and ones that include new SEPA analysis, threshold determination and a public hearing.

I am looking forward to seeing that the Department of Ecology carefully consider all the comments and decide in favor of a healthy and viable Puget Sound.

Comments on the draft NPDES permit modifications for Cooke Aquaculture's Puget Sound open water net pens at Hope Island and Rich Passage

Over-arching comments

As noted in comments I submitted on the applications for these permits, I have serious concerns and request that you **not proceed** with issuance of these permit modifications.

- 1) This company and its predecessors have a poor record in maintaining the structural integrity of their facilities and reporting issues and emergencies in a rapid and timely manner so that appropriate mitigation can take place before there is excessive release of fish or other environmental harm. In the release of Atlantic salmon at Cypress Island in 2017, Cooke Aquaculture avoided responsibility for the fish release in their public statements and did not promptly inform authorities. Why should we expect them to behave differently now or trust their management to protect the environment from harm when their bottom line is profits?
- 2) Given how much additional experience and information is now available pertaining to the safety and issues associated with in-water net pen culture of finfish, proceeding with this permit without an updating and thorough review of the SEPA document from the 1990's, that is the basis for assessing environmental impacts of this industry, is irresponsible and an abrogation of the State's responsibility to protect the waters of the state.
- 3) The people of this State and the Legislature have expressed their high priority for protecting the ESA-listed native salmonid runs and the endangered southern resident Orca population in Puget Sound. Given that, what is the basis for furthering an activity in public waters that adds pollutants to the Sound, interferes with salmonid migration routes, and in particular, poses a risk of amplifying disease in the native fish populations? This is not just a question of whether the permit modifications will increase the level of pollution over the current discharges, but about whether these permits are an appropriate use of the state's waters in light of the ESA listings. Evaluating risk involves both looking at the likelihood of an occurrence and the severity of the potential impacts. Likelihood of some escape and likelihood of disease are both high, based on the past record of this industry. Impacts are serious if they affect the native runs of salmonids in the Sound.

I have not reviewed each of the four draft modified permits, but have chosen to review the draft permit for the Clam Bay net pen facility, WA0031526, as an example of what I presume are parallel conditions, but on different pages, of the other draft permits. Therefore, please apply my permit comments to all four draft permits for Cooke Aquaculture under consideration with the public notice.

Specific Comments on Permit Terms and Conditions

My primary concerns, beyond those expressed above, have to do with the monitoring and reporting requirements.

- 1) If I understand correctly, under Section S1, Discharge Limits, page 7, any release of fish from the net pens is prohibited and each fish released is a separate permit violation. Section G3 A.1., on page 29, goes on to state under Permit Actions that a violation of any permit term or condition is cause for “terminating the permit during its term or for denying a permit renewal application.” I support these terms and hope that the State will respond appropriately when a release occurs, both terminating the permit, and fining the company per permit violation, as found under Section G.14., page 33.
- 2) Section 2, Monitoring Requirements. Monitoring should be done by a third party contractor agreed to by Ecology, not by the company. This section is confusing in terms of how the decisions proceed on whether to perform Exceedance and Enhanced Monitoring. What governs how soon after the initial sediment monitoring the applicant is required to perform Exceedance and Enhanced Monitoring? Sediment biological impacts and toxicity should be assessed as soon as an exceedance is detected, not after the annual monitoring report is submitted to Ecology in January, in order to accurately assess the full extent of impacts from the exceedance.
- 3) Section S 2.L, Antibiotic Resistance Monitoring, on page 13 should be a required element of this permit modification rather than requiring reliance on the vague threshold of an “unusually high usage” level, and the administrative processes to revise the permit requirements after the fact. Antibiotic usage should be assumed to be ongoing with these facilities, and antibiotic addition to the marine environment is a pollutant with ecosystem impacts.
- 4) Section S3, Reporting and Recording Requirements

S3.B.3.a. – Fish Mortality Monitoring and Reporting – it appears that the only concern is to report to WDOH when fish mortality exceeds 5% of the fish in any calendar week due to a harmful algal bloom. This is important in terms of monitoring toxic algal blooms and potential impacts on shellfish harvesting, fishing and ingestion of water by swimmers. However, what does not appear to be addressed is how a decision is made as to when the fish disease incidence and mortality from pathogens in the pens is at a level that is an unacceptable risk to native fish and wildlife nearby. Monthly DMR reporting of fish mortality is insufficient to halt a serious disease outbreak that threatens populations outside the net pens. Increase reporting of fish mortality and its causes.

S3.G.2.b. – page 18, 24-hours is too long a period to allow for reporting of a noncompliance occurrence that “may endanger health or the environment.” For

example, an accidental release of fish from a net pen failure should be reported immediately. How is the quoted phrase above to be interpreted?

5) Section 4, Operations and Maintenance Manual

S4.A.3.e. – pg. 20, How is “frequent basis” defined for removal of fish carcasses? Disintegrating carcasses can carry disease and become particles that are disease vectors in either the water column or sediments outside the pens. Please specify a frequency and what would constitute a reason to increase that frequency of removal of carcasses.

S.4.a.3.l – pg 21. There should be no discharge of toxic chemicals unless specifically authorized by the permit.

S9. Fish Escape Prevention, Reporting and Response Plan

S.9.N, pg 26 – fish escapes must be reported immediately, not within 24 hours. The initial response is critical for recovering fish and assessing the size of the escapement

S.9.X, pg 27 – Ironically, an Annual Fish Release Report presupposes that this activity will result in release of fish. This entire circumstance is unacceptable and has already been declared as a permit violation that can (and should) result in termination of the permit.

Jules Michel

Summary: It is premature to issue discharge permits to Cooke Aquaculture's proposed open net pens growing mostly sterile rainbow trout in Puget Sound until EPA and NOAA have completed their Biological Opinion, started only due to a court decision. Issuing those permits only puts Washington State at risk of litigation, a long and expensive process. Alternatives exist which protect Puget Sound's marine ecosystem. Cooke Aquaculture has the land and the technology exists.

Thank you for the opportunity to comment on the proposed discharge permits which would allow Cooke Aquaculture to grow mostly sterile rainbow trout in Puget Sound and create plumes of untreated waste discharged into Puget Sound's public waters.

As background, I was born, raised and educated in Washington State. My family has owned property on the shoreline of Puget Sound for four generations now. I have seen development along the shoreline, in the tidelands and in the waters evolve over those many years to levels not considered in the past.

There is no question that aquaculture has been largely ignored until recently, most believing it is benign with little to no adverse impacts. The recent court case which negated the Corps of Engineers Nationwide Permit 48 clearly demonstrates cumulative impacts have not been considered adequately, whether in the form of shellfish aquaculture or in this case net pen aquaculture. The more recent court decision which forced NOAA and the EPA to begin a Biological Opinion should shine a bright enough light on this process to show the Department of Ecology it is premature to consider, let alone issue any discharge permits to Cooke Aquaculture, no matter the species grown.

The press release from Wild Fish Conservancy summarizes adequately that decision and process, found here: https://wildfishconservancy.org/pressrelease10.11.2018/at_download/file

Thank you for the opportunity to comment and to help protect Puget Sound.

Laurie Niewolny
Water Quality Program, Department of Ecology
P.O. Box 47600 Olympia, WA 98504

Dear Ms. Niewolny,

Please accept the following public comments.

A bit of background, I moved to the island in 2010 and knowingly bought a home by the fish farm. I thought at the time, it was interesting. Prior to Cooke's ownership, my issues with the owners of the fish farm were mainly about safety issues regarding trucking of food and nuisance issues such as noise, smell, and visible blight that need to be resolved again and again with each new owner. When Cooke took over ownership, instead of an Indonesian company with only a Florida resident address, I was excited after our first meeting with the company. However, I was soon in for a **rude awakening!** Several months later they began violating their NPDES agreement by over water power washing their nets. I spent 38 years working for a global environmentally sensitive company with a strong management culture steeped in honesty, safety, operational integrity, controls, and a "In God We Trust, All Others Bring Data" attitude. My former company strove to be in absolute compliance with both the letter and spirit of all laws. **Cooke's approach was the direct opposite of my former company.** That led me to dig into the regulatory background, science of fish farming, and integrity of Cooke as a global company. The key for an environmentally sensitive industry is managing risk which I truly believe Cooke is not capable of managing the risks of escapement and environmental pollution. **The consequence to a native endangered species, Steelhead, will be disastrous.**

Items in black are our comments. Items in **blue** are quotes from external sources. Items in **green** are from state agencies. Items in **red** are from Cooke.

Risk Assessment

While not a scientist, I personally reviewed all materials and new scientific articles presented to Washington Department Fish and Wildlife for approval to change species of fish being raised. I searched for new scientific research specifically related to raising Steelhead, industry experience with both Steelhead and triploid fish. I found the application lacking.

Cooke has advocated in legislative testimony for permitting based on a scientific basis. However, the proposals in this application are based on an Environmental Impact Statement from 1990 that is only minimally updated primarily for the Endangered Species Act and based on Net Pen Guidance from 1988. Both are geared specifically to Atlantic salmon rather than native species. Scientific studies tend to support conclusions that follow their funding sources. This applies to both sides of the argument, environmentalist and industry. There is conflicting scientific evidence and many of the claims have not been resolved for the purpose of Net Pen Aquaculture regulation in Washington State. Efforts to update Net Pen Guidance based on best available science and practices was halted in 2017.

"There is a rich body of literature about many topics involved in the production of rainbow trout. Feed formulation and improvement, production methods, pollution control, and disease control are research areas that have received much attention. Research at academic institutions and government research stations will likely continue to supply the industry with scientific advances to improve production and help the industry progress in the coming years. As with many forms of aquaculture, little comprehensive research has been conducted and relatively little scientific literature is available on the environmental impacts of rainbow trout farming in the U.S." (Seafood Watch, Farmed Rainbow Trout, 2006,)

Since Cooke is requesting a significant change in species from Atlantic salmon to steelhead that are raised in marine net pens, it should not be permitted to use a 1990 EIS for consideration which assumes the impact and risks are the same. Nothing of this type and scale has ever been done in Washington State. A new EIS is critical so that a valid risk assessment can be performed.

Similarly, the State's regulatory agencies should complete their assessment of net pen guidance since both science and technology have changed in the last thirty years. This guidance would help define mitigation strategies. Using the same set of practices, processes and depreciated facilities will not mitigate the risks associated with the raising of native fish. WDFW has stated in testimony that they are much more concerned about the escapement of native fish.

A more meaningful approach to risk assessment has been advocated in one of the scientific articles that Cooke did cite in their Attachment C – Annotated Bibliography (Genetic Risks Associated with Marine Aquaculture, NOAA, Waples et al. (2012)). This includes both the potential risks and benefits.

“Informed decisions about appropriate use of marine aquaculture are best made following a comprehensive assessment of potential risks and benefits.”

...

“Potential benefits are of two types: benefits to society and benefits to natural populations. Evaluating societal benefits (economic, social, political) involves a host of normative considerations and is not attempted here, but this is a crucial component of any comprehensive risk-benefit analysis.”

Cooke fails to make a strong case for the use of public waters for private gain by supplying any benefits to society or benefits to natural populations to offset the risks associated with the rearing of a native species. The risks associated with a change in species will be addressed in later comments. Some of the areas of concern regarding benefits are described below:

Economic: Somehow the hundreds of jobs stated by Cooke in Washington State legislative testimony have shrunk. The limited number of full-time of jobs potentially impacted are geographically dispersed.

Social: Salmon and Steelhead are relatively expensive food products that are not feeding mass populations. In contrast, Cooke has annual revenues expected to be several billion dollars.

Corporate values were called into question when Animal rights activists recently exposed Cooke practices.

<https://www.fis.com/fis/worldnews/worldnews.asp?country=0&monthyear=&l=e&id=104876&ndb=1&df=0>

Glenn Cooke, CEO of the Cooke family of companies, provided the following statement after the company was contacted by the Maine Department of Agriculture regarding an animal welfare complaint submitted by an activist veganism organization for a Cooke Aquaculture USA freshwater fish hatchery in Bingham, Maine.

“I am disappointed and deeply saddened by what I saw today. As a family company, we place animal welfare high in our operating standards and endeavor to raise our animals with optimal care and consideration of best practice. What we saw today is most certainly not reflective of these standards.

Political: Do the revenues that Washington State receives from Cooke offset the ongoing costs required to supervise their compliance with the state's regulations? Did the money that the State received as part of the Cypress Island incident offset the costs to capture escaped fish and to assess the soundness of their facilities? Does the money that the state receives offset the costs associated with salmon and steelhead restoration?

Benefits to natural populations or environmental benefits: Cooke's proposal will not foster the growth of native fish.

From the Marine Survival Project, Why focus on the Salish Sea: [Of these salmon, Chinook, coho, and steelhead have experienced tenfold declines in survival during the marine phase of their lifecycle, and their total abundance remains well below what it was 30 years ago.](https://marinesurvivalproject.com/the-project/why/) <https://marinesurvivalproject.com/the-project/why/>

Most of the farmed ocean raised steelhead is imported from Norway or Chile and uses production methods similar Atlantic Salmon. Imported farmed trout can be raised in saltwater netpens, which release waste directly in the ocean and escapes potential endanger wild populations unlike farm raised rainbow trout or steelhead which uses environmental sustainable means (Seafood Watch, Farmed Rainbow Trout, 2006,)

Cooke has been recently cited for incidents at their net facilities for overstocking and not conducting environmental testing.

<https://www.seafoodsource.com/news/aquaculture/cooke-to-pay-fine-for-overstocking-maine-salmon-farms-not-conducting-environmental-testing>

“Cooke was cited by the Maine Department of Environmental Protection for a number of incidents at its net pen sites in Hancock and Washington counties, including having too many fish in pens, failing to conduct environmental sampling, and failing to follow a number of procedural measures laid out in the company’s operating permit, including on-time filing of pollution sampling reports and fish spill prevention plans.”

Facility Condition

Cooke knowingly bought a depreciated facility and took on the existing management to operate it.

Since prevention of escapes in the first place is the most important strategy for dealing with escapement, there appears to be some inconsistencies in the application of the law and lack of coordination between the State agencies.

*Furthermore, DNR, Ecology, and WDFW have inspected each facility at least once since 2017. Finally, as part of the new law that sunsets nonnative finfish marine aquaculture in Washington State (EHB 2957), Cooke is required to have each net-pen facility inspected above and below waterline by an engineering firm approved by WDFW, **roughly every two years when the facilities are fallow**. Transport of fish into the net-pens is contingent on the findings from that inspection. In other words, WDFW will not approve transport permit applications for net-pen facilities whose structural integrity is inadequate.*

Based on the last inspection of Cooke's facilities by DNR during September 2017 through January 2018, an inspection would be due about now. Based on the approval of Cooke's NPDES permit for the Bainbridge facilities on July 19, 2019 an inspection would not be due until 2021 (see citation below).

*The permittee must obtain a marine engineering firm to conduct inspections to assess structural Integrity of the net pens. Inspections **must occur within two years of the effective date** of the permit if not completed and to be done routinely, approximately every two years, when net pens are fallow, and must include current Doppler data, topside and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations. The net pen structural integrity assessment reports must be certified by a licensed professional engineer and submitted to Ecology within 60 days of the completion of the inspections.*

The timing of inspections is out of sync. This is further complicated by Cooke's growing cycles of 12 to 18 months. Currently on Bainbridge, the Fort Ward and Clam Bay pens and only a portion of Orchard Rocks-South

are fallow. Orchard Rock-North is fully stocked. Could Cooke could potentially delay inspections to every three or four years creating an unacceptable level of risk?

We believe that Cooke knowingly purchased facilities in 2016 that were reaching the end of their useful life. The average life span of the net pen structures is 15 years, as stated in Cooke’s DNR lease agreement. Some of the previous management continued to be employed by Cooke and should have understood the condition of the facilities purchased. To our knowledge, all of the Bainbridge net pens were replaced after a 1999 escapement. That would put the Orchard Rock pens beyond their useful life per the DNR lease agreement. In looking at the Mott McDonald Engineering Assessment, it would appear that the prior owner replaced pens at the end of their life. These net pens are continuing to depreciate and deteriorate. No structural analyses were performed by Mott McDonald in 2017 according to their report. The following is our attempt to understand the age and status of these pens:

| | First Built | Replaced (1) | Life per Lease Agreement | Last Inspected | Next Inspection Due | Current Status |
|-------------------------|-----------------------------|--------------------|--------------------------|----------------|---------------------|--|
| Fort Ward | 1970 | 2000 (2007 moved?) | 2015 | November 2017 | November 2019 | Fallow since 05/2019? |
| Orchard Rock | 1970 | 2000 | 2015 | December 2017 | December 2019 | South-partially fallow since March 2019, North-fully stocked |
| Clam Bay | 1970 | 2000 (2006?) | 2015 | September 2017 | September 2019 | Fallow since August/September? |
| Hope Island | 1986 | 2001 | 2016 | December 2017 | December 2019 | ? |
| Cypress Island 1 | 1985 | 2001 | 2016 | | | ? |
| Cypress Island 2 | Assumes 1985 | Assumes 2001 | 2016 | Not applicable | Not applicable | Removed in August 2017 due to escapement |
| Cypress Island 3 | 1985 | 2001 | 2016 | | | |
| Port Angles | 1990? Based on Google Earth | 2002 | 2017 | December 2017 | Not applicable | Lease revoked. Net Pen Not removed. |

1 Note Replacement dates from Mott McDonald Engineering Assessments are vague and inconsistent

A two-year inspection schedule complicated by the growing cycle may not be adequate as the pens approach the end of their expected life span. After a certain point, perhaps net pen structures should be inspected every time they are fallow and before a fish transfer permit is issued and never partially filled (like Orchard Rocks South is today) so as to cause an inspection delay.

The industry on Bainbridge Island has been grandfather on a 1988 conditional use permit. Cooke’s approach to maintenance and replacement is to piece meal both. This allows them to avoid triggering SEPA and allows them to avoid coming into full compliance with existing regulation and industry best practices.

Pollution

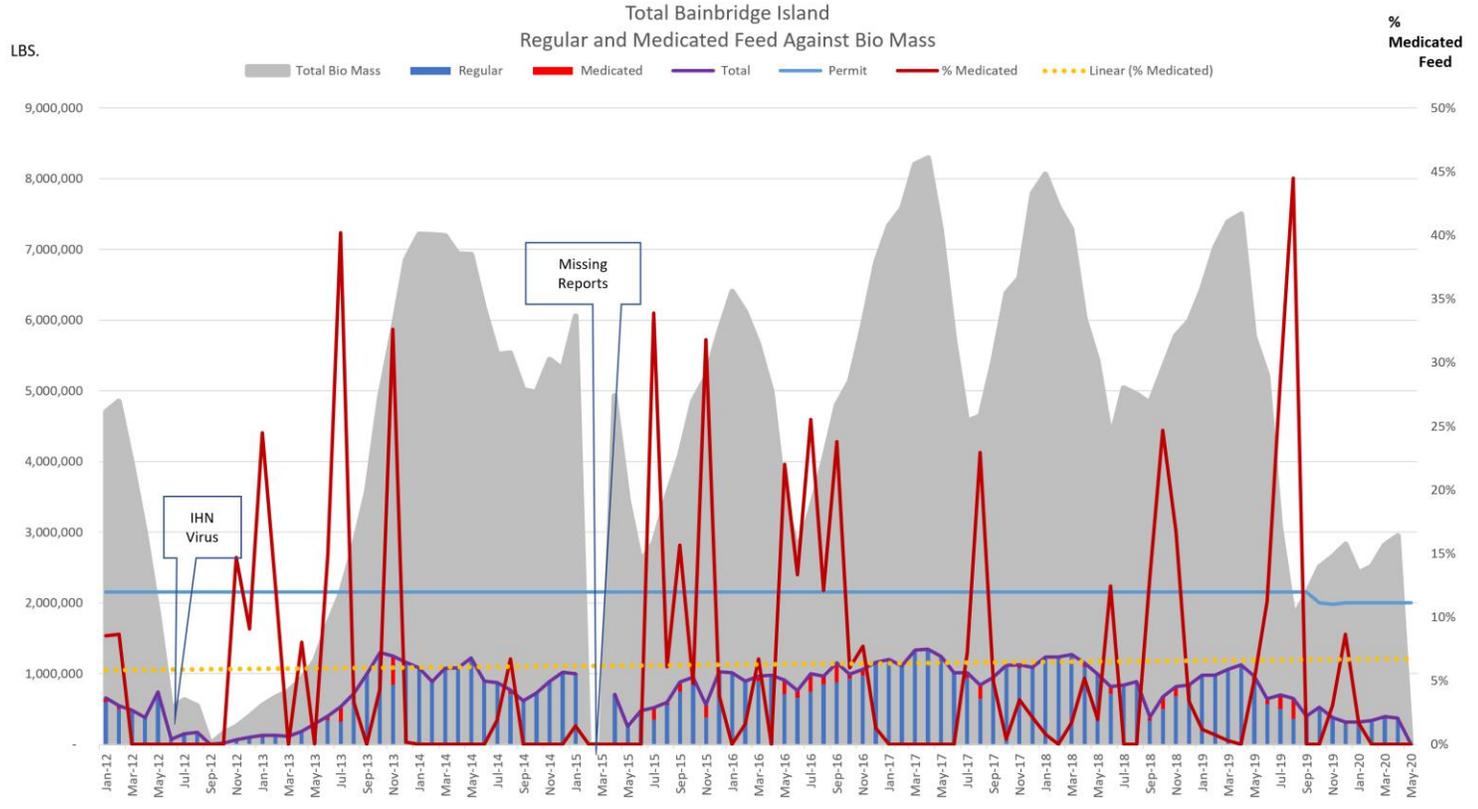
The Department of Ecology has developed a State of Basis which serves as an amendment to the Fact Sheet and describe changes made to the permits that are now up for public comment.

<https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Aquaculture/Net-pens>

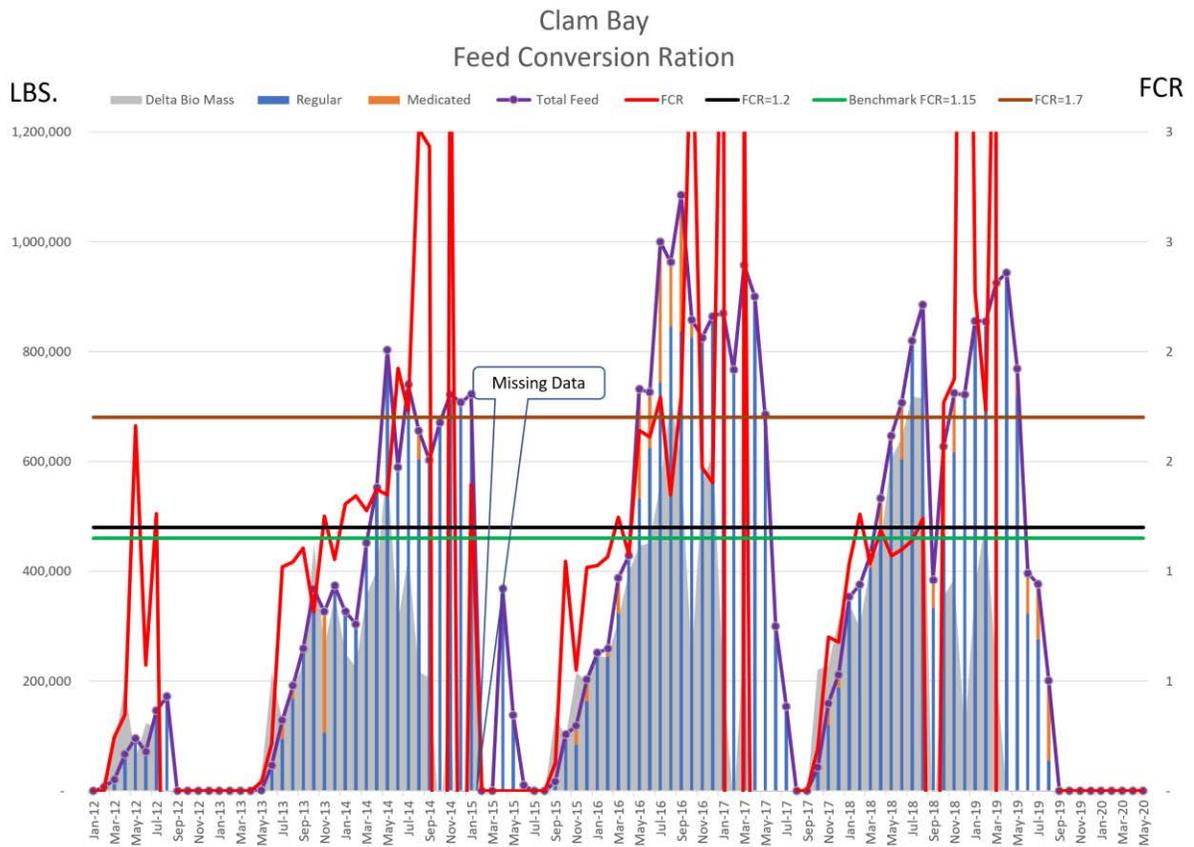
As an existing discharger, state law exempts the modification of Cooke’s wastewater discharge permit from the SEPA process as long as the permit contains conditions no less stringent than federal effluent guidelines and/or state rules and regulations (RCW43.21C.0383). Ecology has assessed Cooke’s switch from non-native Atlantic salmon to native triploid (sterile) all-female stock of steelhead for factors that could affect the characteristics of the discharge. Regardless of species, discharges from finfish

aquaculture operations may contain fish feces, uneaten fish food, disease control chemicals milled into fish feed, biofouling organisms displaced from routine net cleaning, and escaped fish.

When you talk about fish waste, antibiotics, and uneaten feed it is difficult to get a picture of the impact because it all happens underwater. The graphs below are based on monthly data from January 2012 to May 2020 that was submitted to the Washington Department of Ecology by the industry. The period was selected based on current NPDES permits. Total Bainbridge Island (Clam Bay, Orchard Rocks, and Fort Ward Pens) chart shows the total Bio Mass in grey (amount of fish) over 8+ years and the regular and medicated feed (antibiotics). The dark red line shows the percentage of medicated feed over time. With this many fish in the water, there is a significant amount of fish feces as anyone who has had an aquarium or goldfish bowl would know. The percentage of medicated feed in the water is not insignificant.



The second graph shows the Feed Conversion Ratio (FCR) for the largest net pen, Clam Bay. There are approximately a million fish. A perfect FCR is 1.0 or one pound of feed produce a 1 pound gain in a pound of fish. The graph shows industry benchmarks as straight lines for 1.15, 1.2, and 1.7 which represent the best FCR and industry clams. The Red Line indicates the calculated FCR from monthly monitoring data which is outside the industry benchmark lines.



The State Agencies should not ignore Cooke's record

From the public's view point, it is impossible to ignore Cooke's past and **ongoing** behaviors. Cooke purchased the pens in Washington State in 2016. Let's take a look a time line of their corporate behaviors since that purchase in Maine and Canada alone to gain a perspective on how they choose to operate as a company that is "...dedicated to producing a high-quality seafood in a sustainable and environmentally sound manner."

Documented incidents in Washington State:

| Date | Description | Source |
|------------------|---|---|
| August 25, 2016 | Warning Letter: National Pollutant Discharge Elimination System | Department of Ecology PARIS |
| May 2017 | Anchor Slip/Break Clam Bay | Confirmed by facility personnel and photos. |
| July 24, 2017 | Ecology Illicit discharge noncompliance notification | Department of Ecology PARIS |
| August 23, 2017 | Notice of Violation | Department of Ecology PARIS |
| AUGUST 22, 2017 | It's open season on Atlantic salmon as the public is urged to help mop up a salmon spill from an imploded net holding 305,000 fish at a Cooke Aquaculture fish farm near Cypress Island . In a statement Tuesday morning, Cooke said "exceptionally high tides and currents coinciding with this week's solar eclipse" caused the damage. Cooke estimates several thousand salmon escaped following "structural failure" of a net pen. | https://www.thenewstribune.com/news/local/article168636307.html |
| October 10, 2017 | Just a week after the state Department of Fish and Wildlife approved shipment of 1 million more farmed Atlantic salmon to Cooke Aquaculture's fish farm near Bainbridge Island, another state agency says it has found a hole in the nets and corrosion in the structure of the facility. The Department of Natural Resources on Monday notified Cooke that it is in default of the terms of its lease at its Rich Passage operation. It ordered the facility repaired within 60 days, or the department may cancel the company's lease for the facility, which operates over public lands. | https://www.seattletimes.com/seattle-news/environment/fish-farm-has-60-days-to-fix-net-pens-outside-seattle-as-1-million-atlantic-salmon-move-in/ |

| Date | Description | Source |
|-------------------|---|---|
| December 12, 2017 | <p>Administrative Order and Notice of Penalty</p> <p>Without water quality protections in place, Cooke Aquaculture Pacific (Cooke) has repeatedly cleaned dirty equipment and discharged polluted wastewater into Puget Sound. Cooke operates commercial Atlantic salmon net pens in Washington state.</p> | Department of Ecology PARIS |
| December 17, 2017 | Cooke Aquaculture must shut down and remove its Port Angeles Atlantic salmon farm after the state deemed it unsafe and illegal and canceled its lease. | https://www.seattletimes.com/seattle-news/environment/violations-prompt-washington-state-to-cancel-atlantic-salmon-farm-lease-at-port-angeles/ |
| January 30, 2018 | Cooke Aquaculture Pacific vastly underrepresented the scope of a catastrophic Atlantic salmon net-pen spill at its Cypress Island farm last August and misled the public and regulators about the cause, according to a new report by state investigators that blames the pen collapse on company negligence. The investigation found that Cooke lowballed the number of escaped fish by more than half, and did not do essential maintenance at its farm, causing the escape | https://www.seattletimes.com/seattle-news/fish-farm-caused-atlantic-salmon-spill-state-says-then-tried-to-hide-how-bad-it-was/ |
| February 18, 2018 | Cooke Aquaculture inspection finds problems at 2 other Atlantic salmon pens. At the Fort Ward facility in Rich Passage, inspectors found chain links on an anchor line had lost up to 75 percent of holding capacity because of corrosion. At Cooke's Hope Island facility, five miles from the mouth of the Skagit River, inspections conducted by Cooke also "do not appear in accordance with manufacturer's recommendations or industry standards," the report found. | https://www.seattletimes.com/seattle-news/environment/cooke-aquaculture-inspection-finds-problems-at-2-other-operations/ |

| Date | Description | Source |
|---------------------|---|---|
| Feb-Sept 2018 | Workers hammer rust off Orchard Rocks pens | Personal observations and communication from Ecology |
| Oct 15-20, 2019 | Orchard Rocks net pen sinking due to hole in pontoon | Personal observations and photos |
| December 18th, 2018 | The Washington Department of Fish and Wildlife considers the exotic strain of PRV to be an unacceptable risk to native stocks of Pacific salmon. Under the conditions of its permit, Cooke Aquaculture Pacific was required to destroy the fish. | https://www.seattletimes.com/seattle-news/environment/fish-farmer-destroys-800000-juvenile-atlantic-salmon-due-to-disease-second-purge-in-past-year/ |
| October 22, 2019 | "A small hole was identified in one bulkheaded pontoon on the Southeast portion of the Orchard Rocks net pen and we completed the necessary welding repairs immediately today. We will also have an engineer onsite tomorrow to assess the welding repair and pontoon. There were no fish in the corner section of the pen where the pontoon required repair," said a Cooke Aquaculture representative in a statement | https://www.king5.com/article/news/local/no-salmon-released-when-cooke-aquaculture-pen-sinks/281-b4741721-30f3-402a-bd2a-017edcc87b7b |

These types of incidents are not just unique to Cooke here in Washington State. Below is a recap of events in North America:

| Approximate Date | Description | Source |
|------------------|---|---|
| March 4, 2016 | New Brunswick-based multi-national farmed salmon producer Cooke Aquaculture had nothing but bad news during the past month, including yet another product recall from the Canadian Food Inspection Agency (CFIA), a valuable complaint from the mayor of the town housing Cooke's Nova Scotia headquarters and a notice to consumers to avoid eating Cooke's primary product, Atlantic salmon grown in Nova Scotia, New Brunswick and Newfoundland. | http://www.southcoasttoday.ca/content/more-troubles-cooke-aqua-product-recall-do-not-buy-notice-farmed-salmon-loan-demands |

| Approximate Date | Description | Source |
|--------------------|--|--|
| | <p>Government product recalls</p> <p>In late January, CFIA issues a recall notice for salmon products produced by subsidiary True North Salmon, based on evidence that the fish might contain particles of a foreign substance. In 2012, CFIA issues a recall warning when Cooke distributed framed mussels which were alleged to contain marine biotoxins. Also in 2012, three Cooke executives - including CEO and founder Glenn Cooke - faced federal felony charges for dumping gallons of deadly insecticides near their salmon cages in the Bay of Fundy.</p> | |
| September 11, 2017 | <p>Atlantic salmon, believed to be part of a cohort that escaped from a U.S.-based fish farm on Aug. 19, are being hauled in by anglers fishing out of French Creek on mid-Vancouver Island. Cameron Wheatley, owner of the French Creek Store at the marina just north of Parksville, received the head of an apparent Atlantic salmon from a local angler late Sunday morning, Sept. 10. He is freezing the head, along with two more fish heads and one whole farm-raised salmon, to turn over to Fisheries and Oceans Canada</p> | <p>https://fisherynation.com/archives/63166</p> |
| October 12, 2017 | <p>Cooke Aquaculture offered to pay a premium price for Atlantic salmon caught by the Lummi Nation after a major spill from the company's Cypress Island fish farm if the tribe would not advocate getting rid of net pen aquaculture. The tribe tartly rejected the offer. "Your demand to keep quiet for a few extra dollars is insulting," Timothy Ballew II, chairman of the Lummi Indian Business Council, responded in a Sept. 14 letter. Nell Halse, vice president for communications for Cooke, said Wednesday the offer "was not an attempt to muzzle or insult the Lummi Nation, but rather an effort to negotiate toward common ground and respect the interests and concerns of both parties at the table</p> | <p>https://mynorthwest.com/781546/lummi-chairman-calls-bribery-attempt-insulating-and-preposterous/?show=comments#comments</p> |
| March 30, 2018 | <p>Cooke Aquaculture harvested all the fish at its site near Gaultois last October following the detection of five fish with the infectious disease, and did so again in a facility on the south coast of Newfoundland in February.</p> | <p>https://aquaculturemag.com/2018/04/03/isa-virus-found-in-salmon-at-southern-newfoundland-aquaculture-site/</p> |
| April 3, 2018 | <p>Freedom of Information Act request asking for the status of a \$25 million loan extended to Cooke Aquaculture in 2012. A newspaper article disclosed that Cooke Aquaculture is eligible for \$4 million in "loan forgiveness" to fund a university research chair named after the company. The \$800,000 spent by Cooke funded a chair held by an industry friendly researcher.</p> | <p>https://www.halifaxexaminer.ca/featured/cooke-aquaculture-is-eligible-for-4-million-in-loan-forgiveness-to-fund-a-university-research-chair-named-after-the-company/#1. We're giving Cooke Aquaculture a free research cha</p> |

| Approximate Date | Description | Source |
|-------------------|--|--|
| May 17, 2018 | For the second time in five years, a Canadian salmon aquaculture firm has admitted in a New Brunswick courtroom to illegally using a pesticide known to kill lobsters for treating salmon off an island that abuts the Maine border. Cooke was fined \$500,000 Canadian. | https://bangordailynews.com/2018/05/17/business/report-canadian-salmon-firm-admits-using-lobster-killing-pesticide-near-maine-border/ |
| August 7, 2018 | Between 2,000 and 3,000 fish escaped from Cooke Aquaculture's Hermitage Bay salmon farm on Newfoundland's south coast in July, the company confirms. Incident happened after net extensions were sewn onto a pen at the operation. extensions were sewn onto a pen at the operation. The escape of thousands of farmed salmon on the south coast of Newfoundland is a significant concern, as is the lack of public notification about the incident. | https://www.asf.ca/news-and-magazine/salmon-news/salmon-escaped-from-cooke-aquacultures-farm-company-confirms https://fisherynation.com/archives/tag/cooke-aquaculture |
| December 14, 2018 | British Columbia will phase out 17 commercial salmon farms off the northeast coast of Vancouver Island to aid in the migration and restoration of wild West Coast salmon runs, under an agreement between the B.C. government and Aboriginal First Nations | https://www.seattlepi.com/local/politics/article/British-Columbia-salmon-orca-fish-farm-phase-out-13467254.php |
| August 20, 2019 | A pipe broke at the Deer Island Bay of Fundy Cooke facility while fish were being transferred from a net pen to a boat for sea lice treatment. Initial estimates by Cooke Aquaculture set the total of escapees at 2,500, but company representatives have since lowered that estimate to 1,000 fish, Researchers for the Atlantic Salmon Federation have captured and removed 53 Atlantic salmon from a New Brunswick river | https://www.asf.ca/news-and-magazine/news-releases/salmon-escape-in-bay-of-fundy |
| October 9, 2019 | Maine Department of Agriculture finds that unacceptable fish handling incidents have occurred at the Bingham hatchery after a video went viral. | https://www.timesrecord.com/articles/maine-1/ingham-aquaculture-facility-kept-fish-in-cruel-unsanitary-conditions-group-says/ |
| October 16, 2019 | As part of a consent agreement with the Maine Department of Environmental Protection, Cooke Aquaculture has agreed to pay \$156,213 to fund the Marine Rearing Atlantic Salmon Machias River Project, which aims to breed and restore native populations of Atlantic salmon in the Machias River. Cooke violated its operating permit by having too many fish in one or more pens, failing to conduct environmental sampling, and failing to follow a variety of clerical procedures that include timely filing of complete and accurate pollution sampling reports and timely submissions of fish spill prevention plans. The infractions violated the terms of Cooke's operating permit, DEP rules and state law. "The administrative consent agreement was created to determine a path forward and to start anew - wipe the slate clean," Cooke spokesman Joel Richardson said. | https://bangordailynews.com/2019/10/16/news/down-east/canadian-salmon-firm-will-pay-156k-over-fish-pen-violations-to-fund-salmon-restocking/ https://www.seafoodsource.com/news/aquaculture/cooke-to-pay-fine-for-overstocking-maine-salmon-farms-not-conducting-environmental-testing |

| Approximate Date | Description | Source |
|------------------|--|---|
| October 31, 2019 | Just weeks after Cooke Aquaculture agreed to pay the state more than \$150,000 to settle numerous violations at several of its salmon net pen sites in eastern Maine, the Department of Marine Resources is asking for public comment on the company's application for a 20-year lease renewal. | https://www.ellsworthamerican.com/maine-news/waterfront/dmr-seeks-comment-on-cooke-aquaculture-lease-renewal/ |
| November 6, 2019 | Last week, the Atlantic States Marine Fisheries Commission, the partnership, or "interstate compact," that sets harvest limits for 27 fisheries up and down the Atlantic Coast, officially accused Virginia of allowing Omega Protein to overfish,,. In a December 2017 press release on the deal, Cooke hinted at a new use: "The animal feed ingredients produced by Omega Protein are an important component in Cooke Aquaculture's production of healthy Atlantic salmon, making this acquisition a strategic move that greatly enhances Cooke's vertical integration." So instead of rockfish, maybe the Bay's menhaden will be feeding farm-raised salmon in Canada. | https://fisherynation.com/archives/tag/cooke-aquaculture |

In January 2019, Cooke applied to Washington Department of Fish and Wildlife to raise Steelhead. Cooke follows a consistent pattern of bad behavior of an unreliable tenant.

<https://salmonbusiness.com/cooke-aquaculture-to-settle-332k-fine-for-puget-sound-salmon-escape/>

Cooke Aquaculture to settle \$332K fine for Puget Sound salmon escape (30 April 2019)

Settlement agreement reached between the company and the Washington Department of Ecology for collapse of floating fish farm pen near in 2017.

On Tuesday morning, Cooke Aquaculture Pacific Vice President of Public Relations Joel Richardson wrote the following in a press release:

“Cooke Aquaculture Pacific was not interested in going through the hearing, putting additional stress on our employees, and reliving the regretful events of August 2017. When presented with the opportunity to dedicate 80% of the penalty (\$265,600 USD) to a supplemental environmental project, Cooke made

the decision to not litigate the penalty amount, and instead dedicate its resources to a project that will directly result in fisheries enhancement in the North Puget Sound region. Cooke is actively working on identifying such a project and partners in enhancing fisheries in North Puget Sound.

Conclusion

Decisions to modify water quality permits should include Cooke's record both past and present. The addition of more restrictions here is not a guarantee of future compliance. This industry and Cooke in particular should not be allowed to mine and pollute the public waters of Washington State for personal profit at the expense of Washington citizens. Please deny the modification to Cooke's current NPDES permit.

Tom Hansen

Hugh Mitchell

Comments attached in a pdf.

To whom it may concern,

RE: Cooke Aquaculture Pacific NPDES permits modifications to raise steelhead

The question is simple. It has nothing to do with whether aquaculture should be done in Puget Sound. The current leases are valid for another couple of years. Leading up to the end of that time period, that discussion can take place. The only question here: Is Atlantic salmon waste and risk significantly different from sterile Rainbow trout for the Department to not allow Cooke to continue to culture fish under the current NPDES permits. All information says no, there is no difference. This shouldn't really take this kind of process and the Department should really be able to make this decision on their own. It is simple for the Department of Ecology to decide this allow the permit modification.

The exhaustive Environmental Impact Statement on Net pens by the Department of Fisheries has been criticized for being from 1990 and not being relevant to today's changed Puget Sound. However, nitrification is still nitrification today. The contribution of the key nutrient, nitrogen, by net pens has been shown to be insignificant compared to all other sources. The EIS summarized that the impact of 100 farms producing 34,100 MT/yr of salmonids would "be minimal and largely negligible". Even with any changes in Puget Sound, the 4 Cooke sites are just a fraction of this and are still negligible to today's total input. The EIS still provides relevant information to gauge the impact.

The EIS's statement on disease transmission risk is still relevant: "The risk of transmission of disease from farms to wild fish is not likely a significant problem. Disease observed in fish farm culture of salmonids in Washington results from the holding of the fish in captivity. Such diseases are non-exotic; infectious agents that cause such diseases originate from environmental sources or wild fish."

These pens have been in Puget Sound for nearly 40 years. They have been through multiple owners from US to International; from private to corporate. Facts and science (not politics and vested interests) show that fish farming is one of the most environmentally benign industries out there. The know-how and dedication of the skilled workers required to produce wholesome seafood should not be taken for granted. Many have been working on the net pens for most of that entire period. The value of their acumen should not be taken for granted. It can be translated from Atlantic salmon to Steelhead culture and for the sake of our oceans and Sound should not be lost. Despite what detractors say, we should be proud of the pioneering aspect of WA State net pen culture.

Dr. Hugh Mitchell

12015 115 Ave. NE, Suite 120

Kirkland, WA 98034

hughm@aquatactics.com

Spike Mafford

The inadequacies of Washington State's Department of Ecology's modifications to the existing NPDES permits for Cooke's former salmon farms, enabling Cooke to switch to Triploid Steelhead/Trout, are overwhelming. We strongly urge the Department of Ecology to deny any new permits.

Here are a few things to consider:

Cooke Aquaculture Pacific is not a responsible citizen, they have continually broken Washington State's trust through their negligent actions, lack of maintenance, and escapes. They are a bad actor and should not be rewarded with more opportunity to profit again off Public Waters.

Transfer of Viruses and Diseases from concentrated feedlot farmed animals to local waters, and native fish populations.

Farmed Fish need to be physically marked, so that they can be identified from Wild Steelhead populations if they escape.

-to be marked so as to distinguish an aquaculture-raised steelhead from conventional hatchery-raised steelhead and from wild, natural-origin, steelhead. It is critical that aquaculture-raised steelhead be provided with an externally visible mark that is distinct from the adipose clip used to identify conventional hatchery-reared steelhead.

Ecology needs to focus on the net-pen waste and feces stream, and its attractant implications as an unnatural pesticide, pharmaceutical, and antibiotic-laden food source for at-risk and struggling Puget Sound herring and forage fish populations, immature salmonids, and Native Steelhead smolts.

I am also concerned with the potential for attracted forage fish, immature salmonids, and Native Steelhead smolts, to become trapped residents in the pens, and a "take" from the Public Commons as an added "free" food source for the Cooke fish farms.

This has been well-documented through the use of underwater cameras in British Columbia aquaculture operations.

The other concern is the transfer of sea lice parasites from the swarms that develop and expand at the farms, to wild and resident fish populations. Low-count lice loading has been proven to be detrimental and fatal to immature salmonids, forage fish, and Native Steelhead smolts.

Floating Feed Lots are endangering the health of Washington's waters which support our culture, economy, wild salmon, and Orca whales.

Save the Sound, the whales and the wild salmon from this predatory practice.

Alexandra Gayek

I urge you to reject this proposal by Cooke Aquaculture. I am not in favor of farmed fish in our oceans. Regardless of species, the process of farming creates pollution, breeds disease, attracts sea lice, and results in a product that is less healthy for human consumption than wild fish. Our efforts should be to clean up the oceans to support native, wild fish. Farmed fish operations should exist only as land-based operations, if at all. Further, the organization applying for the permit has shown historic disregard for environmental regulations in the past. Tightening the regulations is therefore unlikely to result in compliance. I agree with the comments submitted by Stephanie Ross.

Jon Russell

Why grant these permits to CAP when time and time again they have broken trust through negligent actions, lack of maintenance and allowing escapes to occur? They are a bad actor and to give this permit is to make negligence permissible. And further, you're allowing negligence to profit off of public waters. Not to mention allowing them to self regulate/self report is ridiculous.

Allowing farmed steelheads and trout to be added will almost certainly cause vast harms to the wild populations and the surrounding environment. It's well documented that feedlot fed farmed fish are extremely dangerous when they escape due to viruses, diseases, and transfer of parasites.

It is extremely dangerous and negligent to allow this permit for Cooke Aquaculture Pacific

Anonymous Anonymous

Wild Salmon Nation Supports Wild Salmon and Habitat from Baja to the Bering Sea.

After reviewing the inadequacies of Washington State's Department of Ecology's modifications to the existing NPDES permits for Cooke's former salmon farms, enabling Cooke to switch to Triploid Steelhead/Trout, Ecology is strongly urged to deny any new permits. These are our concerns:

1. Cooke Aquaculture Pacific is not a responsible corporate citizen, they have continually broken Washington State's trust through their negligent actions, lack of maintenance, and escapes. They are a bad actor and should not be rewarded with more opportunity to profit further off of Public Waters that belong "in common" with all Washington State Citizens

2. Self-Regulation and Self-Reporting by Cooke? Seriously, with their track record? 3 Strikes and you're out, or does Cooke keep getting more at bats, and more tries to embarrass the Department of Ecology?

3. Transfer of Viruses and Diseases from concentrated feedlot farmed animals to local waters, and native fish populations.

4. Marking- Farmed Fish need to be physically marked, so that they can be identified from Wild Steelhead populations if they escape.

-to be marked so as to distinguish an aquaculture-raised steelhead from conventional hatchery-raised steelhead and from wild, natural-origin, steelhead. It is critical that aquaculture-raised steelhead be provided with an externally visible mark that is distinct from the adipose clip used to identify conventional hatchery-reared steelhead.

5. Ecology needs to focus on the net-pen waste and feces stream, and its attractant implications as an unnatural pesticide, pharmaceutical, and antibiotic-laden food source for at-risk and struggling Puget Sound herring and forage fish populations, immature salmonids, and Native Steelhead smolts.

6. We are also concerned with the potential for attracted forage fish, immature salmonids, and Native Steelhead smolts, to become trapped residents in the pens, and a "take" from the Public Commons as an added "free" food source for the Cooke fish farms.

This has been well-documented through the use of underwater cameras in British Columbia aquaculture operations.

7. The other concern is the transfer of sea lice parasites from the swarms that develop and expand at the farms, to wild and resident fish populations. Low-count lice loading has been proven to be detrimental and fatal to immature salmonids, forage fish, and Native Steelhead smolts. Just a few sea lice can induce mortality in smolts.

8. Floating Concentrated Feed Lots are endangering the health of Washington's waters which support our culture, economy, wild salmon, and killer whales.

9. Jobs. A few hundred jobs for Cooke, versus tens of thousands that rely intact habitat, healthy

clean water, and Wild Native Fish Populations.

October 16, 2020

RECEIVED

Mail to:
Laurie Niewolny
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

OCT 20 2020
WA State Department
of Ecology (SWRO)

Comments re. Cooke Aquaculture Pacific draft modified NPDES permits modifications to raise steelhead in net pens

As a resident of the San Juan Islands, as an advocate for wild fish and their habitat, as a lifelong Washingtonian who has seen the disappearance of so many of our natural resources, I am greatly concerned about the switcheroo that Cooke Aquaculture is proposing for their Puget Sound net pens. The disastrous mismanagement of Cooke's Atlantic salmon pens should be warning enough to say that no NPDES permits should be granted no matter what is in those pens. Cooke didn't follow the law which led up to the 2017 pen collapse, what is to ensure they will in the future? Is switching to a new product supposed to be automatically OK? No!

The risks of water pollution from a net pen are there no matter what is in that pen. Washingtonians need to know: what are the full and lasting impacts to our water quality, native wild fish, and the SRKWs population from these proposed net pens -- any net pens?

No permitting or leases should be authorized until the Court decides on the legal challenge to WDFW's decision to issue an MDNS, stifling the SEPA review process. And no permitting or leases should be authorized until all local, state, federal and tribal governments weigh in.

Washington's 2018 law, HB 2957, banning Atlantic salmon net pens set a new standard of safety to our environment. Can Cooke hold to those standards? The law dictates that Cooke needs to prove that their proposed new operations "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife."

Not one of Ecology's new requirements (increased monitoring, regular inspections, improved maintenance, and response plans) guarantees there will be no pollution, no disease, no escapement. An "escape response plan" is too little too late. We've seen what happens, why would we risk this all over again? Please, no more net pens in Washington waters.

Thank you for this opportunity to submit these comments.



Ms. Shaun Hubbard
PO Box 805 / 286 Flicker Road
Friday Harbor WA 98250

Hugh Mitchell

All right. Okay, well, thanks for this opportunity. So, I am-- I have two degrees in marine biology and marine ecology, bachelor's and master's. I have a doctorate in veterinary medicine, and I've been practicing fish medicine for over 30 years all over the world in private and public and even tribal fish hatcheries. So, just instead of getting into the science, I don't think this appropriate here, I just want to give a bit of context here as I do travel all over the world.

Currently, the US is an embarrassment to the rest of the world. I mean, by that, we import \$20 billion dollars more seafood than we produce. Half of the deficit is made up with imported foreign sea food. We lag woefully behind in volume technology and know-how with most of our seafood produced internationally outside our control and economic benefit. The gap is widening because we are bogged down in silly, vested politics that hamper current aquaculture production and constrain any real growth. Real science is ignored and fear mongering politics and frivolous lawsuits abound.

Now, environmentally, Norway with its pristine, pure fjords, which are a priceless tourist attraction still has close to a 1,000 net pens. The sights growing 2 million metric tons of salmon in these fields and along its coastline. Salmon is its number two export, and the only significant discharge the oceans from this vast number of farms is nitrogen, and, as, you know, nitrogen is an essential nutrient for primary production at the very base of the food web of the ocean ecosystem.

There are countless other sources, but it's not it's a necessary nutrient for all life in our seas. The key is not to overload the input as excess can result in harmful algal blooms and anoxic conditions

Study after study in Norway and Puget Sound has shown that the nitrogen output from salmon grown and net-pens is insignificant compared to all other sources and to the overall and nitrogen budget. In fact, the original 1990 EIS study by Washington Department of Fisheries, which has been criticized for being dated, calculated the Puget Sound could sustain a 100 net-pen sites without significant impact.

Even if conditions of change in the relevance of this study is in question, we're only talking about four sites here, not a 100, and for 40 years before Cooke rescued the business, and I've done contract work for Cooke and for previous owners, these sites have operated without a single shred of evidence that their nitrogen output is of any concern. In fact, several studies have shown that it isn't, and as we all are aware a couple years ago, the state made non-native fish, such as Atlantic salmon, illegal for net pen aquaculture, even though the scientific evidence is scant, but Cooke

complied and is planning to switch to native and sterile rainbow trout/steelhead, so it doesn't lose the time honored important, maritime business, and its workforce of very skilled and underappreciated animal husbandry technicians remain.

So Department of Ecology's net-pens permit for Cooke needs to be changed from Atlantic salmon to a sterile rainbow trout and the production here, we're only talking about 8,000 metric tons, if that. This should not have taken a hearing or a comment period, such as this to do so, but that's part of politics of aquaculture in the Pacific Northwest these days.

Scientifically, there is no difference between the nitrogen output of two salmonids Atlantic salmon and steelhead. Furthermore, as several escapee [phonetic] over the years before Cooke, there's been no impact whatsoever of these fish on established runs, but with current technology escapee [phonetic] risk is far less and sterile steel had would even less than that risk disease.

Risk is not an issue. That's my field. I'm not going to elaborate in that for the sake of time, but I'll just stand and say the Department of Ecology, if acting scientifically, has no choice but to immediately implement the permit modification.

Thank you

Kevin Bright

Hi, I'm Kevin Bright. I work at Cooke Aquaculture now. I started in this business in 1990. I've got a degree in marine biology, and I truly believe that aquaculture is the answer to providing food for people, just like agriculture on land provides food for people.

So, I just wanted to say that in 1996 the first and NPDES permits for commercial net pen operations were issued. Those permits required the company to report monthly feed, monthly antibiotic use and monthly biomass for the site, so since 1996, the various companies have been required by the NPDES permit to report all those quantities in ecology, so they have that data. It's publicly available to people, and it's been publicly available since 1996.

I think, in my opinion, ecology has these additional permit modifications and additions that ecology has developed more than adequately will further safeguard the water quality conditions around these facilities. This is a switch from one species of salmonid to another species of salmonid. The fish feeds that we will use are going to be nearly identical and as pointed out in the application materials, probably shorter growing periods, which means increased fallowing periods and more resting periods between generations of fish.

When I first started, we had three generations of the fish at the site. Those sites never went empty. We were adding juvenile fish onto adult fish and the pens constantly remain full of fish. Now we've got a break in the cycle. You put a generation in and then you pull them out. That's a standard aquaculture practice for various reasons. It gives a resting period to the environment. It breaks any disease cycles if there are any. Any parasite cycles if there are any.

It's no different than what happens when you drive through the fields out there in the Skagit Valley and there's nothing planted. There's no tulips. It's an empty field, right? So we take a rest and break, give nature a chance to take a breather.

Ecology's never been easy with the since these NPDES permits came about. Every year that they-- every permit cycle that they've been renewed, there's been new and additional requirements of the industry- pollution prevention plans, escape prevention plans, more reporting. These permits now we are going to do more water quality, sampling, more benthic sediment sampling annually, and sometimes twice a year no for benthic sampling.

So, ecology's done a job of increasing the regulatory environment around aquaculture in Washington State and it's done a good job, I believe, in helping this industry evolve. It's a new industry and it's evolved and it's adapted and I think this is a step of the right direction to start raising sterile, native, all female triploid steelhead, and we're not raising a non-native species anymore. We're raising a native species, which is what a lot of people wanted us to do a long time ago. I had lots of my friends ask me why we weren't raising native species and I gave them various explanations why Atlantic salmon was the fish of choice at the time in the 1990's, but the world's changed and this is a native species and there's a market for steelhead. There's a market for fresh, sustainable seafood and there's a market for jobs in this environment, so that's what I want to say, and thank you for your time.

Shari Tarantino

My name Shari Tarantino. I am the executive director for the Seattle based nonprofit, Orca Conservancy, and we work on recovering and advocating for the critically endangered population of southern resident, killer whales.

We focus on law and science and part of what we believe is, and I think Ecology can also relate to this, is that Congress passed a clean water act to restore and maintain the chemical, physical and biological integrity of our nation's waters. You can go to 33 U.S.C. 1251(a), and you can also locate number D 1. 511 U.S. 707.14, which is the National Mgal, being to achieve water quality, which provides for the protection and propagation of fish, shellfish and wildlife, and provides for recreation in and on the water.

Congress responding to the nation's need for clean water supplies tasks the Clean Water Act to creating means by which to reduce the amount of water pollution nationwide. In order to correct the water pollution program the Clean Water Act defines the term "discharge of pollutants" to mean, any addition of any pollutant to navigable waters from any point source.

The Clean Water Act defines a point source as any discernible, confined and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rally, stock, concentrated animal feeding operation or vessel, or other floating craft from which pollutants are, or may be discharged.

Nonpoint sources are defined as those sources not traceable to a single conveyance. Additionally, the Clean Water Act defines "pollutant" as a direct spoil, solid waste, incinerator, residue, sewage garbage, sewage sludge, munitions chemical waste, biological materials, radioactive materials, heat, racked or discarded equipment, rocks and cellar dirt, industrial municipal and agricultural waste discharged into the water.

This Clean Water Act extends to both animate and inanimate pollutants. The statute, for example, regulates fecal coliform, living bacteria as conventional pollutants in the Washington Pollution Control Board has also found that escaped salmon are agricultural or industrial waste.

Another statutory example of the definition of a pollutant.

As a federal government also considers aquaculture to be a form of agriculture, escaped salmon may similarly be treated as agricultural industrial waste under the Clean Water Act. Our goal, obviously, is to work towards advocating for the critically endangered population of southern resident killer whales.

Open net farms, regardless of the species, can discharge significant amounts of waste water, containing nutrients, chemicals and pharmaceuticals that impact the surrounding environment. I mean, I can go on and on. Furthermore, feed and fecal matter from these facilities can deplete the dissolved oxygen concentrations around and certainly within the facilities. Even the anti-fouling agents, copper, which I need to research, to keep these cages and pens clean are highly toxic.

Therefore, Orca Conservancy and its 45,000+ members and supporters stand in direct opposition of said permits from Cooke Aquaculture. This company is not a good respectable neighbor. They have proven time and time again that they are unable to be respectful to our waterways.

We have welcomed them into our waters and they have done nothing but disrupt and decimate what our waters are trying to protect.

Please rescind this permit if at all possible and protect our waterways, our salmon, and our critically endangered population of southern resident killer whales. Thank you.

Jim Parsons

Thank you. So, my name is Jim Parsons. I'm the general manager for Cooke Aquacultures Pacific Operations here in Washington State. We truly appreciate the Department of Ecology for their thorough review of the existing science that was used in determining that the proposed modification to our NPDES permit, a switch from non-native Atlantic salmon to sterile native rainbow trout will result in no increases in nutrient discharge and may even, in fact, lessen any discharge impacts from our marine farming operations.

We will reserve our comments on specific aspects of the permit changes involving increase data submission and analysis of our operational factors for our written this month.

It does seem appropriate at this time, however, to remind our regulatory agencies and those listening that the United States currently imports 80% to 90% of its seafood. Given that food has been shown to be increasingly important for our collective health and that over half of the seafood that is imported comes from aquaculture operations in foreign lands, which may be far less regulated than that in our own country and state

Food and nutritional security alone should dictate that we should be looking at ways to increase [audio breaking up] instead of reducing or eliminating it. Couple of the importance of rural, working waterfront economies and employment, we clearly need to expand this industry.

All food production systems have some form of environmental impact. Latest research trends from throughout the globe are finally demonstrating that the growing of aquatic organisms is one of the most environmentally friendly forms of protein production on our planet. CAP will continue to work with regulators to implement new production technologies as they develop and to continuously improve our operations and minimize our impact, while providing much needed local and safe seafood to our communities.

Thank you for the time to comment tonight.

Jeanne McKnight

Alright, thank you. Yes, I'm Jeannie McKnight, and I'm the executive director of the Northwest Aquaculture Alliance, formerly the Washington Fish birds Association. We changed our name to reflect the fact that our members represent growers such as Cooke and a number of other growers, as well as support industries that by the way also represent and work with the wilds fish sector.

I want to thank you for the opportunity to talk tonight. We are absolutely convinced as an alliance, and we are one of many such organizations throughout the world that aquaculture, whether it's marine, freshwater or closed containment has a role to play as others have mentioned in food security and the creation of robust blue economy here in Washington.

Others have talked about the fact that we import 90% of the seafood or 80 to 90%, so I don't need to go into that too much, but one thing I must say is that one of the lessons that we've learned from the pandemic is that we need to grow our own and we need to become better at growing our own seafood, because we are just one pandemic away from borders being closed and food not being able to come our way.

I want to also say that prior to becoming the agriculture alliance, the fish growers association conducted some consumer research, and one of the things that came up in that research of 700 Washington households, western Washington households was that overwhelmingly, and I can provide backup for this - this was done by GMA research - overwhelmingly people felt that aquaculture done sustainably, fish farming done sustainably was something that they could accept, and part of that came from people feeling that they wanted - this pre-pandemic - that they wanted to have locally grown food.

Tonight we're here to support our member Cooke Aquaculture Pacific and its request to grow sterile rainbow trout in the four net-pen sites that were previously permitted for Atlantic salmon. We're here not just for Cooke, though. We're here I'm here, to talk about the fact that it is whole idea of opening up our economy to aquaculture as the rest of the country, the rest of the world has done is something that is so important right now.

As an aside we now know that there was a growing body of evidences in the record, in the public record, about steelhead being nearly identical to that in the use of in feed conversion to Atlantic salmon. In fact, after Ron Hardy, a leading researcher on this topic, believes that steelhead made metabolize commercial fish feeds more efficiently than Atlantic salmon do and meaning that the

proposed switch maybe in fact more beneficial to water quality.

I want to also say that I've worked aquaculture business for the past 25 years. I started out my career working for the Alaska Seafood Marketing Institute at an organization called the West Coast Fisheries Development Foundation. Absolutely loved working for the wild fish sector, but as luck would have it, salmon runs were depleting, commercial, let's say whether you were trolling or trying to get bottom fish, you know, things have changed in the environment and even though the US has a very well managed fishery, climate is changing and fish are going elsewhere, so we can't we can't catch enough fish to feed our people, so we've got to do something about this.

Not only does marine aquaculture, however, have the lowest environmental footprint of any animal protein farming production system on the planet, but it has lower feed requirements, lowest water usage, low energy requirements, resulting in low greenhouse gas emissions, and everybody's in love with these days. They think that and some previous speakers have alluded to this about closed containment land-based systems. We, the alliance believe that we need all forms of aquaculture, and we are here to support because we believe that this will become the basis of a very robust economy here.

On a final note, I often get messages from colleagues and friends that I've met through my work in aquaculture all around the world saying what is going on in Washington state. What they mean is, why all the hurdles? Why the opposition? And why can't Washington get with the program? And believe me what happens in Washington does not stay here when it comes to aquaculture. People are watching all over. The eyes of the world are upon us, but with these permit modifications, and the requirements that, go with it, we think we have the chance to do things, right. To lead the nation and becoming a sustainable producer of nutritious seafood. The production of which will create much needed employment opportunities here in Washington.

I personally and we trust that the Department of Ecology will make the right final decision in the right way to permit modification based on science and not politics. Thank you.

Walt Dickhoff

All right, thank you. I'm Walt Dickhoff, retired professor of fisheries, University of Washington, retired senior scientist with NOAA Fisheries. I've been-- I worked with salmon net-pens for 40 years in Puget Sound, and have quite a big experience.

I'd like just to comment that we've looked at impacts of salmon net-pen rearing in Puget Sound on endangered species, including Pacific salmon in southern resident killer whales and we never considered them a major threat to those groups. There are persistent organic pollutants that are a major threat to those southern resident killer whales, but these are mostly of terrestrial origin and not really a threat from net-pen culture. So, I like to commend the Department of Ecology for developing these guidelines and working with Cooke and urge their approval of the permit. So, thank you for this opportunity.

Coastal Watershed Institute

Attached. Thank you for timely action to end inwater netpens in Washington state.jas



Our mission: "To protect and restore marine and terrestrial ecosystems through scientific research and local community, place based partnerships."

17 September 2020

To whom it may concern,

We are providing comments per the Wed, Sep 9, 2020 email from Laurie Niewolny, Washington state Department of Ecology, lnie461@ecy.wa.gov, calling for comments on draft modified NPDES permits to raise steelhead in net pens.

- [Draft Clam Bay \(Rich Passage\) permit, support document](#) explaining changes to the permit
- [Draft Fort Ward \(Rich Passage\) permit, support document](#)
- [Draft Orchard Rocks \(Rich Passage\) permit, support document](#)
- [Draft Hope Island \(Skagit County\) permit, support document](#)

Our comments apply to all the proposed in water net pens-including those with proposed permit modifications. We have provided these comments before, which include but are not limited to the points listed below.

Synopsis: In addition to a number of significant administrative reasons to deny modified NPDES permits, the bottom line is that changing the species that are grown in net pens doesn't improve/minimize the environmental impacts of net pens as detailed below, and in the past. Native species in fact may even pose a greater risk of harm to ESA-listed Puget Sound steelhead and salmon. Net pens are well documented to be sources, amplifiers, and vectors of disease, viruses, and parasites including HSMI/PRV and sea lice. They are well known both globally and regionally to be catastrophic to wild salmon and ecosystems. Washington state has literally spent hundreds of millions of dollars to conserve and restore these same resources and ecosystems, only to then locate devastating net pens square in the migration corridors of vulnerable watersheds and coastal ecosystems we are trying to restore. This management is short sighted and economically nonsensical. It clearly undermines our invaluable resources and earnest science based conservation and restoration efforts.

Net pens are no longer water-dependent and there is a clear alternative. ALL net pens should be required to be upland contained. The technology exists-in fact the fish that are reared in net pens are transferred to net pens FROM upland contained systems. The clear logic is simple. KEEP them upland contained.*

In addition, we also offer the following comments to include but not limited to:

- 1) Ecology should not authorize Cooke's modified NPDES permits at all, and certainly not until the ongoing lawsuit challenging the State Environmental Policy Act (SEPA) environmental review process and determination is complete and it is determined whether or not the original SEPA determination will be invalidated and additional review necessary.
- 2) Ecology should delay issuing Cooke's modified NPDES permits until NOAA Fisheries has provided the final biological opinion on the impact of Puget Sound net pens on ESA-listed species.
- 3) There is substantial new information that was not considered during the SEPA process including points outlined in this comment letter.
- 4) Ensuring compliance of rules set by NPDES permits is crucial.
- 5) Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture.
- 6) Switching species does NOT reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with a change of species. Including:
 - 6a. Fish Effluent
 - 6b. Fish Waste
 - 6c. Amplification and Discharge of Pathogens (Viruses, Parasites, and Diseases)
 - 6d. Discharge of antibiotics and medical effluent.
- 7) The change in species poses new and different risks.
- 8) Escape prevention and the adequacy of Cooke's escape prevention and escape response plans must be carefully considered in this permit process.
- 9) Ecology should not issue NPDES permits to allow in water aquaculture as aquaculture is no a longer water dependent use. ALL NPDES permits should be limited to UPLAND CONTAINED.

Details, by item include (but are not limited to):

- 1) Ecology should not authorize Cooke's modified NPDES permits.

The Department of Fish and Wildlife's (WDFW) decision to issue a Mitigated Determination of Nonsignificance (MDNS) granted Cooke key permits and ended the environmental review process under SEPA. This decision was flawed, and is currently being legally challenged in Washington State court with a trial date of September 24, 2020. Given the magnitude of scientific evidence WDFW failed to consider during the review, it's possible the Court could render this determination invalid and require WDFW to reinstate the SEPA process to conduct additional environmental review such as an environmental impact statement. No permitting should be authorized until the Court reaches a decision in this legal matter, as additional environmental

review could unveil new or presently unknown pollution and water quality risks posed by this expansion and extension of net pen aquaculture that would need to be addressed or incorporated into NPDES permits.

2) NOAA Fisheries is currently conducting a biological opinion of Puget Sound net pens in response to the Environmental Protection Agency's initial determination that Puget Sound net pens "are likely to adversely impact" ESA-listed Puget Sound salmon, steelhead, and rockfish populations. Ecology should delay issuing Cooke's modified NPDES permits until that ESA consultation is complete. This consultation is addressing water quality standards needed to issue the permits and therefore the permits should not be issued until NOAA Fisheries has provided the final biological opinion on the impact to ESA-listed species.

3) There is substantial new information that was not considered during the SEPA process.

The SEPA determination issued in January, 2020 (Mitigated Determination of Non significance (MDNS), requires Cooke to prepare and submit a plan for marking steelhead (clipping the adipose fin) in ways that will distinguish fish from their pens from hatchery-raised fish swimming freely in Puget Sound. That plan is not part of this record, and review of the NPDES permit application should await that filing.

The MDNS also requires Cooke to submit a plan for a "no-recovery response" to escapes. That plan is not part of the escape plan submitted in Cooke's application, and it is impossible to assess the adequacy of Cooke's pollution prevention plan until that plan is included in the application.

During the emergency response to the Orchard Rocks partial sinking, Cooke told DNR that they planned to replace some existing net pens in Puget Sound. If indeed that plan is under way, the NPDES review should include engineering data on the new pen structures in order to assess the adequacy of those pens for Puget Sound's dynamic conditions, and the escape risk and other risks the new pens might pose to Puget Sound.

The SEPA review led by the Washington Department of Fish and Wildlife which produced the MDNS, is currently being appealed (see #1). Given the potential for a Court ruling requiring additional environmental review under SEPA and this new information described above, Ecology should delay drafting any NPDES permit until the evidentiary record and ruling can be incorporated.

4) Ensuring compliance of rules set by NPDES permits is crucial.

Following the 2017 Cypress Island net pen collapse, Wild Fish Conservancy sued Cooke Aquaculture under the Clean Water Act (CWA). That suit resulted in rulings that the company had violated the terms of its permits, including by failing to conduct required inspections of net pen moorings and anchors, to accurately monitor and report the number of fish escaping from pens, to develop operational plans that include necessary procedures for inspecting cages, storing chemicals, disposing of harvest blood, and to track the number of fish in its cages and lost to predation. Cooke's history of CWA violations is important to consider in this process, if nothing else to ensure that the permits are drafted to ensure that violations are detected before catastrophe ensues.

Incidents like the partial sinking of the Orchard Rocks pen in October, 2019 demonstrate that the risks of additional escapes are very real, given the state of the existing pen structures. The response to that incident was conducted by several Washington State agencies, including Ecology, and the records from that incident and state agencies' documentation of Cooke's inadequate emergency response should be included in this record to ensure that emergency plans incorporate lessons learned, and acknowledge the degraded state of the surviving pens as identified by state inspectors and Cooke's own contractors.

5) Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture.

In 2018, Washington's passed a law, HB 2957, banning Atlantic salmon net pens on the grounds that the practice placed too great a risk on the ecosystem, created a new and stricter regulatory regime for marine net pen aquaculture.

As such, it is not sufficient to say that conditions of the current NPDES application are similar to those of past permits. HB 2957's new standards require re-examining past decisions to hold Cooke Aquaculture to that higher standard of eliminating these risks.

In reviewing Cooke's submissions and other materials submitted through this public process, the standard of review should be specifically on whether the policies in place achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife."

6) Switching species does NOT reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. Ecology should not limit the scope of their review to risks associated with a change of species.

Decades of experience shows real effects on water quality in a plume around the net pens, which the terms of Cooke's current permit application does not eliminate. This NPDES review should re-examine existing data on effluents from industrial products, medicines, feed, fish waste, and dead and rotting fish to assess whether the current plans eliminate all of those risks.

6a. Fish Effluent

Open water net pens routinely disperse large volumes of feed into public waters within the boundaries of the net pens. Some portion of the feed may not be consumed by penned fish, and thus makes its way into, and have an impact upon, the surrounding marine environment. The high-energy tidal zones in which net pens are located may drive broad dispersal of unconsumed feed and other dietary supplements, including medicines. This dispersal of feed into public waters represents a continuous and constant act of chumming, and attracts native fish species as well as other wildlife (see #8). Divers near net pens have observed large schools of fish swimming in and out of the pens, and reports from British Columbia on bycatch and incidental take of wild species during harvest operations indicate that many native species enter the pens, likely because of the food attraction.

Small fish species, such as forage fish species and outmigrating and rearing wild salmon and trout (including ESA-listed Chinook and steelhead), have to migrate past net pens as they swim across the shoreline, and may be attracted by net pen feed to the point where they physically enter a net pen facility and are vulnerable to disease associated with farmed salmon in the pens-regardless of species.

The constant dispersal of feed may also cause disruptions in the natural migratory patterns of wild fish, as the pens provide a constant and unnatural food source that may cause wild salmon or trout to occupy a single location for a longer period of time than is typical, and deter rearing or migrating wild fish from developing key feeding strategies which are critical to their early growth and development, as well as subject them to net pen concentrated disease.

Additionally, feeding and harvesting steelhead from the net pens attracts wildlife to the vicinity of the pens, including birds, sea lions, orcas, seals, and other fish. Cooke's NPDES permits need to consider this additional biomass and waste from these attracted species when setting limits for phosphorous, nitrogen, and other discharge.

Aside from water quality concerns, this attraction increases the chances that orcas and other marine mammals will be harassed, and that endangered wild fish will be accidentally harvested, injured, or preyed upon.

6b. Fish Waste

No matter the species, there is no mechanism to capture waste from open water net pen aquaculture. Fish waste, excess food, dead fish, and tissue sloughed off of live fish, all flow from net pens into surrounding waters. This nutrient imbalance in the vicinity of pens can be harmful to some wild species, and can cause unhealthy growth of other species, including algal blooms. Additional climate change impacts suggest die-offs from algal blooms could be more frequent. Read about an example in BC's Clayquoet Bay.

Unlike highly-regulated land-based agriculture and production where animal manure is collected and composted, waste (feces, urine, medicines, and uneaten feed) from open water is discharged directly into public water. The most prominent organic nutrient waste involved are phosphorus (P) and nitrogen (N). Based on calculations made by Wild Fish Conservancy using a bioenergetics program and data provided by Cooke in their monthly NPDES reports, the estimated amount of untreated N discharged by Atlantic salmon net pens in Puget Sound on a daily basis is roughly equivalent to the amount of N discharged in waste treated by the city of Tacoma. For the same comparison with regards to P, the amount of discharge is roughly equivalent to the cities of Port Angeles, Everett, Bellingham, and Tacoma combined.

The attraction of wildlife including birds, sea lions, orcas, seals, and other fish (described in 5a) concentrates animal waste near the pens, further increasing levels of phosphorous and nitrogen.

Currently, Ecology only considers the impacts of the nutrients and chemicals discharged on the environment directly below or in close vicinity to the pens. As part of risk assessment and monitoring, Ecology should utilize the Pacific Northwest National Laboratory's Salish Sea Model, a predictive ocean-modeling tool developed by the federal government for coastal

estuarine research, restoration planning, water-quality management, and climate change response. This tool could analyze how discharge and pollution from net pens travels through the dynamic, tidal marine environment, therefore allow Ecology to better evaluate the risk the pollution poses and the geographic range the pollution would impact.

6c. Amplification and Discharge of Viruses, Parasites, and Diseases

Rearing concentrated populations in what are effectively aquatic animal feedlots, face greater risk of disease, parasitic, and viral amplification than wild fish populations. When outbreaks break out in net pens, the disease-causing organisms are rapidly amplified in number and discharged to the surrounding aquatic environment in large numbers. Because wild steelhead, forage fish, and other species of concern (i.e. coho salmon, ESA-listed Chinook salmon and bull trout and forage fish and as required by WAC 197-11-080) swim in close proximity to the pens, there is likely to be a spread of disease from infected farmed fish to these endangered wild populations. For example, see map of net pen and herring spawning sites in the Salish Sea.

In 2017, a B.C. study documented a strong correlational connection between disease prevalence in net pens and disease transfer to wild fish populations (Morton et al., 2017). Recent research in British Columbia found novel viruses in endangered salmon, and found evidence that these novel viral infections may originate from farmed salmon and trout (Mordecai et al., 2019).

Such pathogens fall within the definition of pollutants, and the NPDES permit review should ensure that Cooke's plans will eliminate the risk of these pollutants harming the integrity of the Sound ecosystem and the biological integrity of its wild species.

Net pens chronically discharge particles of decaying fish flesh that are often consumed by native fish and birds. These particles may be contaminated with pathogens, parasites, pharmaceuticals or chemicals that may be ingested by native fishes, including wild steelhead, salmon, and other trout. Studies have shown that these particles are potential vectors for pathogens. While Cooke now is required to recover dead fish and transport them upland for disposal, there is currently no mandate that those mortalities be submitted to the state for testing before disposal.

6d. Discharge of antibiotics and medical effluent.

In order to treat specific diseases of fungal occurrences or to prevent infection, chemicals and pharmaceuticals are often applied by the industry to the fish, water, or feed in the net pens. Among the potential and likely harmful impacts to designated uses of surrounding water is the use of these chemical or pharmaceuticals for treating infections, parasites or diseases such as "yellow mouth" where the U.S. Food and Drug Administration (FDA) requires a 30 day waiting period before treated fish may be approved for human consumption. Native fishes in the immediate vicinity of the treated pens may also be exposed to or consume the very same chemicals and pharmaceutical treatments (including fish that may enter the pens attracted by the presence of feed and fish odors). These fish may then be caught in recreational or commercial fisheries and unknowingly be consumed by the public within FDA's required 30 day waiting period. This risk to the public and to wild fish must be addressed in the NPDES review.

The SEPA checklist submitted by Cooke Aquaculture and included in this record refers to the use of unspecified probiotic supplements. These unspecified introduced microbes are likely to colonize the microbiome of native fish and the environment near net pens. Given the growing scientific appreciation of the role of the microbiome in health and development of fish and other animals and plants, these supplements should be detailed, and a plan for monitoring surrounding areas and fish populations for colonization or excess growth of these bacteria should be required. This monitoring should also test for growth of antibiotic resistance in nearby areas.

It should also examine new data on antibiotic resistance in protected marine mammals (research discussed in this recent report from High Country News). These risks were discussed in the SEPA comments submitted by the Our Sound, Our Salmon coalition in 2019, and comments to the previous Atlantic salmon NPDES review.

7) The change in species poses new and different risks.

The change in species poses new and different risks, in addition to the harms open water net pen aquaculture has caused for decades. Some policies which may have been permitted for Atlantic salmon under the pre-2017 status quo, pose additional risks with the proposal to introduce a highly-domesticated and partially-sterile form of steelhead. The differences in this circumstance were considered as far back as 1990, when the last comprehensive Environmental Impact Statement was drafted. The prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with biologically-altered, domesticated steelhead and Puget Sound's federally-listed steelhead population, different risks apply, and standards laid out in the 1990 EIS have not been met for these purposes.

For example:

The "a minimum distance of separation between farms and river mouths" has never been considered and adopted in state policy, as section 5.7.2.2 of the 1990 EIS would require for aquaculture involving native fish (and as is required in many other nations). Since escapes, and their risks to threatened steelhead and rainbow trout, constitute pollution and are within the scope of Ecology's review, this guidance and an analysis of the proximity of pens to steelhead spawning rivers should be included in Ecology's review of these NPDES permits. In addition, the assessment of risks from pollution (including diseases) should account for the migration corridors in areas like Rich Passage, which may concentrate wild salmon near the pens.

The behavioral response of wild steelhead to a large aggregation of wild steelhead may be different than it was to Atlantic salmon. If wild schools are attracted to the captive domesticated steelhead in pens, the pollution from the pens may do greater harm to hatchery-reared steelhead and to threatened wild Puget Sound steelhead.

Despite treatment to render the fish infertile (triploid), many fish in the pens will be capable of reproducing. When a net pen collapses, it will release more fertile female steelhead than exist in many endangered wild steelhead runs. When an escape happens, it will be nearly impossible to manage a recovery effort that removes farmed steelhead and does no harm to endangered wild steelhead and bull trout, endangered and threatened salmon, endangered southern resident killer whales, and other protected wildlife in Puget Sound.

The escape of steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, will pose risks to native salmon, steelhead, and rainbow trout rearing in nearshore marine habitats and rivers due to competition for food and foraging space. This will be particularly true in the case of Cooke's proposed triploid (treatment to render the fish infertile) steelhead because as noted in Cooke's materials, triploid fish have appetites that are likely to be considerably greater than wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish. This means escapees may outcompete wild steelhead, or indeed predate upon them.

8) Escape prevention and the adequacy of Cooke's escape prevention and escape response plans must be carefully considered in this permit process.

The steelhead Cooke proposes using in their net pens are highly-domesticated, biologically-altered to be partially-sterile, and genetically dissimilar to wild stocks. Similar to nonnative farmed Atlantic salmon, these fish are considered and regulated as a pollutant under the Clean Water Act if they escape into public waters.

Escape prevention and the adequacy of Cooke's escape prevention and escape response plans must be carefully considered in this permit process. The determination from the SEPA review process requires Cooke to develop a "no-recovery" option to be added to their escape response plan, which is not included in these NPDES application materials. The NPDES review must be based on their full escape plan, not this incomplete record. The SEPA determination also required Cooke to develop a plan for marking their domesticated stock (clipping the fins) to distinguish them from free-swimming wild and hatchery steelhead. That marking plan is not included in these NPDES materials, but is an important aspect of escape recovery.

Despite treatment to render the fish infertile, many fish in the pens will be capable of reproducing. When a net pen collapses, it will release more fertile female steelhead than exist in many endangered wild steelhead runs. When an escape happens, it will be nearly impossible to manage a recovery effort that removes farmed steelhead and does no harm to endangered wild steelhead and bull trout, endangered and threatened salmon, endangered southern resident killer whales, and other protected wildlife in Puget Sound.

9) Ecology should not issue NPDES permits until all net pens are transitioned to upland contained systems. *NOTE THE FISH THAT ARE TRANSFERRED TO NETPENS COME FROM AN UPLAND CONTAINED FACILITY*. KEEP THEM THERE. Furthermore, finfish aquaculture as practiced at these sites is no longer water-dependent under the terms of RCW 79.105.060. Innovations in land-based aquaculture are now more affordable and practical since these pens were first installed in Puget Sound thirty years ago.

Today, these land-based facilities are being built throughout the U.S. and world and represent a steadily growing industry and an environmentally-responsible farming practice. By endangering the health and productivity of Puget Sound ecosystem services, net pen aquaculture has the potential to harm actual water-based uses that cannot exist without access to healthy and productive marine and freshwater environments in the Puget Sound region. Ecosystem services in

Puget Sound support thousands of jobs throughout the region and generate billions in local economic capital.

Land-based aquaculture using closed-containment systems eliminates all of the risks open water net pens pose to the natural ecosystem, offering the industry an ecologically-safe opportunity to produce farmed fish that can be marketed as a truly sustainable and responsible product. Examples of successful land-based aquaculture companies, such as Nova Scotia's Sustainable Blue which has been in operation since 2015, further demonstrate that commercial marine net pen finfish aquaculture is no longer water-dependent.

Industry representatives often claim transitioning to land-based facilities is simply too expensive. **However, under the current business model the net pen aquaculture industry is using the public's waters and resources to subsidize their expenditures and profits. Moving these facilities out of public waters shifts the responsibility and financial burden of oversight, monitoring, emergency response, and management of effluent and pollution away from the public and onto the company.** For that very reason, as long as governments around the world are willing to continue leasing public waters for use by this industry, companies have little incentive to invest and transition to sustainable and ecologically safe alternatives.

Washington state is the only west coast entity in BC and the United states that allows in-water netpens. This is irresponsible. By denying permits for open water net pen aquaculture, the state, including DoE should unite Washington with the rest of the coast which has committed to removing or already prohibited commercial marine net pen finfish aquaculture. This effort will support global efforts to transition this industry out of public waters and toward sustainable land-based alternatives.

In addition, many counties and municipalities have established new rules since the net pens were installed, which would prohibit the construction of new net pens in their waters. These prohibitions are based on science, and should be adhered to as best available science.

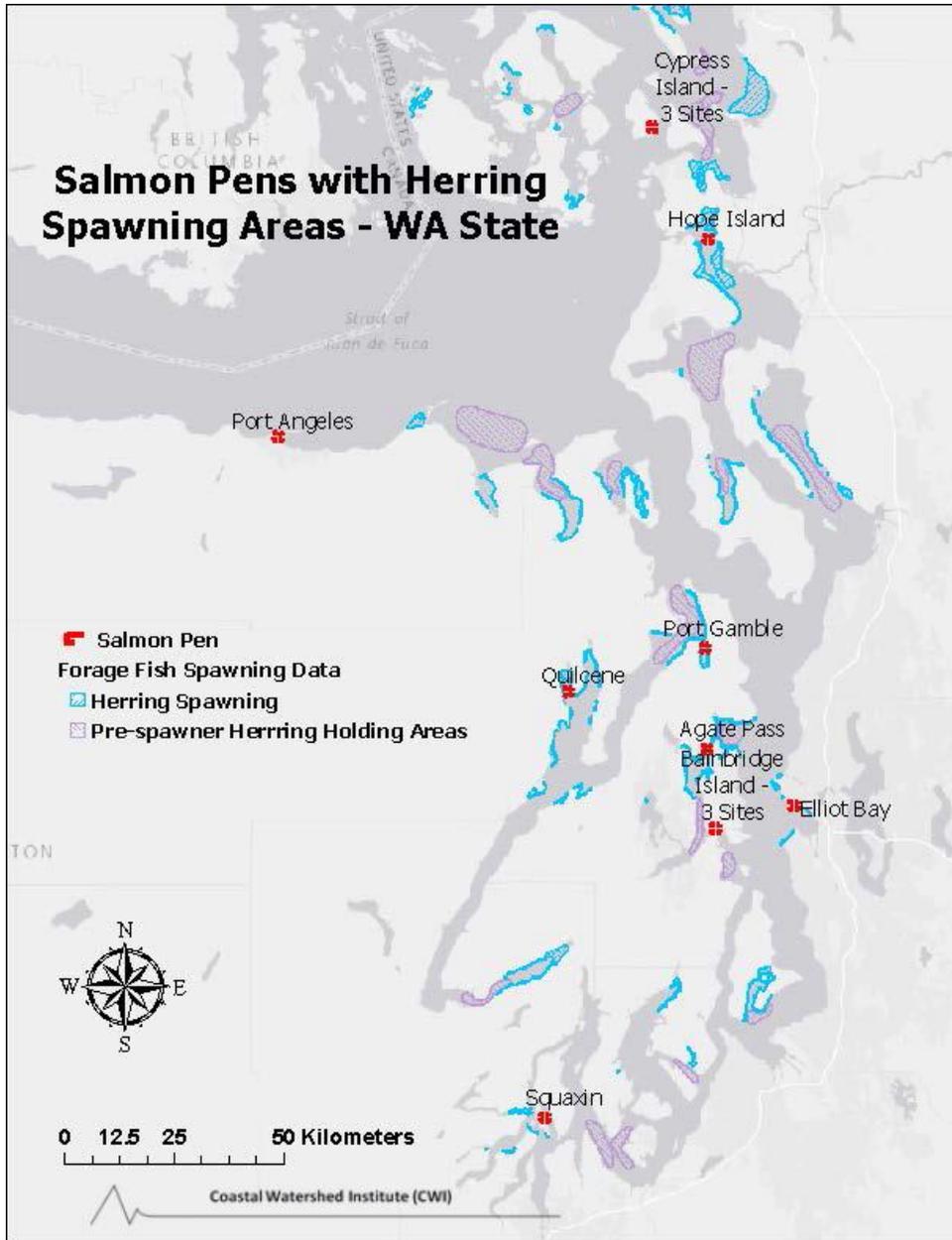
Do the right thing for our state's (and nations) invaluable coastal ecosystems. Deny these NPDES permits and deny future in water net pens in Washington state.

Respectfully,,



Anne Shaffer, PhD
Lead Scientist
Coastal Watershed Institute
Anne.shaffer@coastalwatershedinstitute.org
360.461.0799

Figure 1. Herring spawning areas, holding areas and current net pen locations 2019, Salish Sea (Shaffer in review). Herring data from WDFW, Net pen locations from DoE. Map by Clinton Stipek, Coastal Watershed Institute.



Olympic Environmental Council

The Olympic Environmental Council has long been concerned about raising fish in pens and has tracked this industry for over 20 years. To be brief, our position opposes raising penned animals, feeding them toxic feed which then circulates through the marine system and to other animals, using dyes to color the fish -- dyes which can be harmful to humans, the diseases and parasites endemic to the penned fish and then sold for human consumption, the plastic introduced to the marine ecosystem from the pens, the pollution of the bottom lands, the history of thousands of escapees -- violating the rule that if one escapes that is pollution, the escapees ability to access the streams of wild fish and build reefs and crowd out the wild fish from their native streams, the introduction of non native species - even so-called native but of different genetic stock, and the fact that Cooke Aquaculture has provided the State a poor record of upkeep and oversight of its properties.

To: Laurie Niewolny
Water Quality Program
Washington State Department of Ecology
PO Box 47600, Olympia, WA 98504

Submitted online: <http://wq.ecology.commentinput.com/?id=HEdBM>

Oct 23, 2020

RE: Draft Cooke Aquaculture permit modifications to raise steelhead in four Puget Sound net pens.

Dear Laurie Niewolny,

Thank you for taking the time to consider our comment on the proposal put forth by Cooke Aquaculture Pacific, LLC to modify their existing NPDES permit from raising Atlantic salmon to raising steelhead (*Oncorhynchus mykiss*) at four of their existing marine net pen sites in Puget Sound. We recognize that changing the species from Atlantic salmon to rainbow trout will not result in significant changes to water quality, however we continue to oppose net pen aquaculture of any type because of their contribution of nutrients and toxic chemicals. We feel that net pens pose a significant threat to the marine ecosystem including threatened and endangered species.

RE Sources is a non-profit organization located in northwest Washington and founded in 1982. We work to protect the health of northwest Washington's people and ecosystems through the application of science, education, advocacy, and action. Our priority programs include Protecting the Salish Sea, Freshwater Restoration, Climate Action, and Fighting Pollution—all critical issues affecting our region. Our North Sound Baykeeper is also a member of the Waterkeeper Alliance, with over 300 organizations in 34 countries around the world that promote fishable, swimmable, drinkable water. RE Sources has thousands of supporters in Whatcom, Skagit, and San Juan counties, and we submit these comments on their behalf.

Fish net pens, regardless of species, contribute considerable organic waste including uneaten fish food, fish feces, and dead fish. These waste products result in excess nutrients that lead to eutrophication and subsequent hypoxic zones in Puget Sound.^{1,2} Research also shows that eutrophication is leading to a rising algae population that is shading out eelgrass and kelp causing a decline of these critical species.³ Nutrient inputs, therefore, are having a widespread and direct negative impact on the Puget Sound ecosystem, including the food web that is critical to our endangered orca whale.²

Growing any species of fish in high densities can lead to more parasites and diseases than would occur in the natural environment.^{4,5} Sea lice, viruses, and other emergent diseases all have the potential to further stress our dwindling native salmon populations.^{5,6} Furthermore, the use of fish food, pharmaceuticals, and

antifoulants to maintain the health of the salmonids and net pens contribute toxic chemicals and are additional stressors.⁷

In fact, a new study that identified pathogen environmental DNA in relation to salmon net pens found that net pens are potential reservoirs for infectious agents.⁸ This research suggests that native salmon and other fish that swim in proximity to net pens are at an elevated risk of contracting an infectious disease. This study not only highlights the potential danger net pen operations have on our native fauna but also illustrates that we are still learning about the potential dangers from net pen operations.

The National Pollutant Discharge Elimination System (NPDES) is intended to regulate point source pollution discharged to waters of the United States so that the discharge does not hurt water quality or people's health. The Cooke Aquaculture net pens are strategically situated in areas that are deep, well flushed, and have complicated circulation patterns. Therefore, this makes it impossible for the Department of Ecology to accurately measure and regulate the amount of discharge emitted by these net pens. These pollutants are continually released into the Puget Sound where they are dispersed and diluted yet continue to bioaccumulate and biomagnify in organisms.^{9,10}

We need to prioritize the recovery of our native salmon species over propagating farmed ones. Native salmonids will not benefit from net pens and could be adversely affected by them through worsening water quality. We strongly encourage all fish aquaculture operations be moved inland where pollutants can be measured and regulated before being discharged into waters of the state. Wastewater Treatment Plants will soon need to regulate their nutrient discharges and it only makes ecological sense for net pens to be required to do the same.

Net pens are contributing to the decline of the Salish Sea and are making recovery rates slower and more difficult, for this reason we oppose any type of net pen operation in Puget Sound. Thank-you for reading our comments and taking our concerns into consideration.

Sincerely,

Kirsten McDade
Pollution Prevention Specialist

Eleanor Hines
North Sound Baykeeper, Lead Scientist

Resources

¹Ahmed, A., G. Pelletier, M. Roberts, and A. Kolosseus (2014) South Puget Sound Dissolved Oxygen Study: Water Quality Model Calibration and Scenarios. Retrieved from: <https://fortress.wa.gov/ecy/publications/documents/1403004.pdf>

²Washington State Department of Ecology. Marine Water and Sediment Monitoring. Retrieved from: <https://ecology.wa.gov/Research-Data/Monitoring-assessment/Puget-Sound-and-marine-monitoring>

³Washington State Department of Natural Resources Aquatic Science. Retrieved from: <https://www.dnr.wa.gov/programs-and-services/aquatics/aquatic-science>

⁴Walker, Peter & R Winton, James. (2010). Emerging Viral Diseases of Fish and Shrimp. Veterinary research. 41. 51. 10.1051/vetres/2010022.

⁵Bateman, Andrew W, and S.J. Peacock, B. Connors, Z. Polk, D. Berg, M. Krkosek and A.

Morton. 2016 Recent Failure to Control Sea Louse Outbreak on Salmon in the Broughton Archipelago. *Canadian Journal of Fisheries and Aquatic Sciences*

⁶Krkošek, M., J.S. Ford, A. Morton, S. Lele, R. A. Myers, and M.A. Lewis. 2007. Declining wild salmon populations in relation to parasites from farm salmon. *Science* 318:1772–1775.

⁷Guide to using Drugs, Biologics, and Other Chemicals in Aquaculture. (2016). American Fisheries Society Fish Culture Section. Retrieved from: <https://www.syndel.com/downloads/dl/file/id/112/>

⁸Shea, D. et al. 2020. Environmental DNA from multiple pathogens is elevated near active Atlantic salmon farms. *Proceedings of the Royal Society B*. Retrieved from: <https://doi.org/10.1098/rspb.2020.2010>

⁹Khangaonkar, T., W. Long, W. Xu. 2017. Assessment of circulation and inter-basin transport in the Salish Sea including Johnstone Strait and Discovery Islands pathways. *Ocean Modelling*, 109:11-32. Retrieved from: <https://www.sciencedirect.com/science/article/abs/pii/S1463500316301408>.

¹⁰Roberts, M., S. Albertson, A. Ahmed, and G. Pelletier. 2014b. South Puget Sound Dissolved Oxygen Study: South and Central Puget Sound Water Circulation Model Development and Calibration. Washington State Department of Ecology Publication No. 14-03-015. Retrieved from: <https://fortress.wa.gov/ecy/publications/SummaryPages/1403015.html>.

Northwest Aquaculture Alliance

October 26, 2020

Laurie Niewolny, Water Quality Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Re: Comments on Ecology Draft Permit Modifications for Cooke Aquaculture Pacific

Dear Ms. Niewolny:

The Northwest Aquaculture Alliance (NWAA), an organization of producers and support businesses in Washington, Oregon, Idaho, Montana, and British Columbia that share a commitment to responsible aquaculture and a robust Blue Economy, appreciates the opportunity to comment on the DRAFT revised permits for Cooke Aquaculture Pacific (CAP), a global industry leader in sustainable seafood production for both wild and farmed species.

First and foremost, we are pleased that the agency has correctly concluded, based on best available science from leading researchers from the public and the private sector, that little or no difference exists in feed utilization and nutrient waste production between Atlantic salmon and rainbow trout/steelhead. This finding of fact should clear the way for a swift granting of permits so that this company can get back to doing what it does best: Producing high-quality, high-value, nutritious seafood for human consumption, creating well-paying jobs along the way.

At the same time, however, we urge the Department of Ecology to use restraint by not requiring CAP or any company in a similar situation to divulge proprietary information to the state. We see this as a dangerous precedent, and we respectfully request that the agency avoid adding additional new requirements or constraints on this company's existing permits.

We are all aware that there are very vocal groups in this state that do not support having net pens in state waters. However, it should be noted that commercial net pen aquaculture has been going on in Washington waters for more than 30 years. Today, in fact, several tribes are growing salmon for their delayed release fish enhancement projects by using net pens in the early life stages of their fish.

Technology has made this form of farming—in the water—the most sustainable, environmentally friendly form of food production of all types of protein production. As the federal government works toward its vision of farming in the open ocean, and seafood companies look to both offshore aquaculture as well as experimental land-based fish growing operations, the reality is that marine aquaculture worldwide remains one of the most efficient, environmentally responsible, and sustainable ways to produce the protein the world needs.

As our organization's diverse membership shows, the business of aquaculture is heavily dependent on science. To grow any kind of finfish (or shellfish), growers rely heavily upon science—including genetics, breeding, animal health, veterinary medicine, and nutrition, to name just a few areas of

study.

It is also heavily reliant on technology, including but not limited to the use of computers and underwater cameras that make sure no feed is being wasted to robotics to GPS systems. Companies like Cooke continue to embrace new technologies that help grow much-needed protein more efficiently, allowing producers to monitor the fish growing process through their entire life cycle.

In addition, feed companies have also embraced innovation, creating fish feeds that minimize the use of marine ingredients, increase the digestibility, and meet the exact nutritional requirements of the fish stocks at each stage of the growth cycle. We have come a long way as an industry and companies in our organization—particularly CAP in this instance—are leading the way in being stewards of the environment.

Finally, if the COVID-19 pandemic has taught us anything, it is that we as a state, region, and country need to put ourselves in the position of being food secure. That means, among other things, "growing our own" rather than importing. It means encouraging the development of rural natural resource jobs, of taking pride in what we grow in Washington's lands and waters.

Aquaculture is the future, and we in Washington are at a crossroads. We can either lead, follow, or get out of the way and let our food come from other countries where regulations may not be as stringent as those in the United States. There is no reason the United States cannot cultivate its own seafood resources and businesses right here at home in our own waters.

Because Washington state has done extensive research and monitoring of net pen operations in the state, and because current regulations on any discharges from net pen operations are among of world's most stringent, we are hopeful that Cooke Aquaculture Pacific will be granted the permits it seeks to begin to supply local and regional markets once again.

On behalf of our fish and shellfish grower members as well as the many companies involved in supplying our producers, we urge you to take a broad view of this request and grant Cooke Aquaculture Pacific the permits to begin operating, and to do so in an expeditious manner.

Thank you.

Sincerely,

Jeanne McKnight, Ph.D.
Executive Director
Northwest Aquaculture Alliance
P.O. Box 8562
Covington, Washington 98042 USA

Friends of the Earth

Please accept the attached comments from 1093 members and activists of Friends of the Earth who are opposed to the issuance of the proposed water quality permits for Cooke Aquaculture to raise steelhead trout in its existing net pens. Friends of the Earth joins these comments and urges Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state. Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters. Moreover, as detailed in the attached comment letter, we recommend that Ecology (1) wait to reach a decision on the permits until pending developments that impact the decision are resolved; (2) revisit its conclusion that issuance of the permits will not change the effect of Puget Sound water quality; and (3) if the permits are issued, ensure that any noncompliance of the permits will result in swift revocation of the permits and additional harsh penalties.

Thank you for accepting and considering these comments.

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Kathryn Bromley

Lake Forest Park, WA 981557454

"

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Sincerely,

Meg Sabatino

San Francisco, CA 98101

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Sincerely,

Elizabeth Fortmann

Ferndale, WA 982489810

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Kiran Gill

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Sincerely,

virgil ripley

Seattle, WA 981255401

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Sincerely,

Nancy Worsham

Spokane, WA 992011602

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Sincerely,

Donna Davis

Bellingham, WA 982298975

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Sincerely,

Nathan LacQuaye

Vancouver, WA 986633310

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Sincerely,

Leslie Saelens

, Washington 98236

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Sincerely,

David Breckette

MAPLE VALLEY, WA 98038

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Denise Radow

Mercer Island, WA 97405

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Richard Nelson

Seattle, WA 981162739

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Blaine, WA 98230

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Roger Delmar

Port Townsend, WA 98368

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Sincerely,

Linda Murdock

Seattle, WA 981254049

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Teresa Tomasek

Kingston, WA 983469629

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James Wiley

Tacoma, WA 98407

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Sincerely,

Richard Johnson

Bellingham, WA 98227

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Sincerely,

Joan Christensen

Ilwaco, WA 98624

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Sincerely,

Robert Blumenthal

Seattle, WA 98115

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Sarah Sanford

Kirkland, WA 98033

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Spokane, WA 992021821

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Sincerely,

Julie Boss

, Washington 98028

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Sincerely,

Tricia Nakoma

Seattle, WA 87507

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Sincerely,

Melanie Morin

Edmonds, WA 98026

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Charlotte Cherzan

Battle Ground, WA 98604

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Sincerely,

Renee Harris

Bellevue, WA 980085619

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Sincerely,

Beth Eisenbeis

Bothell, WA 980127937

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Sincerely,

Sam Garbi

Vancouver, WA 986642860

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Sincerely,

David Thompson

Spokane, WA 99217

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Sincerely,

Tony Porto

CHIMACUM, WA 98325

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Ann Bradshaw

Lake Stevens, WA 982583791

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Sincerely,

Rose Marie Gai

Woodinville, WA 98072

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Sincerely,

Diane Carlson

Glenwood, WA 986199023

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Guy Purdy

Kenmore, WA 980284637

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Sincerely,

Polly Taylor

Olympia, WA 985012302

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Sincerely,

Gale Kessler

MERCER ISLAND, WA 98040

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Sincerely,

Deborah Schulte

Seattle, WA 981052159

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Gail Tedford

Bremerton, WA 983370100

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Everett, WA 982035079

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John Shattuck

Olympia, WA 985014779

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Hap Enzi

Walla Walla, WA 99362

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Stephanie Bell

Seatac, WA 98198-4207

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Seattle, WA 98106

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Angela Swanson

CONCRETE, WA 98237

"

End Cooke Aquaculture's operations

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Sincerely,

Renne Adams

Redmond, WA 98052

"

End Cooke Aquaculture's operations

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Sincerely,

Kameron Durnan

Ellensburg, WA 989262242

"

End Cooke Aquaculture's operations

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Sincerely,

annika bowden

Seattle, WA 981162889

"

End Cooke Aquaculture's operations

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Sincerely,

Victoria Urias

Seattle, WA 98125

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been shitting in our waters and harming our wild, native salmon for far too long. I am fucking outraged to see that the Department of Ecology has gone against public will and prepared draft water quality permits that gives Cooke Aquaculture the ability to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout. These must be removed!

I am telling you to get off your worthless bureaucratic ass and realize the importance making a decision for the future of this vital water quality issue. Your agency is going to get sued. There is already litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Jeremiah Donier

Freeland, WA 982499776

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Eden Teachout

Olympia, WA 985017128

"

End Cooke Aquaculture's operations

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Sincerely,

Adam Udovich

Olympia, WA 985023821

"

End Cooke Aquaculture's operations

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Sincerely,

Adeline Parker

Federal Way, WA 98003

"

End Cooke Aquaculture's operations

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Kathryn Oliver

Bainbridge Island, WA 981101710

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End Cooke Aquaculture's operations

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Sincerely,

Sally Thrall

Seattle, WA 981074103

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Sincerely,

Jim Bartley

Bainbridge Island, WA 98110

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Sincerely,

Patricia Schroeder

Port Angeles, WA 98363

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Monica Albin

Kenmore, WA 98028

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Sincerely,

Karen Kershaw

Seattle, WA 981024549

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Sincerely,

Greg Saul

Olympia, WA 985013917

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Sincerely,

Adeline Parker

Federal Way, WA 98003

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Sean Townsend

Olga, WA 982799303

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Sincerely,

BARBARA MCKEE

Vancouver, WA 986642548

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End Cooke Aquaculture's operations

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Sincerely,

Adeline Parker

Federal Way, WA 98003

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Sincerely,

Tracy Fitterer

Spokane Valley, WA 992063973

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Sincerely,

Diane Moore

Deming, WA 982449304

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Freeland, WA 982490015

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Sincerely,

Percy Hilo

Seattle, WA 98111-3761

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Arthur Ficarra

Seabeck, WA 98380

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Sincerely,

Blake Koehn

Tacoma, WA 984076014

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Richard Hernandez

Kirkland, WA 980344482

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Sincerely,

Sena Krug

Seattle, WA 981023203

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Sincerely,

Maxine Clark

Sekiu, WA 98391

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Sincerely,

Victoria Forsberg

Langley, WA 982609217

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Sincerely,

Tracy Ouellette

Bow, WA 982329246

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Sultan, WA 982940372

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Sincerely,

Robert Bartlett

WENATCHEE, WA 98801

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Sincerely,

Samantha Ngy

Kent, WA 98042

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Sally Radford

Tacoma, WA 984094007

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Annette Smith

Gig Harbor, WA 983321046

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Sincerely,

Valerie Rapport

Seattle, WA 981125016

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End Cooke Aquaculture's operations

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Sincerely,

Susan Bigda

Kent, WA 98032-3794

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Sincerely,

Don Adair

Spokane, WA 992249671

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Ron Slosky

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Seattle, WA 98119

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Shoreline, WA 981552214

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Sincerely,

Rene Ray

Gig Harbor, WA 983357102

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Sincerely,

Anita Scheunemann

Rochester, WA 985798693

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Sincerely,

Linda Prier

Kittitas, WA 989340689

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Greg Lyman

Woodinville, WA 98072

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Sincerely,

Kari Blom

Shoreline, WA 981552273

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End Cooke Aquaculture's operations

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Sincerely,

Amy Walter

Seattle, WA 981150271

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Sincerely,

ALBERT WAGNER

Port Ludlow, WA 983659668

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Sincerely,

Maureen Wilhelm

Seattle, WA 981090503

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Port Townsend, WA 98368

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Charlotte McFeely

SEATTLE, WA 98125

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Sincerely,

Leon Robert

Seattle, WA 981072125

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Sincerely,

Justin and Anne Morahan

, Washington 11111

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Sincerely,

Jude Green

Bellingham, WA 982252625

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Sincerely,

Darius Mitchell

Seattle, WA 981992008

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End Cooke Aquaculture's operations

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PJ Overton

Vancouver, WA 98665

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Charles Landau

Port Townsend, WA 983684841

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Mark Volmut

Olympia, WA 985012415

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Ferndale, WA 982489819

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Sincerely,

Steve Green

Burlington, WA 982333824

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Sincerely,

Colleen Lynch

Spokane Valley, WA 992162189

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Sincerely,

Kathryn Godwin

Auburn, WA 98092

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Lin Higley

Mead, WA 99207

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Sincerely,

jerry ellis

Oak Harbor, WA 982772556

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Sincerely,

Joe Nichols

Snohomish, WA 98290

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Sincerely,

Rose Rohrer

Spokane, WA 992084033

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Sincerely,

Somsaron Pheth

Tacoma, WA 984042214

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Gerry Stamper

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Clarkston, WA 99403

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Sincerely,

Dan Schneider

Seattle, WA 981154217

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Sincerely,

Pamela Larsen

Camano Island, WA 982826680

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Sincerely,

Brandie Deal

Bothell, WA 98021

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Sincerely,

Joanie Merritt

Port Angeles, WA 983620330

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Annie Foy

Burien, WA 981661753

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End Cooke Aquaculture's operations

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Sincerely,

Meredith Baker

Mount Vernon, WA 982739232

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Sincerely,

Judy Bluhm

Auburn, WA 980921912

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Sincerely,

Susan Shouse

Everett, WA 982012546

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Wanda Myers

Twisp, WA 988569774

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Sincerely,

Fred Stone

Everett, WA 982087515

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Sincerely,

Mary Sebek

Seattle, WA 981034617

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Ted Clark

Spokane Valley, WA 992123216

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Sincerely,

Karen Cook

Lacey, WA 985134181

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Sincerely,

Robin Hirsch

, Washington 98280

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Sincerely,

Laur Mallett

Seattle, WA 981256163

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Sincerely,

Linda Watson

Leavenworth, WA 988261231

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Sincerely,

Daniele Rubcic

Lynnwood, WA 980875433

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White Salmon, WA 986720480

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Barbara Tountas

Lake Forest Park, WA 981551567

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Sincerely,

Charlotte Wollheim

Seattle, WA 981093762

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Nicholas Kovalcik

Redmond, WA 980538100

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Patrick Gray

Spokane, WA 992031060

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

ro donelson

Ferndale, WA 982489714

"

End Cooke Aquaculture's operations

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Sincerely,

Laura Delmas

Kirkland, WA 98033

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Sincerely,

Mary Schreifels

Seattle, WA 981173835

"

Cooke Aquaculture's operations must end.

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Sincerely,

Anthony Troutt

Brier, WA 980368410

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Sincerely,

Charles Muzio

Seattle, WA 981035220

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Sincerely,

Tina Gardner

Oak Harbor, WA 98277

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Don't be stupid. Just say "NO" to Cooke Aquaculture operations in Puget Sound and the Strait of Juan de Fuca.

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Sincerely,

Kathryn Townsend

Olympia, WA 985069727

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End Cooke Aquaculture's operations

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Sincerely,

Tia Hendrix

Orting, WA 983600019

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Kimberly Seater

Seattle, WA 981461056

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Bhavana Lymworth

Langley, WA 982600459

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End Cooke Aquaculture's operations

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Sincerely,

Meghan McCutcheon

White Salmon, WA 98672

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Sincerely,

Norm Conrad

Mount Vernon, WA 98274

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Sincerely,

Holly Taylor

Ellensburg, WA 989269643

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Catherine Craig

Walla Walla, WA 993623310

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Sincerely,

Carol Miller

Seattle, WA 98105

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Sincerely,

CJ Joyce

Vancouver, WA 98661

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Sincerely,

Wendy Howard

Seattle, WA 98146-1950

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John Hunter

Langley, WA 98260

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Susan Finkel

Seattle, WA 981193572

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Ellen Kendall

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Ellen Kendall

Seattle, WA 98125

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Sincerely,

Jill Stokes

Spokane, WA 992232203

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Sincerely,

Robert Seaman

Lynden, WA 982649402

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Poulsbo, WA 983708739

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Sincerely,

Jennifer Mazuca

Seattle, WA 981162515

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Sincerely,

Daniel Grimley

Seattle, WA 981191433

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Sincerely,

Nancy Hayden

Spokane, WA 99217

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Laureen France

Seattle, WA 981991652

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Sincerely,

Vivian Korneliussen

Shoreline, WA 981334809

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Sincerely,

Elizabeth Purtill

Bellingham, WA 982256706

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Harolynne Bobis

Langley, WA 982608664

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Ximena McIntosh

Bainbridge Island, WA 98110

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Bellingham, WA 982254844

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Dianne Hyer

Vashon, WA 980706563

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Robert Jamieson PhD

Edmonds, WA 98020

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Merriann Bell

Lyle, WA 986359509

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bob rodgers

Brush Prairie, WA 986063406

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely yours,

Gerald Thompson

Everett, WA 98203

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End Cooke Aquaculture's operations

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Sincerely,

James Haywood

North Bend, WA 980459644

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Katherine Wright

Freeland, WA 982491106

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Sincerely,

Barbara Sim

Seattle, WA 98105

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Constance Knudsen

Seattle, WA 981172704

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Jennifer Fairchild

Seattle, WA 98118

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Sincerely,

Susanne Weil

Onalaska, WA 985700787

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Sincerely,

Janis Willett

Seattle, WA 981075634

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Carlann Copps

Anacortes, WA 982211617

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications.

Sincerely,

Christopher Young

University Place, WA 98466

"

End Cooke Aquaculture's operations

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Sincerely,

Cindi Lund

Lopez Island, WA 982618412

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Sincerely,

terrie pohl

Liberty Lake, WA 99019

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Sincerely,

Sara Hart

, WA 98105-2525

"

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I live in the area. I need wild caught salmon for health reasons.

Sincerely,

Gloria McClintock

Mount Vernon, WA 98274

"

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Sincerely,

Laura Reigel

Bainbridge Island, WA 98110

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Sincerely,

Allen Gates

Spokane, WA 992051626

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Sincerely,

Carla Fisher

Edmonds, WA 98026

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Sincerely,

Diana Meyers

Seattle, WA 981073466

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Sincerely,

Silvia De Los Santos

Seabeck, WA 983809449

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Bob Gillespie

Mount Vernon, WA WA

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Sincerely,

Jill Ungar

Ellensburg, WA 989269127

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Sincerely,

Carey Durgin

Seattle, WA 981062109

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Sincerely,

Celia Martin

Poulsbo, WA 983708046

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Sincerely,

Daniel Brant

Port Townsend, WA 983686417

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SUSAN DENIKE

Lacey, WA 985033503

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Carole Hiatt

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Wenatchee, WA 98801

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Christine Mirkhani

Marysville, WA 982708874

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Kristin Otto

Normandy Park, WA 981663925

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End Cooke Aquaculture's operations

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Sincerely,

Stuart Mork

Seattle, WA 981174642

"

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications. Remember, you are the Environmental Protection Agency. Time to start living up to your name.

Sincerely,

Susan Thiel

Spanaway, WA 983877630

"

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Sincerely,

Dawn Wojciechowski

Kirkland, WA 980341006

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Linda Ball

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Sincerely,

Julie A Simpson

Tahuya, WA 98588

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

No one should be eating farmed fish!

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Sincerely,

George Maupin

Kingston, WA 983468002

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Julie Hoerner

Tacoma, WA 984074222

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James Giles

Quilcene, WA 983760640

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erica money

Seattle, WA 981033107

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Sincerely,

Blanche Hill

Normandy Park, WA 981663872

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Julia N Allen PhD DVM

Edmonds, WA 980202903

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Karen Gilmore

Vancouver, WA 986646414

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Carnation, WA 980145800

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Kim Mack

Shelton, WA 985847833

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Amielle Moreno

Seattle, WA 981054738

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Art Bogie

Anacortes, WA 982214484

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Sandra L. Herndon

Olympia, WA 985063447

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Sincerely,

Russ Bradford

Orting, WA 98360

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End Cooke Aquaculture's operations

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Sincerely,

Megan DeSantis

Woodinville, WA 980729346

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Sincerely,

Cynthia Feuerstein

Mercer Island, WA 983709214

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WA

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Sincerely,

Maria Batayola

Bellevue, WA 98006

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Howard Mizuta DDS

Seattle, WA 981362036

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Sincerely,

Gail Buchanan

Anacortes, WA 982218543

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Sincerely,

Paul Bakke

Olympia, WA 98501

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Sincerely,

Craig Britton

Port Townsend, WA 983686610

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Valarie Matinjussi

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Bellingham, WA 98225

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Sincerely,

Deborah Francis

Oak Harbor, WA 982779630

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Sincerely,

Susan McRae

Olympia, WA 985063382

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Sincerely,

Peter Rimbos

Maple Valley, WA 980388926

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Sincerely,

John Burrows

Spokane, WA 99201

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Sincerely,

Cindy Hart

Oak Harbor, WA 982774816

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Sincerely,

Beverly Gilyeart

Everett, WA 982084603

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Sincerely,

Veronika Coleman

Walla Walla, WA 993624129

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J Chambers

Seattle, WA 98103

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Sincerely,

Lauren Ranz

Bellingham, WA 982298912

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications.

Sincerely,

Carl Golden

Woodinville, WA 980724643

"

End Cooke Aquaculture's operations

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Sincerely,

Inga Rouches

Fall City, WA 980249625

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Sincerely,

Will Silva

Bellingham, WA 98225

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Carol Reed-Jones

Bellingham, WA 98229

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Alice Gray

Port Orchard, WA 983660797

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Sincerely,

Fran Holme

Snohomish, WA 98296

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Sincerely,

Brock Smith

Vashon, WA 98070

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PATRICIA SIMON

Seattle, WA 981153244

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David Berger

Lyle, WA 98635

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Scott Peck

Bainbridge Island, WA 981103908

"

Joan Reberger

"Dear Ms. Niewolny:

I live in western Washington on Camano Island. Like most of the people in the Puget Sound area, I value the natural beauty here very highly and want to see a return of salmon and orca. Cooke's operations have already failed badly and are pushing us in the wrong direction.

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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Sincerely,

Joan Reberger

Camano Island, WA 982827383

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Sincerely,

Francis Schwinger

Seattle, WA 981461807

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Sincerely,

Charlie Wallblom

Spokane, WA 992014051

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Diane McCutcheon

Seattle, WA 98125

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Sincerely,

Den Evans

Port Angeles, WA 98362

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Sincerely,

Marlene Hayden

Tacoma, WA 984480402

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Sincerely,

David Grelock-Yusem

Bainbridge Island, WA 981103181

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Sincerely,

Donna Leavitt

Edmonds, WA 98026-8214

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Sincerely,

Cheryl Eiger

Friday Harbor, WA 982506740

"

End Cooke Aquaculture's operations

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Sincerely,

Vikki Voss

Shelton, WA 985849403

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Sincerely,

Hans Purdom

Chehalis, WA 985323127

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Sincerely,

Neal Umphred

Redmond, WA 98052

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Olympia, WA 985013584

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Sincerely,

Anne Almgren

Lynnwood, WA 98087

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WINIFRED DAISLEY

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WINIFRED DAISLEY

Spokane, WA 99202

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C. David Cook

Seattle, WA 981081505

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Cristina Wenzl

Lynnwood, WA 980872126

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Sincerely,

Norman Husser

Shoreline, WA 981556451

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Sincerely,

Beth Whitfieldhenry

Auburn, WA 980928605

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Sincerely,

Denee Scribner

Nine Mile Falls, WA 99026

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Sincerely,

Penelope Johansen

Montesano, WA 985633411

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Bryan Bell

Port Angeles, WA 983627938

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Sincerely,

Evelyn Lemoine

Seattle, WA 981224627

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Mandy WeeksGreen

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Mandy Weeks-Green

Olympia, WA 985128518

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Sincerely,

Terry Sullivan

Vashon, WA 980706467

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Larry Allen

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Sincerely,

Linda Ball

Liberty Lake, WA 990197574

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Holly Green

Anacortes, WA 982218943

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Laura Goldberg

Arlington, WA 982238677

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Marjorie Ostle

Olga, WA 982790218

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Seattle, WA 98116

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Steve Williams

Tacoma, WA 984068210

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Diana Nielsen

Edmonds, WA 980202948

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Marysville, WA 98271

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Sincerely,

Nancy Enz Lill

Spokane, WA 99201

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Jennifer Larsen

Seattle, WA 981222923

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Sincerely,

Suzanne Wardlow

SEQUIM, WA 98382

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Scott Bishop

Olympia, WA 985024734

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Spokane Valley, WA 992160485

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Lemoine Radford

Sammamish, WA 98075

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Sincerely,

Lisa Halpern

Seattle, WA 981182558

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Peter Karakondis

Port Angeles, WA 983626521

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Myrna Eden

Seattle, WA 98109

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Sincerely,

Myrna Eden

Seattle, WA 981092511

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Sincerely,

Dodd Johnson

Vashon, WA 98070

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Sincerely,

Karla Mason-Cohen

Richland, WA 993527508

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Sincerely,

THOMAS JOHNSON

Olympia, WA 98512

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Sincerely,

P Elle

Poulsbo, WA 983708607

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Sincerely,

Bonnie Benard

Olympia, WA 98516

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Sincerely,

michael leff

Bellevue, WA 980042820

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Sincerely,

Joan Peter

Gig Harbor, WA 983355906

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Sincerely,

Phyllis Oshikawa

Edmonds, WA 980204117

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Sincerely,

Carol Bennett-Bertrand

Tacoma, WA 98422

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Sincerely,

Thom Lufkin

Olympia, WA 985012928

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Sincerely,

D Hubenthal

Spokane, WA 992057334

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Sincerely,

Megan Graves

Seattle, WA 981255668

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Seattle, WA 98117

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Sincerely,

Denise Echelbarger

Camano Island, WA 982827028

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Sincerely,

Judith Landy

Mt Vernon, WA 98273

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Sincerely,

Linda Lindsay

Langley, WA 982600112

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Sincerely,

Julie Roe

Sequim, WA 983829543

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Pamela Rains

Issaquah, WA 980296272

"

End Cooke Aquaculture's operations

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Sincerely,

Robert Hoffmann

Eastsound, WA 982459326

"

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Sincerely,

Edith Kusnic

Seattle, WA 981256643

"

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Sincerely,

Mr. Shelley Dahlgren, PhD

Sammamish, WA 980297520

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Sincerely,

Veda Onori

Seattle, WA 981081406

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Sincerely,

Christian Miller

Washougal, WA 986717432

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End Cooke Aquaculture's operations

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Sincerely,

Sally Martine

Bremerton, WA 98337

"

End Cooke Aquaculture's operations

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Sincerely,

Ruth King

Lacey, WA 985033025

"

Please End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

It has been substantiated that industrial ocean fish farming has been polluting our waters and harming our wild, native salmon. I am disappointed to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I urge you to please wait to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Please place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Pamela K Tetarenko

Pullman, WA 99163

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Luke Magnotto

Bainbridge Island, WA 981102943

"

End Cooke Aquaculture's operations

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Sincerely,

Carol Royer

Lacey, WA 985032547

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Sincerely,

Rebecca Bartlett

Anacortes, WA 98221

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Sincerely,

Claire Berkwitt

Issaquah, WA 980297206

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications. PROFITS WILL NEVER BE AN ACCEPTABLE OUTCOME OVER THE PLANET HEALTH WE ALL DEPEND ON.

Sincerely,

Gail Barton

Naches, WA 989379419

"

End Cooke Aquaculture's operations

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Sincerely,

Tim Durnell

Rice, WA 991679745

"

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Sincerely,

Wendy Jarvis

Bellevue, WA 980046314

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Sincerely,

Philip Conrad

Bainbridge Island, WA 981106202

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Sincerely,

Katherine Schettler

Leavenworth, WA 988269426

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

Moreover, I request the Department of Ecology to revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. First, there is substantial new information that was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures). Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. Under HB2957, Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. In fact, the proposed change in species poses new and different risks, and there are a number of inherent problems with this industry regardless of the species being cultivated (including but not limited to, fish effluent and waste, amplification and discharge of pathogens, and discharge of antibiotics and medical effluent). Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Fred Ervin

Bonney Lake, WA 983916160

"

End Cooke Aquaculture's operations

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Sincerely,

JT Guthrie

Edmonds, WA 980265703

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

The tides in Puget Sound move the water back & forth... which does dilute the fecal output from these pens. But it doesn't really remove that output. It becomes a plume, like we saw from the ASARCO smelter in Tacoma, where there are tracks of the deposits of poisonous elements that remain in the soil for decades.. maybe forever.

So there are plumes in both directions from these net pens.

It's kind of like having cancerous polyps in the colon... but with the added problem that "traffic" past those polyps will be going BOTH WAYS, unlike the "traffic" inside a colon.

We would be remiss if we only tried to control the outfall/output from these net pens, instead of simply removing them entirely from the Sound.

On another issue, the idea of feeding little fish to make these larger (& seemingly more valuable) fish, when the small fish is an excellent human food in its own right, is wasteful... and only makes "economic sense" by virtue of ad campaigns to "sell" salmon & steelhead as "superior & desirable" food.

Get rid of these net pens! If people want to raise salmon & trout for food, then it should be done AWAY from the Sound... if at all... like hatcheries.

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout. THIS IS RIDICULOUS, bordering on the CRIMINAL.

Moreover, I request the Department of Ecology to revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with CLOSURES, AND PEN REMOVAL.

Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

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HAVE NO PLACE in our waters! ^..^

Sincerely,

John Browne

Vashon, WA 98070"

Dave Schettler

"Dear Ms. Niewolny:

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Sincerely,

Dave Schettler

, 98826

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End Cooke Aquaculture's operations

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Sincerely,

clayton murray

Seattle, WA 981338717

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Sincerely,

Michael Hedt

Burley, WA 98322

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Sincerely,

Eugenia Haggin

Bellevue, WA 98008

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End Cooke Aquaculture's operations

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Sincerely,

Claire Sagen

Bellevue, WA 980055164

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Sincerely,

Dean Webb

Seattle, WA 981991154

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

mia heavyrunner

Port Orchard, WA 98366-8929

"

End Cooke Aquaculture's operations

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Sincerely,

Debi Grotzinger

Vancouver, WA 98682

"

Carole Henry, MSW

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Sincerely,

Carole Henry, MSW

Seabeck, WA 98380

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End Cooke Aquaculture's operations

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

C Jackson

Tukwila, WA 98168

"

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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If all of this is true (I am not a marine biologist nor able to independently confirm all of these allegations), I implore you to do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications. Their history of polluting our shared waters and the impact that has had on native species is enough to truly research what is best for our Puget Sound.

Sincerely,

David Mayer

Olympia, WA 985024930

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am dismayed that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

Please wait to reach a decision on the water quality permits. Litigation is pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Christie Hedman

Seattle, WA 98121

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Sincerely,

Aliza Winship-Freyer

Seattle, WA 981156703

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Sincerely,

Lauren Tolle-Bulley

Puyallup, WA 983744551

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Sincerely,

Marquam Krantz

Bainbridge Island, WA 98110

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Sincerely,

Eleanor Israel

Rainier, WA 985769404

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End Cooke Aquaculture's operations

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Sincerely,

Russell Peterson

Everett, WA 982014271

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Sincerely,

Elaine Mahony

Bainbridge Island, WA 98110

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Sincerely,

Jim van Zee

Seattle, WA 98105

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Nancy Mattson

Seattle, WA 981164915

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Sincerely,

Patricia Wilson

Belfair, WA 98528

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Sincerely,

Jean Fee

Seattle, WA 981074345

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Sincerely,

DJ Blanchard

Port Angeles, WA 983627185

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Warren Kronenberg

Olympia, WA 985023548

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Kathleen Bogar

Normandy Park, WA 981481728

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End Cooke Aquaculture's operations

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Sincerely,

Jeffery McConaughy

Bellingham, WA 982257237

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Sincerely,

Michael Lampi

Bellevue, WA 980085516

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Farming fish is not a bad idea. We're just doing it in a way that creates a vast number of environmental costs so a few people can make a profit. That's not a business model we should encourage.

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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James Bracher

Kirkland, WA 98033

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David Eden

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Lacey, WA 98503

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Sincerely,

Darlene Baker

Sammamish, WA 98075

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Sincerely,

Jeff Freels

Lacey, WA 985036927

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Sincerely,

Corinne Salcedo

Anacortes, WA 98221

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Sincerely,

MK Bryan

Bothell, WA 98021

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Jessica David

Sumas, WA 982952226

"

End Cooke Aquaculture's operations

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Sincerely,

Eleanor Dowson

Mill Creek, WA 980124817

"

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Sincerely,

Donna Redemer

Snoqualmie, WA 980659675

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Sincerely,

Doris Holdaway

Spokane, WA 992237609

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Russ Thomas

Kirkland, WA 980334759

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Sincerely,

Sharon Fasnacht

Olympia, WA 98512

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Sincerely,

C. DeMaris

Olympia, WA 98507

"

End Cooke Aquaculture's operations

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THANK YOU!!!!!!!

Sincerely,

j, eggars

Addy, WA 991019712

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Sincerely,

Andrew Rosenthal

Seattle, WA 981153244

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Ursula Mass

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Ursula Mass

La Conner, WA 98257

"

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Sincerely,

Jessica Zickefoose

Olympia, WA 985022751

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Sincerely,

LARA LORENZ

Seattle, WA 981173528

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Sincerely,

Ying Cooper

Bellevue, WA 980046877

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Roger Nystrom

Edmonds, WA 980263515

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Sincerely,

Wendy Bowman

Lacey, WA 985033694

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Sincerely,

Analeigh Smith

Seattle, WA 98055

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Sincerely,

Peter Mastenbroek

Kirkland, WA 98033

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James Day

Lyle, WA 986359416

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Jennifer Gindt

Yakima, WA 989025091

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Jennifer Clavet

University Place, WA 98466

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Sincerely,

Cole Grabow

Seattle, WA 981094995

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Laurette Culbert

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Seattle, WA 98107

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Port Townsend, WA 98368

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Sincerely,

Paula Bennett

Seattle, WA 981254139

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ray foster

Bellevue, WA 980082101

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Jerry Kessinger

Lynnwood, WA 98087

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Sincerely,

Barbara DelGiudice

Hoquiam, WA 98550

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Susan Barron

Washington, WA NE37 1AB

"

End Cooke Aquaculture's operations

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Sincerely,

susan Betourne

Mukilteo, WA 98275

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Sincerely,

Darrell Jones

Port Townsend, WA 983680004

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Sincerely,

Ruthann McVicker

, WA 98282

"

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Dan DiLeva

Seattle, WA 981450343

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Sincerely,

Joanne Jensen

Spokane, WA 992043306

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Sincerely,

Janice Jack

Bainbridge Island, WA 981104250

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Sincerely,

Holger Mathews

Seattle, WA 981342135

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Sincerely,

David Berlow

Seattle, WA 981337449

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Sincerely,

Janet Wynne

Bellingham, WA 98229

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Sincerely,

Lynne Roberson

Port Angeles, WA 983639776

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Mary Oakland

Edmonds, WA 980202928

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Konstan Stewart

Vancouver, WA 986614915

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Seattle, WA 981226316

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Marjorie Millner

Vancouver, WA 986851256

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Sincerely,

Andrea Roelen

Woodinville, WA 980728655

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Lorraine Monprode

Spokane, WA 992237120

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Kimberly Baxter

Seattle, WA 981993549

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Sincerely,

Lynn Bamberger

Everett, WA 982042722

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Sincerely,

Shirley Graves

Lake Tapps, WA 983916232

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Susan Olson

Shoreline, WA 98087

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Sincerely,

Linda Rossi

Auburn, WA 98002

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Port Townsend, WA 98368

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Stephen Humphrey Pacios

Kennewick, WA 99336

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Michael Tomazic

Kirkland, WA 98034

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Sincerely,

Barbara Davidson

Bellingham, WA 982256339

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Robb Mottl

North Bend, WA 980459272

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Sincerely,

Shannon Lewis

Puyallup, WA 98374

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Nena Gay

Snohomish, WA 982909276

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Claudia Lee Miller

Oroville, WA 988449329

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Jean Irving

Trout Lake, WA 986500236

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Lacey, WA 985032164

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Coral Shaffer

Seattle, WA 981156622

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keyth mallam

Tacoma, WA 984074723

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katie austin

Monroe, WA 98272

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AIDA Bound

Wenatchee, WA 98801

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Linda Feletar

Vancouver, WA 98664

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End Cooke Aquaculture's operations

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Sincerely,

Suzanne Natrass

Yelm, WA 985972430

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

I remain stunned that Cooke Aquaculture was ever allowed to exist in Washington state! Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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Sincerely,

Ellen zarter

Bellevue, WA 980083323

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Sincerely,

PETER SEIDMAN

Olympia, WA 985162376

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Philip Reimer

Maple Valley, WA 980388973

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Sincerely,

Lyle Wirtanen

Walla Walla, WA 993629232

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Sincerely,

ES Johnston

Seattle, WA 981994501

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End Cooke Aquaculture's operations

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Sincerely,

Matthew Hobson

Puyallup, WA 983749764

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Kristin Rivas

Seattle, WA 981182181

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

David Shively

Snohomish, WA 982968245

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End Cooke Aquaculture's operations

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Sincerely,

Glen Anderson

Lacey, WA 98503

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Sincerely,

Jessica Schiffman

Seattle, WA 981034613

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Sincerely,

Timothy Boone

Seattle, WA 981255613

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Gordon Radovich

Bremerton, WA 98312

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Sincerely,

Ian Jezorek

Bingen, WA 986059131

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Sincerely,

Sanja Futterman

Seattle, WA 981152331

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Jackson Ogden

Moscow, ID 83843

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Del E Domke ~

Bellevue, WA 98008-2711

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Sincerely,

Bud Hansen

, Washington 98229

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Sincerely,

Candace Mast

Raymond, WA 985779650

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Sincerely,

Ryan Welch

Kenmore, WA 980283912

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Sincerely,

Barbara Gregory

Seattle, WA 981153636

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Issaquah, WA 98027-0130

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Sincerely,

David Baine

Federal Way, WA 98023

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Sincerely,

Bruce Horowitz

Bellingham, WA 98225

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Sincerely,

Chloe Key

Tacoma, WA 984084246

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DeLorse Lovelady

Kenmore, WA 980287945

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Sincerely,

Henry Graves

Newport, WA 991569317

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Sincerely,

Amy Osborne

Vancouver, WA 986825202

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Gregory Peters

Seattle, WA 98146

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jesslyn howgate

Seattle, WA 981783940

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Seattle, WA 981156742

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Ernetta Skerlec

Lakewood, WA 984992345

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Sincerely,

Leslie Quenell

Lopez Island, WA 982618140

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Sincerely,

d robinson

Curlew, WA 99118

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Broehe Karpenko

Seattle, WA 981256402

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

Moreover, I request the Department of Ecology to revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. First, there is substantial new information that was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures). Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. Under HB2957, Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. In fact, the proposed change in species poses new and different risks, and there are a number of inherent problems with this industry regardless of the species being cultivated (including but not limited to, fish effluent and waste, amplification and discharge of pathogens, and discharge of antibiotics and medical effluent). Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications.

Sincerely,

Cole Mumper

Oak Harbor, WA 982778004

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Joel Konikow

Mercer Island, WA 98040

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications.

Sincerely,

Ken Mincin

Redmond, WA 980522605

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Nick Szumlas

Seattle, WA 981163324

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Mary Guard

Friday Harbor, WA 98250

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Stanley Willard

Seattle, WA 98125

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Cynthia Zimmermann

Lynnwood, WA 980373891

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon horribly for far too long. I am distraught--and very angry--to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to stress the importance of waiting to reach a decision on the water quality permits at issue. There currently is litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species.

Both of these developments are ongoing, and both will affect the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all affected local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

I also request that the Department of Ecology revisit its conclusion that the issuance of these permits will not change the effect on water quality in Puget Sound. First, there is substantial new information that was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures). Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. Under HB2957, Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. In fact, the proposed change in species poses new and different risks, and there are a number of inherent problems with this industry regardless of the species being cultivated (including but not limited to, fish effluent and waste, amplification and discharge of pathogens, and discharge of antibiotics and medical effluent). Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, with regard to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should be met promptly with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans also must be carefully considered in this permit process. We absolutely cannot afford to let another Cypress Island spill occur in Puget Sound.

In summary, I urge Ecology to use extreme caution before reaching a decision on the draft water discharge permits, since they would allow the company to continue operating its net pens in the state. Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been a paramount problem with Cooke's Atlantic salmon operations. These issues are not mitigated simply by

raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the multiple harms of industrial ocean fish farming is to remove the operations from our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have absolutely no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Bobette Jones

Seattle, WA 981156655

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Asko Hamalainen

Bellingham, WA 982257430

"

End Cooke Aquaculture's operations

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

P R

Sequim, WA 983824311

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End Cooke Aquaculture's operations

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Sincerely,

Lorrie Eaton

Lacey, WA 985033465

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Sincerely,

Madeleine Sosin

Seattle, WA 981361905

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Sincerely,

Roger Schiltz

Lacey, WA 98503

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Lisa M. Mintz Kavas

Lynnwood, WA 980876057

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Sincerely,

Linda Wasserman

Tacoma, WA 98406

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Sincerely,

Joel Flank

Seattle, WA 981072926

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Sincerely,

Beverly Crocker

Seattle, WA 981052202

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Sincerely,

Michelle Ryan

Shelton, WA 985841120

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Laurie Slater

Bellevue, WA 98004-6717

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End Cooke Aquaculture's operations

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Sincerely,

Romell Reed

Kenmore, WA 980280511

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Sincerely,

Rose Fanger

Spokane, WA 992052766

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Sincerely,

Judy Palmer

Tonasket, WA 988550705

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Amanda Sloss

Pateros, WA 988469612

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We must work with our ecosystems and keep them healthy for native species, not be polluting practices of companies that destroy our natural habitats and native species.

Sincerely,

Angie Dixon

Clinton, WA 982369622

"

End Cooke Aquaculture's operations

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Sincerely,

David Sugarman

Olympia, WA 985169536

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Sincerely,

Jude Waller

Tukwila, WA 981882444

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Norman Baker

Sequim, WA 98382

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Sincerely,

Virginia Paulsen

Shoreline, WA 98155

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Sincerely,

Elizabeth Taylor

Port Townsend, WA 98368

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Sincerely,

Gary MacDonald

Lummi Island, WA 982628630

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Ingeborg Overby

Seattle, WA 98125

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Des Moines, WA 981987570

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Sincerely,

Helen Gilchrist

Olympia, WA 985122420

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Sincerely,

Abigail Fanestil

Sequim, WA 983823788

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Lyndee Cunningham

Camas, WA 986071266

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David Jessup

Port Angeles, WA 98362

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Sincerely,

Jeannine Lish

Marysville, WA 982714723

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Sincerely,

Ben Moore

Mountlake Terrace, WA 980435648

"

Jeanene LaVonne Lorey

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Jeanene Lorey

Bothell, WA 98021-9242

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Sincerely,

Kathryn DeWees

Tacoma, WA 984053325

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Spokane, WA 992053710

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Sincerely,

Kergan Street

Seattle, WA 981447001

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Sincerely,

Glenna Johnson

Redmond, WA 980524677

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Sincerely,

Anita Montgomery

Olympia, WA 985128515

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Sincerely,

Marlene Clark

Olympia, WA 98506

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Sincerely,

Jenny England

Bellingham, WA 982292574

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Sincerely,

julie palumbo

Port Orchard, WA 983665234

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Sincerely,

Phyllis Self

BELLINGHAM, WA 98225

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Sincerely,

Lina Downes

Friday Harbor, WA 98250

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Bellevue, WA 98006

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Sincerely,

Patricia Coffey

Langley, WA 982608222

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Sincerely,

Kathy Wilson

Port Ludlow, WA 983659775

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Jerry Wheeler

Tukwila, WA 98168

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Margaret Mills

Deer Harbor, WA 982430191

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Jill Blaisdell

Bellingham, WA 982298911

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End Cooke Aquaculture's operations

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Sincerely,

MARY KROHNER

GIG HARBOR, WA 98332

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Sincerely,

Nancy Jacobs

Bellevue, WA 980051210

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Sincerely,

Ronald Ramey

Everett, WA 98203

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Seattle, WA 981157243

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Sincerely,

betty jo costanzo

Bothell, WA 980112270

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Sincerely,

George Morgan

Washougal, WA 986717283

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Ron Beckham

Yelm, WA 98597

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Sincerely,

Michele Livesay

Fall City, WA 980249621

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Sincerely,

James H

Redmond, WA 98052

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Carrie Heron

Seattle, WA 981182763

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Pam Borso

Custer, WA 982400154

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Robert Sanford

Woodland, WA 986749280

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Bellingham, WA 982253525

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Lorna Kropp

Spokane, WA 992237206

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Sincerely,

Thomas Libbey

Seattle, WA 981223916

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Lin Provost

Seattle, WA 981447205

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Mount Vernon, WA 982749167

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Sincerely,

Earl McCarter

Tacoma, WA 984432804

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Jon FAYTH

, Washington 984032011

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Suzann Finch

Bellingham, WA 982254102

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Lorraine DeGloria

Seattle, WA 98133

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Kent, WA 980311394

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Sincerely,

REBECCA STOCKER

Tacoma, WA 984052210

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Chad Kassen

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Port Angeles, WA 98363

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Leslie Sherman

Kirkland, WA 980337394

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Sincerely,

john kassen

Port Angeles, WA 98363

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Sincerely,

Rebecca Brooks

Seattle, WA 98178

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Sincerely,

Kim Strunk

Bothell, WA 980113680

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Jan Tyler

Walla Walla, WA 993624166

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Spanaway, WA 983875775

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Sincerely,

Michael Springer

Seattle, WA 98103

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Sincerely,

Delia Gerhard

Seattle, WA 981173038

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Sincerely,

Karen Genest

Mount Vernon, WA 982736037

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Sincerely,

Bobby Righi

Seattle, WA 981035645

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Jayson H Luu

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Sincerely,

Jayson Luu

Renton, WA 98030-2883

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Stacia Haley

Seattle, WA 98108

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Sincerely,

r wood

seattle, WA 21804

"

Larisa Moore

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Seattle, WA 981224707

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Tacoma, WA 98404

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Sincerely,

Nancy Hathaway

Spokane, WA 99203

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Chris Nolasco

Lynnwood, WA 980872401

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Sincerely,

Sandra Gehri-Bergman

Puyallup, WA 983711940

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Jennifer Soames

Maple Valley, WA 980387449

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Douglas Taylor

Bonney Lake, WA 983918453

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Sincerely,

edna elze

Thornton, WA 991769739

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Mary Easton

Cosmopolis, WA 985370311

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Sincerely,

Phyllis Villeneuve

Olympia, WA 985129445

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Bellevue, WA 980042019

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Richard Yust

Arlington, WA 982239413

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Sincerely,

Lisa Schraufnagel

Puyallup, WA 983732745

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Sincerely,

cheryl sloan

Bellingham, WA 982256457

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Stephen Zettel

Sequim, WA 98382-7391

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Sincerely,

Nancy Zylstra

Seattle, WA 981172739

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Sincerely,

Geoffrey Richards

Poulsbo, WA 98370

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Lake Tapps, WA 98391

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Simone Jarvis

Vancouver, WA 986633228

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North Bend, WA 980459645

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Sincerely,

Scott Species

Seattle, WA 981011329

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Sincerely,

kaji Dyson

Seattle, WA 981256513

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Sincerely,

Matthew Cloner

Seattle, WA 98115

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Diane Dishion

Pasco, WA 993019432

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Dan Freeman

Clinton, WA 982368439

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Susan P Burnett

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Susan Burnett

Seattle, WA 98133

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Sincerely,

Joan Bowers

Seattle, WA 981012779

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John Ruhland

Seattle, WA 981081511

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Nadine Wallace

Tacoma, WA 984076338

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Sincerely,

m gilbert

Mead, WA 990215130

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Sincerely,

Ray Couture

Seattle, WA 981680953

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Sincerely,

Barry Parker

Vancouver, WA 986641984

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Sincerely,

Dale Russ

Tukwila, WA 98188

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Sincerely,

Joseph Leatherman

Kirkland, WA 980349441

"

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Sincerely,

Debby Mayberry Jensen

Kirkland, WA 98033

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Nance Nicholls

Davenport, WA 991228681

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Sincerely,

Dianne Hurst

Lacey, WA 985166645

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Seatac, WA 981885428

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Sincerely,

Barbara Cardarelli

Redmond, WA 980522632

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Sincerely,

Dave Pierot

Snohomish, WA 98296

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Diana Fries

Othello, WA 993448613

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Trudy Cordes

Bellingham, WA 982295751

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Cristina Briseno

Tacoma, WA 984093913

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End Cooke Aquaculture's operations

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Sincerely,

Lee Stafford

Bellevue, WA 980044298

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SUSANA SERNA

Vancouver, WA 986863226

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Sincerely,

Richard Donnelly

Bellingham, WA 982296309

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Shoreline, WA 981335671

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Sincerely,

Krisitine Kevorkian

FOX ISLAND, WA 98333

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Sincerely,

Jerry Miller

Vancouver, WA 986838914

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Sincerely,

Carol Whitehurst

Tacoma, WA 984065520

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Judy McDonald

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

Moreover, I request the Department of Ecology to revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. First, there is substantial new information that was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures). Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. Under HB2957, Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. In fact, the proposed change in species poses new and different risks, and there are a number of inherent problems with this industry regardless of the species being cultivated (including but not limited to, fish effluent and waste, amplification and discharge of pathogens, and discharge of antibiotics and medical effluent). Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Mark Joy

Arlington, WA 982237343

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Stan Parker

Bellingham, WA 98225

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Jo Harvey

Pacific, WA 98047

"

End Cooke Aquaculture's operations

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. This particular applicant has been problematic, and should not get special treatment. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

C.J. Livingston

Seattle, WA 98115

"

End Cooke Aquaculture's operations

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Sincerely,

Edward Kaeufer

Blaine, WA 98230

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Sincerely,

Angela Kawlewski

Washougal, WA 986711826

"

End Cooke Aquaculture's operations

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Sincerely,

Richard Grassl

Pasco, WA 993014121

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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Sincerely,

Margaret S Bomber

Vancouver, WA 986617140

"

End Cooke Aquaculture's operations

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Sincerely,

Marcia Culver

Bellingham, WA 982256605

"

End Cooke Aquaculture's operations

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Sincerely,

Arlene Bell

Seattle, WA 981052445

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Sincerely,

Angela Kelly

Olympia, WA 985012943

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Joanna Redman-Smith

Kent, WA 980319609

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Sincerely,

TOBI SOLVANG

FALL CITY, WA 98024

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Vancouver, WA 986841805

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Carolyn Eden

Bainbridge Island, WA 981103604

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Sincerely,

David Huneryager

Seattle, WA 981152140

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Carol Ellis

Seattle, WA 981163725

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Candice Kalb

Tacoma, WA 984223253

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Tita Husted

Lilliwaup, WA 985550327

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Sincerely,

Noah Ehler

Monroe, WA 982721073

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Sincerely,

Diane Sullivan

Oak Harbor, WA 982774556

"

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Sincerely,

MaryJo Fontenot

Walla Walla, WA 993622141

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Derek Benedict

Lynnwood, WA 98036

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Sincerely,

Rose Montgomery

Bremerton, WA 983371368

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Sincerely,

QUENTIN KREUTER

Chewelah, WA 991090779

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Sincerely,

Judy Jensen

Vashon, WA 980703605

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Sincerely,

Shirley Carmichael

Bonney Lake, WA 983919646

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Becky Henson

Puyallup, WA 983713949

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End Cooke Aquaculture's operations

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Sincerely,

Gary Kelly

Bothell, WA 98011-6707

"

Judith Dunn

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Judith Dunn

Sedro Woolley, WA 982844340

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Completely End ALL Cooke Aquaculture's operations

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Sincerely,

Hal Enerson

Port Angeles, WA 98362

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Karen Gielgens

Kirkland, WA 980343116

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Sincerely,

Doug Brown

Otis Orchards, WA 99027

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Sincerely,

Juanita Schroeder

Moses Lake, WA 988372652

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Sincerely,

Thomas Cox

Kirkland, WA 98034

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Colleen Beck

Woodland, WA 986749557

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Sincerely,

FRANCE MORROW

Yakima, WA 989086103

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Sincerely,

Kristin Peterson

Kent, WA 980311592

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Sincerely,

Steve Wilson

West Richland, WA 993534000

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Sincerely,

Gina Abernathy

Sammamish, WA 98075

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Alan Schauer

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Port Angeles, WA 983638647

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Sincerely,

Anne Cross

Port Orchard, WA 983665242

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Sincerely,

Bonnie Bledsoe

Seattle, WA 981256725

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Sincerely,

Linda Lindquist

Shoreline, WA 981772359

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Sincerely,

Antonia Lawrence

Mill Creek, WA 980125035

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Sincerely,

ELLA ELMAN

Redmond, WA 98053

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Sincerely,

Kathleen Allen

Seattle, WA 981186204

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David Bailey

Sequim, WA 98382

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Sincerely,

jeff lane

KIRKLAND, WA 98034

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John Gieser

Seattle, WA 981174420

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Sincerely,

Pat Siggs

Seattle, WA 981125259

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Sincerely,

Deborah Willard

Nine Mile Falls, WA 990260300

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Marcia Gowing

Seattle, WA 98103

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Calista Whitney

Spokane, WA 99212

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Sincerely,

Sarah Hanson

Friday Harbor, WA 982508159

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Carla DeCrona

Vashon, WA 980704008

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Lynne Oulman

Bellingham, WA 982256304

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Sean O'Dell

Renton, WA 980595558

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Rebecca Deardorff

Seattle, WA 981038305

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Michael Calhoon

Des Moines, WA 981989012

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Linda M Gusch

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Newport, WA 99156

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Sincerely,

Richard Morgan

Bellingham, WA 98226

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

David Arntson

Bothell, WA 98012

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End Cooke Aquaculture's operations

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Sincerely,

Jessica Spence

SEATTLE, WA 98103

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Sincerely,

Max Feingold

, WA 98053

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Sincerely,

Anthony Buch

Seattle, WA 98115

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David Hollingsworth

Covington, WA 980424818

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Sincerely,

Maragaret Woll

Bellingham, WA 98225

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Sincerely,

Carolyn Davis

, Washington 98240

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Sincerely,

Melinda Mehring

Lakewood, WA 984983326

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Kristine Kriner

Seattle, WA 98165

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Sincerely,

Michael Nesbitt

Seattle, WA 981992722

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Sincerely,

Robby Robinson

Copalis Beach, WA 98535-0238

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Sincerely,

RoseMarie Balch

Olympia, WA 98506

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Brenda Michaels

Port Townsend, WA 98368

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Sandy Braden

Yakima, WA 989019541

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Sincerely,

Bruce White

Kirkland, WA 980345845

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Sincerely,

Mark McKole

Oak Harbor, WA 98277

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Sincerely,

Jesse Mallory

Kennewick, WA 993373927

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Diane Weinberger

Greenbank, WA 982539751

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Russell Watson

Vancouver, WA V5W1N9

"

End Cooke Aquaculture's operations

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Sincerely,

wanda unger

Seattle, WA 981052208

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Karen Geri

Burlington, WA 982333760

"

Virginia (Ginny) Ramey

"Dear Ms. Niewolny:

I live on the shores of Puget Sound and had the opportunity to go very close - in a small boat -to the Cooke Aquaculture nets off Cypress Island. These nets had given way months before and polluted Puget Sound with non-native salmon! It was chilling to see the potential for another disaster, as I looked at those throbbing nets!!

.

Because of another disaster like that is possible, why has the Dept. of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout??

Instead of this long delay, I would like to see the following actions taken by you:

1. WAIT to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology.
2. Ecology should undergo consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.
3. D. of E. must revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. Issues of that still are not resolved:
 - a. Water quality
 - b. Net pen safety & escapement
 - c. Switching species from Atlantic salmon
to steelhead trout

These measures do not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. Instead, they pose new and different risks!

Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated do all it can to ensure Cooke's compliance of all rules and limitations! Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well.

In short, I urge Ecology to use extreme caution before reaching a decision on the draft water discharge permits. Why should we allow this company to continue operating its net pens in Washington state??!

Our waters have been threatened by pharmaceuticals, viruses, parasites, and other water quality pollutants! . These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female.

The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to REMOVE the operations from our waters entirely! Moreover, it's clear that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Cooke needs to go! Permanently!

Therefore, any proposed, tougher restrictions – although well-intended "" are not enough! Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible. You must proceed with extreme caution and eventually DENY Cooke's NDPES permit applications.

We can not afford another disaster in Puget Sound waters!

Sincerely,

Virginia Ramey

Samish Island

Bow, WA 98232

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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Sincerely,

Summer Spinks Marasco

Lynnwood, WA 980367231

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Sincerely,

Sharon Robertson

Renton, WA 980562671

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Sincerely,

Bruce Hall

Bremerton, WA 983372700

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Sincerely,

Peta-Maree Lamb

Poulsbo, WA 98370

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Sincerely,

Kim James

Lynden, WA 982641628

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

M Forman-Mason

University Pl, WA 98467

"

End Cooke Aquaculture's operations

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Sincerely,

Nicholas Jurus

Vashon, WA 980704961

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. AS YOU MUST, OR YOU SHOULD, DAMN WELL KNOW. I am APPALLED THAT THIS GUTLESS MINDLESS DEAF, DUMB and BLIND TRUMP-CORRUPT Department of Ecology CONTINUES TO GO AGAINST public opinion AND COMMON SENSE, and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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EVEN IF YOU'RE TOO SOCIALLY SICK TO BE ASHAMED OF YOURSELVES, please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Patrick Conn

Kent, WA 980319669

"

End Cooke Aquaculture's operations

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Sincerely,

Ann Bates

Shoreline, WA 981555825

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Sincerely,

Kyle Kennedy

Seattle, WA 981052466

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Sincerely,

joanne mayhew

Olympia, WA 985028325

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Sincerely,

Alfred Birnbaum

Seattle, WA 98115476

"

End Cooke Aquaculture's operations

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Sincerely,

Jacob struiksma

Kenmore, WA 980285018

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End Cooke Aquaculture's operations

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Sincerely,

Peter Holcomb

Bellingham, WA 982269536

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Carolyn Conway

MARYSVILLE, WA 98271

"

End Cooke Aquaculture's operations

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Sincerely,

WOODY SIMMONS

Walla Walla, WA 993623121

"

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Sincerely,

Richard Black

Hansville, WA 983400027

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Sincerely,

David Turnoy

Eastsound, WA 98245

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Larry Lawton

Aberdeen, WA 985209639

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Sincerely,

Liz Campbell

Seattle, WA 98103

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Sincerely,

Mary Davison

Seattle, WA 98112

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Sincerely,

Jim Byrne

Ridgefield, WA 986429139

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Sincerely,

Lorraine Johnson

Seattle, WA 981252603

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Arthur Kaufman

Seattle, WA 981052057

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End Cooke Aquaculture's operations

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Sincerely,

linda howard

Poulsbo, WA 983709542

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Sincerely,

Susan K. Jenkins

Seattle, WA 98112

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Sincerely,

Sara Eldridge

Seattle, WA 981152350

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Bethany Temple

Kirkland, WA 980348056

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Sincerely,

Sammy Low

Stanwood, WA 982927843

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Sincerely,

Erland Lofquist

Sedro Woolley, WA 982848565

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Sincerely,

Margaret Peyou

Pullman, WA 99163

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Suong Huynh

Kirkland, WA 980344110

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Sincerely,

Paula Shafransky

Sedro Woolley, WA 982848586

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Sincerely,

Ryan Reid

Olympia, WA 98506-5254

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Sincerely,

Kathleen Emmett

Olympia, WA 985034219

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Sincerely,

Holly Graham

Olympia, WA 985021535

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Victoria Holman

Auburn, WA 980021816

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Tora Wienand

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Shelton, WA 98584

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Sincerely,

Cheryl Bissett

Bothell, WA 980218862

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Sincerely,

Doris Raspa

Vancouver, WA 986623131

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Sincerely,

Amy Mower

Maple Falls, WA 98266-2004

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Clary Douwes

Snohomish, WA 982902519

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Sincerely,

Rajwantee Robinson

Seatac, WA 981884226

"

Linda Schuyler

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Benton City, WA 99320

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Sincerely,

William Persky

Olympia, WA 985013050

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Crystal Schaffer

Lacey, WA 985037136

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Sincerely,

Carrie Pilger

Lynnwood, WA 980876509

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Sincerely,

Ruth Neuwald Falcon

Seattle, WA 98125

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Lisa Nemeth

Spokane, WA 992057309

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Debbi Pratt

Seattle, WA 981992110

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Eleven Vexler

Mount Vernon, WA 982745021

"

End Cooke Aquaculture's operations

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Sincerely,

Sandra Wilson

Graham, WA 983389077

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Sincerely,

Jessica Jones

Olympia, WA 985139010

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Sincerely,

Annette Fails

Arlington, WA 98223-7891

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Sincerely,

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Seattle, WA 98144

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Sincerely,

Linda Curry

Kelso, WA 986265308

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Sincerely,

Marie Marrs

Port Angeles, WA 983637133

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Sincerely,

Aisha Farhoud

Seattle, WA 90027

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Gerald Patterson

Anacortes, WA 982211111

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Sincerely,

Barbara Lamb

Langley, WA 98260

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Deonet Wolfe

Camano Island, WA 982827551

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Shelton, WA 98584

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Tacoma, WA 98465

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Wilkeson, WA 983960245

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Anne Hall

Lopez Island, WA 982618589

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marie lyndemere

Auburn, WA 98513

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James Clark

Lake Stevens, WA 982588156

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Sincerely,

Silke Chipchase

Dupont, WA 983278751

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Sincerely,

Rebecca Babik

Burien, WA 981462719

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Paul Weiss

Seattle, WA 981056650

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Sincerely,

Shelley Mortinson

Marysville, WA 982707404

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Eleanor Morris

Grapeview, WA 985469721

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Gena DiLabio

Mount Vernon, WA 982748902

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Sincerely,

Ruth Darden

Seattle, WA 981157810

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Charlene Lauzon

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Lynnwood, WA 98036

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Sincerely,

Chris Guillory Guillory

Port Angeles, WA 98362-2803

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

I was so proud of Hillary Franz's decision to disallow Cooke's permits to farm fish in our waters! It gave me renewed confidence that the State was really looking out for the best interest of Washingtonians and our precious environment. And recently we saw the old net pens being hauled away, which felt SO good . . . and so wonderfully final.

I read in the PDN (Peninsula Daily News) today that the Tribe and Cooke Aquaculture are planning to raise steelhead in fish farm nets--again in the Port Angeles harbor--and that the State is re-considering?

Even if they raise steelhead instead of salmon, we all know the net pens damage the water quality and the native fish environment, and should not be allowed. Additionally, Cooke Aquaculture has PROVEN that they are not to be trusted to act responsibly for the sake of our marine environment.

Please don't go backwards--don't let Cooke and the Tribe raise any kind of fish in Washington's nearshore waters!

CAROL VOLK, DVM

Port Angeles, WA 983636115

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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Sincerely,

Lisa Ehle

Friday Harbor, WA 982509023

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Sincerely,

Robert Horn

Woodinville, WA 98072

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Max DeNise

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Tumwater, WA 98512

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Sincerely,

Jennifer Corrigan

Snohomish, WA 982907259

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Sincerely,

Joan Book

Spanaway, WA 983877865

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Sincerely,

Cecilia Alvarez

Seattle, WA 98144

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Sincerely,

karen sheflo

Poulsbo, WA 98370

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John Hansen

Renton, WA 980562170

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Michael Goldberg

Ocean Park, WA 986404817

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

Animals are God's creations, we need to take better care of them, and their environment.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

priscilla martinez

Bothell, WA 98011

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J Michael Pinc

Vancouver, WA 986621729

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Sincerely,

Jacob struiksmā

Kenmore, WA 980285018

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Sincerely,

Mark Frey

Yelm, WA 98597

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Sincerely,

N Robinson

Renton, WA 980582824

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Sincerely,

Kimberly Izzi

Tacoma, WA 984032769

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Sincerely,

Karla Taylor

Olympia, WA 985028159

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Sincerely,

Bobette Plendl

Everett, WA 982033239

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Jan Aszman

Goldendale, WA 986203017

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Alycia Staats

Seattle, WA 981156004

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Sincerely,

Giles Sydnor

Seattle, WA 981074107

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Sincerely,

Maria Magana

Burlington, WA 982331469

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Sincerely,

Clayton Jones

Tukwila, WA 98168

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Sincerely,

Daniel Sandvig

Monroe, WA 982728752

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Sincerely,

J Clark

, WA 98155

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Sincerely,

Elizabeth Passarelli

Anacortes, WA 98221

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Sincerely,

William Insley

Tacoma, WA 984111461

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Allison Nelson

Seattle, WA 98116

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Mark Simpson

Shelton, WA 98584

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Sincerely,

peter ross

Seattle, WA 981226706

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Sincerely,

Suzanne Nevins

Brinnon, WA 98320

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Sincerely,

Adriana Radu

Seattle, WA 98106

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Sincerely,

Pamela Roebuck

Lakewood, WA 984982834

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Sincerely,

Leslie Pfof

Tacoma, WA 984053712

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Sincerely,

Karen Popoff

Omak, WA 98841

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Sincerely,

Susanne Murray

Spokane Valley, WA 992066165

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Sincerely,

Carrie Taylor

Vancouver, WA 986828539

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Sincerely,

Nancy White

Spokane Valley, WA 992160202

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Sincerely,

Lorna McGowan-Smith

Lynden, WA 98264

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Sincerely,

Sybil Kohl

Seattle, WA 981158112

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Julie Yeager

Elk, WA 99009

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Seattle, WA 98125

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Duane Niatum

Seattle, WA 981072512

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Mike Oras

Anacortes, WA 982217407

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Victoria Chinchar

Kent, WA 98042

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Susan Kiplinger

Vancouver, WA 986831804

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Sincerely,

Christopher Bain

Bothell, WA 980113217

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Sincerely,

Sharon Anderson

Poulsbo, WA 983709501

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Sincerely,

Sierra Sanchez

Seattle, WA 981253934

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Carl Woestwin

Seattle, WA 981152407

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Kent, WA 980312272

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Robert Vermeers

Bremerton, WA 98310

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Sincerely,

Marc Rieck

Marysville, WA 982703783

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Sincerely,

Sharren Davis

Vancouver, WA 98684

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Sincerely,

Martin you Forster

Port Angeles, WA 983627429

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Carol Armstrong

Seattle, WA 981158222

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End Cooke Aquaculture's operations

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Sincerely,

Dorothy Jordan

Lynden, WA 98264

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Sincerely,

Valerie Emery

Vancouver, WA 986823624

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Sincerely,

Bettina Guttowski

Union Hill-Novelty Hill, WA 22453

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Seattle, WA 98119

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Sincerely,

John Campbell

La Conner, WA 98257

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Sincerely,

Toby Fitch

Seattle, WA 981155678

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Carla Helm

La Conner, WA 982570870

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Sincerely,

Christine Zander

DEMING, WA 98244

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Rebecca Nimmons

Bellevue, WA 98006

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End Cooke Aquaculture's operations

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Please do not let Cooke's severe pollution go unpunished - especially in light of their many previous pollution transgressions that only resulted in a "slap on the wrist" punishments.

Do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications.

Sincerely,

Lloyd Daniels

Auburn, WA 980025858

"

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Sincerely,

Maradel Gale

Bainbridge Island, WA 98110

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Sincerely,

Mary Daub

Spokane, WA 992085146

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Alice Flegel

Rochester, WA 985791178

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Sincerely,

Melinda Campbell

La Conner, WA 98257

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Sincerely,

Kathy Golic

North Bend, WA 980458866

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Sincerely,

Lauren Sewell

Seattle, WA 981025170

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Margaret Amber Garlan

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Marie Colvin

Kennewick, WA 993372560

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

LUCI BULL

Ellensburg, WA 989269641

"

Terminate Cooke Aquaculture's operations

"Dear Ms. Niewolny:

As an environmentally motivated voter, I am chagrined that industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I urge you to wait to reach a decision on the water quality permits at issue until the conclusion of the current litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the conclusion of the National Oceanic and Atmospheric Administration's process regarding Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology.

In addition, Ecology should formally consult with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Please do all you can to end Cooke's extremely harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Linda Carroll

Spokane, WA 992053178

"

End Cooke Aquaculture's operations

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Sincerely,

Ann Moseley

Clarkston, WA 99403

"

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Sincerely,

Nancy Shah

Kenmore, WA 980282054

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Sincerely,

Yvonne Pawtowski

Lynnwood, WA 980374122

"

End Cooke Aquaculture's operations

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Sincerely,

Dean Fanara PhD Medical Entomologist

Elk, WA 990099753

"

End Cooke Aquaculture's operations

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Sincerely,

Jan Ellis

Port Townsend, WA 983688860

"

End Cooke Aquaculture's operations

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Sincerely,

Joyce Rogich

Tacoma, WA 984087414

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Sincerely,

Tom Rarey

Winlock, WA 98596

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Sincerely,

Athena F

Belfair, WA 985289348

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Brett Burris

Preston, WA 980500473

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Kathlene Croasdale

Redmond, WA 980523406

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Seattle, WA 981175630

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Gretchen Van Meter

Kirkland, WA 980345013

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Caila Robinson

GIG HARBOR, WA 98329

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Gary Woods

Puyallup, WA 983758977

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Kristin Felix

Olympia, WA 985029501

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Lawrence Magliola

Sequim, WA 98382

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Sincerely,

Mike Lyman

Colville, WA 991142005

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Sincerely,

Deidre Puffer

Tacoma, WA 984457706

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Sincerely,

Travis Miller

Seattle, WA 981223264

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Sincerely,

Moira Green

Lynden, WA 982649136

"

Long Past Time to End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

It is beyond frustrating that WA state has done a complete 180 and has decided that Cooke can continue to destroy our local waters with more fish farming. Just because they won't farm Atlantic salmon, doesn't mean that farming steelhead trout is ok. It's still toxic, polluting cruel fish farming! Shame on WA state officials! Your disregard for the health of our local waters is shameful.

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am extremely pissed off to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Do the right thing and end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Gayle Janzen

Seattle, WA 981338611

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End Cooke Aquaculture's operations

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Lakota Crystal

Roy, WA 98580-8503

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Sam MacKenzie

Vancouver, WA 986613502

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Lin Sunseri

Cheney, WA 990049535

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Sincerely,

Jo Wagner

Bellingham, WA 98225

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End Cooke Aquaculture's operations

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Sincerely,

Thomas Robinette

Kent, WA 980645249

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james hipp

Bellingham, WA 98226-1745

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Sincerely,

Sharmayne Busher

Vancouver, WA 98662

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Seattle, WA 981338611

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Sincerely,

Adam Levine

Seattle, WA 981124682

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Jill Prevendar

Vancouver, WA 98685

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Sincerely,

Linda Rethwisch

Bremerton, WA 98312

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Joanne Watchie

Seattle, WA 981162271

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Sincerely,

Spencer Rawls

Seattle, WA 981444170

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Jay White

, WA 98401

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Sincerely,

Marnie Kennedy

North Bend, WA 980457958

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Sincerely,

Kara Harms

Bothell, WA 980129635

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Seattle, WA 981061406

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Sincerely,

Duncan Massey

Blaine, WA 982305135

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Sincerely,

Alena Schoonmaker

Mead, WA 990219067

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This company has had other accidents and they still think they deserve to be in our waters! They don't! Our native fish are more important than Cooke's bottom line!!!

Sincerely,

Noel Orr

Shoreline, WA 98155

"

End Cooke Aquaculture's operations

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Sincerely,

Michael McKinnon

Lakewood, WA 98498

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Sincerely,

john zey

Sequim, WA 983829320

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Sincerely,

Elaine Besmer

Snoqualmie, WA 980659458

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Dennis Ledden

Sequim, WA 98382

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Marysville, WA 982704143

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Sincerely,

Alexa Fay

Seattle, WA 981038114

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Sincerely,

Phillip Leija

Spokane Valley, WA 992162046

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Indigenous people lived in harmony with the bounties from Mother Earth and they made sure never to harm or deplete the salmon. Cooke's fish farms are detrimental to everything and have been allowed to get away with destruction for far too long! The contract NEVER should have been allowed and, the next one after an accident, should NEVER be allowed! Cancel the contracts and kick them out of our waters so the wild salmon can be free of Cooke's pollution!!

Sincerely,

Lou Orr

Shoreline, WA 98155

"

End Cooke Aquaculture's operations

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Dina Pearl-Thomas

Bellingham, WA 982252603

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Sincerely,

Abigail Brooks

Seattle, WA GU52 6QZ

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End Cooke Aquaculture's operations

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Sincerely,

Joanna Stiehl

Olympia, WA 985011350

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Julia McLaughlin

Rochester, WA 98579

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Sincerely,

Gay Thompson

Selah, WA 989421115

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Janet Dann

Friday Harbor, WA 98250

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Sincerely,

Celia Smith

Granite Falls, WA 982520767

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Sincerely,

Wendy Atmore

Shoreline, WA 981335749

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Sincerely,

Greg Goodwin

Seattle, WA 981651982

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Lee Gresko

Mountlake Terrace, WA 980435412

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Sincerely,

Marcela Portaluppi

Sprague, WA 99032

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Sincerely,

Eric Zimdars

Seattle, WA 981361993

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MARK FRANK

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MARK FRANK

, 98110

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Sincerely,

Dennie Carcelli

Burien, WA 981664303

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Renee Bourgea

Vancouver, WA 986865772

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Sincerely,

Nick Broman

Olympia, WA 985034186

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Sincerely,

Douglas DeMers

Walla Walla, WA 993623726

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Sincerely,

Rich Lague

Seattle, WA 981173014

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Sincerely,

Luan Pinson

Vancouver, WA 986641762

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Sincerely,

Mary Onufer

Issaquah, WA 980278341

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Bren Bartol

Kenmore, WA 980284936

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Farnoush Katouzian

Tacoma, WA 984652055

"

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Olympia, WA 98501

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Mercer Island, WA 98040

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Dorothy Hall

Mountlake Terrace, WA 98043

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Kayla Cool

Seattle, WA 98116

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Rose Cromby

Lija, WA 98101

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Alessandra Paolini

Sammamish, WA 980746324

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Sincerely,

Renee Stearns

Seattle, WA 98109

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Heidi McBride Fritts

Edmonds, WA 980206614

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Barbara Rosenkotter

Deer Harbor, WA 982430136

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Seattle, WA 98144

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Lake Tapps, WA 983915602

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Kathleen Wheeler

Deer Park, WA 990068514

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Curt Given

Everett, WA 982014800

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Grace Padelford

Kirkland, WA 98034

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Alyce Brame=Galyean

Tacoma, WA 984446501

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Stephanie Hylton

Lopez Island, WA 98261

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Laurie Lapierre

Moses Lake, WA 98837

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Bothell, WA 980127627

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Kristina Rohder

Stanwood, WA 98292

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Deer Park, WA 99006

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Matt Lennon

Ellensburg, WA 989263715

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Sincerely,

Jody Caicco

Vancouver, WA 986829548

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Sincerely,

Diana Johnson

Seattle, WA 98116

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Sincerely,

Sally Carter-DuBois

Olympia, WA 985028829

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Sincerely,

Craig Feyk

Edmonds, WA 98020

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Tika Bordelon

Seattle, WA 981011965

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Sincerely,

Bruce D. Chambers

Seattle, WA 981191807

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Sincerely,

Susan Davidson

Seattle, WA 981362133

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Sincerely,

David Cumming

Seattle, WA 98107

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Sincerely,

Stefan Lewis

Edmonds, WA 980266207

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Cathy Lindsay

Seattle, WA 981257621

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Jill Campbell

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DAVID CAMPBELL

Freeland, WA 98249

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Josefina Lopez

Kent, WA 98031

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Alex Berger

Seattle, WA 981034240

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Redmond, WA 98052

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Sincerely,

Kim Grantier

Everett, Washington 98208

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Sincerely,

Linda Thompsen

Redmond, WA 980522945

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Caroline Bowdish

Pasco, WA 993013539

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Nancy Corr

, Washington 98198

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

S Knoll

Richland, WA 99354

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Sincerely,

Elsie Wattson Lamb

Bellingham, WA 982255815

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Sincerely,

Ji-Young Kim

Bothell, WA 98012

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Sincerely,

Shannon Markley

Shoreline, WA 981772723

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Sean Edmison

Redmond, WA 98052

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Sincerely,

Taylor Phillips

Yakima, WA 989018221

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Sincerely,

Jane Penner

Bellingham, WA 982267838

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Sincerely,

Julie Taylor

Mountlake Terrace, WA 980434438

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Bruce Hampton

Tacoma, WA 98444

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Sincerely,

Margaret Woll

Bellingham, WA 98225

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Sincerely,

tanya lana

Westport, WA 985951811

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Sincerely,

Emily Childs

Seattle, WA 981181732

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Sincerely,

Arianna Zarate

Oak Harbor, WA 982774119

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Gig Harbor, WA 983321012

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Sincerely,

Kenlee Ducoing

Seattle, WA 981162531

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Sincerely,

Anita Waytz

Bellingham, WA 982297781

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Sincerely,

Ellen Lyons

Seattle, WA 98119

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Oleg Varanitsa

Redmond, WA 980524063

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

mary n

Vancouver, WA 986833908

"

End Cooke Aquaculture's operations

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Sincerely,

Nick Barcott

Lynnwood, WA 98087

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Sincerely,

Felicia Dale

Tulalip, WA 98271

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Sincerely,

Cindy Rose

Seattle, WA 981257615

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Dennis Bahr

Snohomish, WA 98296

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Sincerely,

kaye adkins

Tumwater, WA 985016890

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Sincerely,

Crystal Hultberg

Pullman, WA 991633145

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Sincerely,

Lindsay Ward

Lynnwood, WA 980366200

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pete weymiller

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Pete Weymiller

Gig Harbor, WA 98335

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Sincerely,

Mike Schuster

Deming, WA 982449415

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Sincerely,

Susan Schlee

, Washington 98110

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Sincerely,

Nancy Hh

, WA 98520

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Sincerely,

Cristina Holland

Bellingham, WA 982268316

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Kirkland, WA 980341038

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Sincerely,

Christine Mullie

Winthrop, WA 988629700

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LUCAS WITT

Battle Ground, WA 98604

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Jennifer Gindt

Yakima, WA 989025091

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Kelley Coleman-Slack

Bellingham, WA 98229

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Sincerely,

Kim Howe

Seattle, WA 98115

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Sincerely,

CHARLENE DONOVAN

Vancouver, WA 98664

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Sincerely,

Patricia Carter

Port Townsend, WA 98368

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Sincerely,

Susan Froeschner

Seattle, WA 981034320

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Renton, WA 98059

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Ruth Hooper

Seattle, WA 981183917

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Therese Nielson

Spokane, WA 992031761

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Peter Marshall

Bellevue, WA 980047535

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Kevin Hughes

Anacortes, WA 98221

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Sky Aisling

Port Townsend, WA 983680011

"

End Cooke Aquaculture's operations

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Sincerely,

Bill Bowman

La Conner, WA 982579530

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Sincerely,

William Cullen

Olympia, WA 985017119

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Sincerely,

Roxanne Ray

, 98102

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Grace Padelford

Kirkland, WA 98034

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Sincerely,

Marco Di Marzio

Dublin, WA 65123

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Sincerely,

Richard Bergner

Anacortes, WA 982218754

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

As a fisherman I have witnessed the tragic decline in our anadromous fisheries in the last decade and am familiar with the risk fish farms pose to our native fish. We simply cannot allow industrial fish farms with the resultant diseases, sea lice and fecal pollution to continue in our marine waters. As you are aware, industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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Sincerely,

Richard Curtis

CHEHALIS, WA 98532

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End Cooke Aquaculture's operations

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A L

Kenmore, WA 980283567

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Susan Leavitt

Seattle, WA 981446214

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Heather CAMPBELL

Bellingham, WA 98229

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Sincerely,

Gary Brill

Seattle, WA 981337580

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Tiffany Welton

Carnation, WA 98014

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This company has a proven record of non-compliance. Whether by design or by negligence, neither they nor any other company should be given the benefit another chance when the stakes for Puget Sound waters are so high.

Sincerely,

Deborah Bornzin

Bellingham, WA 982264182

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Barbara Bear

ANACORTES, WA 98221

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James Minick

Lyle, WA 986359318

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Michael Betz

Bellingham, WA 982253505

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Sincerely,

Ally Jones

Seattle, WA 11221

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End Cooke Aquaculture's operations

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Sincerely,

Sophie DeRuiter

Yelm, WA 985979611

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Sincerely,

Daryl Johnson

Friday Harbor, WA 982508520

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Sincerely,

Matthew Boguske

Redmond, WA 980523495

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Sincerely,

Brian Larson

Seattle, WA 981175823

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Sincerely,

June Sevier

Port Angeles, WA 983639638

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Sincerely,

John Primrose

Bellingham, WA 982256546

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Becaley Elsie

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Seattle, WA 98112

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

Moreover, I request the Department of Ecology to revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. First, there is substantial new information that was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures). Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. Under HB2957, Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. In fact, the proposed change in species poses new and different risks, and there are a number of inherent problems with this industry regardless of the species being cultivated (including but not limited to, fish effluent and waste, amplification and discharge of pathogens, and discharge of antibiotics and medical effluent). Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Vanassa Lundheim

Everett, WA 982033144

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

David Starke

Vancouver, WA 986845945

"

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Sincerely,

John Kenny

Edmonds, WA 980203060

"

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Sincerely,

Diana Cristina

Port Angeles, WA 98362-8350

"

End Cooke Aquaculture's operations

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Sincerely,

Molly Sutor

Spokane, WA 992248211

"

End Cooke Aquaculture's operations

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Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPEs permit applications.

Sincerely,

Tristan Stone

Spokane, WA 992011535

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming has been polluting our waters and harming our wild, native salmon for far too long. I am distraught to see that the Department of Ecology has gone against public opinion and prepared draft water quality permits that will allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Caroline Das Neves

, Washington 00000

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

Industrial ocean fish farming pollutes our waters and harms wild salmon. Please do NOT allow Cooke Aquaculture to bypass the industry phaseout and transition its existing Puget Sound net pens to cultivate steelhead trout.

The water quality permits are at issue due to litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision. And the Feds are conducting an ESA biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, with impacts to the water quality permitting processes and decisions before Ecology.

Plus Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Slow down!

New information was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures).

Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. So Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife."❏

Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. So reconsider ALL water quality risks associated with this industry.

Finally, speaking to the draft permits themselves, Ecology is obligated do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered.

Human health is at stake: pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from our waters entirely.

Simply deny the permit!

Yours,

Carol Ellis

Spokane, WA 992034045

"

End Cooke Aquaculture's operations

"Dear Ms. Niewolny:

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

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Sincerely,

Adrienne Blackburn

Yelm, WA 985978943

"

End Cooke Aquaculture's operations

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I want to urge the importance of waiting to reach a decision on the water quality permits at issue. There is currently litigation pending against the Department of Fish and Wildlife's flawed permitting process and decision, and the National Oceanic and Atmospheric Administration is in the process of conducting an Endangered Species Act biological opinion on the impacts of Puget Sound net pens on protected species. Both of these developments are ongoing, and both will impact the water quality permitting processes and decisions before Ecology. In addition, Ecology should undergo formal consultation with all impacted local, state, federal, and tribal governments before reaching a decision on these permits. Ecology should place a hold on any further action related to the draft water quality permits until these actions are fully and finally completed.

Moreover, I request the Department of Ecology to revisit its conclusion that the issuance of these permits will not change the effect to water quality in Puget Sound. First, there is substantial new information that was not considered during the SEPA process for the permits (including Cooke's plan for marking steelhead, Cooke's "no-recovery response" plan, and Cooke's plans for new pen structures). Second, Washington's landmark 2018 law, HB2957, created a new and stricter regulatory regime for marine net pen aquaculture, which places higher standards for regulating and monitoring water quality. Under HB2957, Ecology must adopt the new standard of review to achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Third, switching species from Atlantic salmon to steelhead trout does not reduce the rampant daily pollution and water quality risks posed by open water net pen aquaculture. In fact, the proposed change in species poses new and different risks, and there are a number of inherent problems with this industry regardless of the species being cultivated (including but not limited to, fish effluent and waste, amplification and discharge of pathogens, and discharge of antibiotics and medical effluent). Ecology should reconsider all water quality risks associated with this industry and not limit the scope of their review to risks associated with only a change of species.

Finally, speaking to the draft permits themselves, Ecology is obligated to do all it can to ensure Cooke's compliance of all rules and limitations set by the NPDES permits. Any noncompliance should swiftly be met with harsh penalties, including immediate permit revocation. Cooke's escape prevention and escape response plans must be carefully considered in this permit process as well. We cannot afford to let another Cypress Island spill occur in Puget Sound.

In short, I urge Ecology to heed extreme caution before reaching a decision on the draft water discharge permits, as they would allow the company to continue operating its net pens in the state.

Pharmaceuticals, viruses, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke's Atlantic salmon operations. These issues are not mitigated by simply raising a different fish species – even if the stock is partially sterile/all-female. The only way to truly protect our coastline and wildlife from the harms of industrial ocean fish farming is to remove the operations from

our waters entirely. Moreover, it's clear from recent history that Cooke has no intention of operating in accordance with our environmental conservation and protection laws and regulations. Therefore, any proposed, tougher restrictions – although well-intended – are not enough. Cooke's destructive facilities have no place in our waters.

Please do all you can to end Cooke's incredibly harmful practices in our waterways as soon as possible, including by proceeding with extreme caution and eventually denying Cooke's NDPES permit applications.

Sincerely,

Michael And Barbara Hill

Mineral, WA 98355

"

Wild Steelhead Coalition

(Document uploaded)



Comments on Draft Cooke Aquaculture permit modifications to raise steelhead

October 26, 2020

Ms. Niewolny,

On behalf of the board of the Wild Steelhead Coalition and the organization's thousands of members, we thank the Washington Department of Ecology (Ecology) for the opportunity to provide our comments on Cooke Aquaculture's National Pollution Discharge Elimination System (NPDES) application to modify their existing water quality permits so that they can commercially farm triploid rainbow trout in four of their Puget Sound net pen operations.

The Wild Steelhead Coalition has long been concerned about the negative impacts of net pens in Puget Sound, a concern that has been validated time and again by Cooke Aquaculture's negligent and destructive operations. Not only was the 2017 collapse of Cooke Aquaculture's Cypress Island Net Pen operation, which released more than 250,000 farmed Atlantic salmon into Puget Sound, an environmental catastrophe, but Cooke's lies and lack of transparency in the aftermath of this crisis demonstrated that they have zero regard for Washington's environmental laws or regulatory agencies.

Recognizing the destructive nature of commercial salmonid production in Puget Sound and Cooke's propensity to operate with total disregard for environmental safety, the state legislature took the wise and judicious step of banning commercial finfish in Puget Sound by passing HB 2957. However, now Cooke is trying to take advantage of a loophole in this law to transition their existing fish farms into an even more dangerous operation that produces farmed steelhead.

While Cooke's farmed steelhead proposal does act in accordance with the letter of HB 2957, it is certainly a violation of its spirit, which intended to prevent companies such as Cooke from operating dangerous salmonid net pen operations in Washington's waters. Additionally, this proposed steelhead operation violates the will of Washingtonians who overwhelmingly supported HB 2957 and believed the threat of Cooke's disaster-prone fish farms was being removed from Puget Sound.

In the context of the clear intent of Washingtonians to ban net pens, and Cooke's deplorable record in our public waters, and the fact that HB 2957 created a more stringent regulatory regime for marine net pen aquaculture in Washington's waters, it is essential that Ecology utilize a standard of review which ensures it achieves the state's goal to "eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Unfortunately, that reasonable standard of review is not being met for Cooke's NPDES permit review process.

The following comments highlight our concerns with this ongoing process and provide guidance on how we believe this process should continue:

- **Ongoing SEPA review** – We believe it is premature to move forward with the authorization of Cooke's modified NDPES permits while the underlying SEPA review is being legally challenged in a Washington Superior Court, with a ruling pending from a Judge who held trial on September 24, 2020. Given the imminent nature of this ruling and the fact that Ecology is



a partner agency in this SEPA review, the Court's decision will directly impact whether or not the NPDES permits can move forward. As such, Ecology should not authorize NPDES permits or finalize the permitting process until the Court announces their final decision in this legal matter.

- **Ongoing federal ESA consultation** – We also believe it is premature to move forward with the authorization of Cooke's modified NPDES permits while the U.S. National Oceanic and Atmospheric Administration (NOAA) is developing a revised Biological Opinion that analyzes the impact of Puget Sound's marine finfish net pens have on ESA-listed populations. Since the ongoing federal consultation analyzes updates to the NPDES permits themselves and addresses water quality standards needed to issue the modified NPDES permits, it is clear Ecology should delay the permitting process until the Biological Opinion is completed. In order for the NPDES permits to hold Puget Sound net pens to standards that comply with the ESA, the findings of the federal consultation must be appropriately reviewed, analyzed, and incorporated into the NPDES permit requirements.
- **Failure to account for changes in risk assessment imposed by new law** – The passage of HB 2957 created a new and stricter regulatory regime for marine net pen aquaculture, and the law intended to eliminate net pen aquaculture and all the risks they pose to Puget Sound by December 2022. While the law does not explicitly prohibit native fish from being reared in open water net pens, the law does impose a series of other requirements and establishes the legislature's clear intent that future marine net pen aquaculture be subjected to greater scrutiny.

The Wild Steelhead Coalition continues to urge Ecology to ensure that the NPDES permits conforms with this current law and share the policy's objective to eliminate – not just mitigate – commercial marine net pen escapement and the net pens' negative impacts on water quality, native fish, shellfish, and wildlife. We believe HB 2957's new standards require re-examining past decisions and holding Cooke to the new higher standard of eliminating risks.

By considering Cooke's new project as an extension of past practices, Ecology is not only failing to meet the new standard set by HB2957, but it is also directly enabling Cooke to continue benefiting from environmental exemptions that for three decades have protected the commercial net pen industry from complying with local statutes, state conservation plans, and other environmental laws put in place to protect Puget Sound since the early 1990's.

When Cooke's leases expire for these sites in 2022, the Department of Natural Resources (DNR) will not consider the applications as renewals of their previous leases but as brand-new lease agreements that will need to adhere to today's environmental standards. We encourage Ecology to take a similar approach as DNR to the NPDES permits and assess Cooke's applications as a new project and adhere to the risk assessment imposed by the new law.

- **NPDES Permits Must Consider Toxic Pollutants** – The modified NPDES permits must consider and address the risk of toxic pollutants like viruses and diseases. Ecology continues to exclude this significant environmental risk factor from the NPDES permits, despite the fact



that pathogens like viruses and bacteria should fall under Ecology's regulatory oversight considering that disease-causing agents are defined by the EPA as toxic pollutants.

Like any high-density confined animal feeding operations, commercial net pens amplify and spread endemic and exotic viruses, bacteria, diseases, and parasites into the marine environment in large numbers. This reality was highlighted by a study published in *Virology Journal* in 2019 that revealed that nearly 100% of the 250,000 Atlantic salmon that escaped the Cypress Island collapse were infected with an exotic virus originating in Iceland where Cooke purchases their Atlantic salmon eggs.

It is both reckless and unacceptable for WDFW and Ecology to issue permits that allow for steelhead to be planted in Puget Sound while this fundamental regulatory inadequacy exists. Ecology must rectify this gap in regulatory oversight in its permits. If Ecology does not feel they have the regulatory authority to test for and monitor disease-causing agents, Ecology and WDFW must work together to incorporate monitoring and reporting requirements for disease-causing agents in net pen aquaculture regulatory permits.

- **Change in Species** - Without an EIS, Ecology's analysis that transitioning from Atlantic salmon to steelhead "is not likely to change the effect to water quality" is only an assumption. This issue was a major concern raised by DNR, a partner agency to the SEPA review, in their comments to WDFW which concluded the SEPA materials "did not adequately address how the proposal from Cooke [Aquaculture] might impact the already declining population of Puget Sound steelhead."

The escape of partially sterile (triploid) steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, constitute pollutants under the CWA. These escaped fish may pose significant environmental impacts to native salmonids rearing in nearshore marine habitats and rivers due to competition for food and foraging space. This threat will be particularly pernicious given that triploid individuals, as noted in Cooke's materials, will have appetites that are likely to be considerably greater than wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish. As a result, escapees may outcompete wild steelhead or indeed predate upon them.

We are also concerned about the genetic integrity of threatened Puget Sound steelhead stocks in the event of an escape. While the limited data from Troutlodge indicates an average triploidy failure rate of 0.17%, the true rate may be substantially different, and higher. In the event of an escape on the scale of Cypress Island, that could mean thousands of fertile females entering Puget Sound, potentially diluting the genetics of threatened wild populations, and competing with wild females for redds.

An additional related concern is the absence of specific details regarding how the replacement steelhead stock is to be marked so as to distinguish an aquaculture-raised steelhead from conventional hatchery-raised steelhead and from wild, natural-origin, steelhead. It is critical that aquaculture-raised steelhead be provided with an externally visible mark that is distinct from the adipose clip used to identify conventional hatchery-reared steelhead. This is necessary in order that recovered escaped aquaculture-raised fish can be distinguished from hatchery and wild steelhead in order to assure that these farmed fish are removed from public waters



and that native steelhead (with an intact adipose fin) not be killed due to suspicion that such a fish captured following an escape is one of the escapees.

Additionally, the prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with partially sterile (triploid), domesticated *O. mykiss* and Puget Sound's federally listed steelhead population, different risks apply, and standards laid out in the 1990 EIS have not been met for these purposes.

In particular, "a minimum distance of separation between farms and river mouths" has never been considered and adopted in state policy, as section 5.7.2.2 of the 1990 EIS would require for aquaculture involving native fish (and as is required in other nations). Since escapes, and their risks to threatened conspecifics, constitute pollution and are within the scope of Ecology's review, this guidance and an analysis of the proximity of pens to steelhead spawning rivers should be included in Ecology's review of these NPDES permits. Furthermore, the behavioral response of wild steelhead to a large aggregation of conspecifics may be different than it was to Atlantic salmon. If wild schools are attracted to the captive domesticated steelhead in pens, the pollution from the pens may do greater harm to threatened wild Puget Sound steelhead.

In closing, we strongly believe the current NPDES process must be delayed until the Court issues a ruling in the lawsuit challenging the underlying SEPA review and the federal ESA consultation on the impacts Puget Sound net pens pose to ESA-listed species is complete. Issuing Cooke an NPDES beforehand is nothing short of negligent. Additionally, given the new legal standard established by HB 2957 and the substantial concerns that arise from raising a native species in net pens, we believe it is imperative that Ecology hold Cooke Aquaculture to the highest standards of environmental protection, something it fails to do in the current NPDES permit process.

On behalf of the Wild Steelhead Coalition, we encourage the Department to hold off on issuing any permits until all of these aforementioned issues are resolved as well as until after the lawsuit and Biological Opinion are finalized. Simply put, Puget Sound and its wild steelhead, which are in such dire shape that they are protected under the Endangered Species Act, are far too important to Washington's people, economy, and ecosystem to risk by dangerously rushing through this important environmental review process.

Thank you for your consideration,

Greg Topf
Board of Directors
Wild Steelhead Coalition

The Wild Steelhead Coalition is a non-profit 501c(3) organization representing more than 3,000 members in Washington state and beyond. We were founded in 2000 by a group of conscientious steelhead anglers and advocates, determined to make lasting change for this iconic species. For nearly 20 years, the WSC has worked to build partnerships, educate stakeholders, and change policy on behalf of the fish.

Rich Passage Estates Homeowners' Association

Rich Passage Estates Homeowners' Association
Bainbridge Island, Washington

The attached documents provide public comments by the Rich Passage Estates Homeowners' Association related to the application by Cooke Aquaculture for National Pollutant Discharge Elimination System Permit modifications. Thank you for this opportunity to engage in this public process.

Rich Passage Estates Homeowners' Association
PO Box 11683
Bainbridge Island, WA 98110

October 26, 2020

Laurie Niewolny, Water Quality Program
Washington State Department of Ecology

Dear Laurie Niewolny,

This letter and attachments provide public comment on the application to the Washington Department of Ecology by Cooke Aquaculture for the modification of National Pollutant Discharge Elimination System Permits (NPDES) associated with the proposed farming of steelhead in pens located in Rich Passage.

We are requesting that discussions to modify the NPDES permits be tabled until the Wild Fish Conservancy lawsuit challenging the Department of Fish and Wildlife is concluded. Both the science and net pen guidance that supports the proposed modification are based on a thirty-year-old Environmental Impact Statement for Atlantic salmon. Both should be reevaluated with respect a species change to native fish and their impacts on threatened and endangered species. Additionally, the State of Science in Puget Sound, Washington was never completed and there has been no public comment on the latest draft version.

In May of this year, the Environmental Protection Agency made a determination that the marine net pens in Puget Sound “*are likely to adversely affect*” several ESA-listed species of fish. That document is attached. As a result, NOAA is charged with preparing a related Biological Opinion which, in part, addresses the NPDES permit modification relative to water quality standards. Ecology should delay any NPDES permits until this analysis is completed and NOAA issues its Biological Opinion.

Attached is a resubmission of our previous public comments for review and response recognizing that some items may have been mentioned in the revised draft. Also attached are the shoreline permits for reference that are listed on the application. These decades-old permits, under which the industry is grandfathered, are not aligned with many provisions of the current Shoreline Master Program and provide few water quality protections.

Ecology’s one virtual meeting appears to have been effective in soliciting little more than a few responses primarily by the applicant. The general option of the public is that Net Pen Aquaculture should be phased out because of the pollution it causes and risk of escapements as well as impacts to our threatened and endangered species. Ecology should conduct appropriate comment through multiple meetings and not the “one and done” during unprecedented times. For example, the Draft Aquatic Plant and Algae Management General Permit and Padilla Bay Tributaries Bacteria TMDL Public Comment are each holding two public workshops and hearings. During the legislative

hearings for EHB 2957, the issue of net pens was **the** topic that legislators heard the most about that legislative session.

Net Pen Structural Integrity Assessment Report

Of particular concern is the timing of inspections related net pen structures “approximately every two years” when net pens are fallow as they are at this time. The last inspection, to our knowledge, occurred in December of 2017 nearly three years ago. These pens need to be in good working order to receive fish, but also to ensure structural integrity in the highly-trafficked waters of Rich Passage even if pens are fallow. Ecology should not delay this inspection process on the timing of Cooke’s permit approvals.

From the draft permit S7. NET PEN STRUCTURAL INTEGRITY ASSESSMENT REPORT:

In accordance with RCW 77.125.060, the permittee must obtain a marine engineering firm to conduct inspections to assess structural integrity of the net pens. Inspections must occur within two years of the effective date of the permit if not completed and to be done routinely, approximately every two years, when net pens are fallow, and must mooring assessments related to escapement potential, structural integrity, permit compliance, and operations. The net pen structural integrity assessment reports must include current Doppler data, topside and be certified by a licensed professional engineer and submitted to Ecology within 60 days of the completion of the inspections.

| | | | |
|----|--|-------------------------------|-----------------------------------|
| S7 | Net Pen Structural Integrity Assessment Report (includes Doppler current assessment) | Approximately every two years | Within 2 years of permit issuance |
|----|--|-------------------------------|-----------------------------------|

RCW 77.125.060 does not state that “inspections must occur within two years of the effective date of the permit...” which appears to be language that Ecology has added.

RCW 77.125.060

Facility operator must hire marine engineering firm to conduct inspections.

(1) For marine finfish aquaculture, the facility operator must hire, at their own expense, a marine engineering firm approved by the department to conduct inspections. Inspections must occur **approximately every two years, when net pens are fallow**, and must include topside and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations.

(2) Any net pen facility must be found to be in good working order to receive fish.

(3) If the facility is found to be in imminent danger of collapse or release of finfish, the director may require the operator to remove fish or deny a fish transfer permit.

[2018 c 179 § 12.]

<https://app.leg.wa.gov/RCW/default.aspx?cite=77.125.060>

From WDFW:

“WDFW SEPA 19-056 Determination Marine Aquaculture Permit Approval 24 • EHB 2957 requires that approximately every two-years, when net-pens are fallow, each of Cooke’s facilities must be inspected by an independent marine engineering firm, approved by WDFW, and to receive fish the facility must be considered in good working order. In December 2019, a Consent Decree was reached between Cooke and Wild Fish Conservancy, where both parties agreed that before Cooke restocks any of their net-pen facilities, they are required to conduct a load analysis of the mooring and cage systems using environmental condition data that are consistent with the Norwegian aquaculture standard NS 9415. As part of the inspections mandated by EHB 2957, WDFW will require that Cooke provide an engineering analysis certifying that the net-pens conform to the parameters derived from the NS 9415 standard. Each net-pen facility will be evaluated independently as conformity to parameters derived from the NS 9415 standards require evaluation of the environmental conditions (e.g., currents, winds, waves, depth) specific to that netpen facility.”

The net pens in Rich Passage have been fallow since the following dates:

- Fort Ward April 2018
- Clam Bay August 2019
- Orchard Rocks September 2020

In October 2019, the Orchard Rock South net pens were partially stocked. As you are aware, a hole in a pontoon caused the southern end to sink. The primary mitigation for fish escapements is prevention regardless of species. The Rich Passage Pens are beyond or near the end of their useful lives per the Department of Natural Resource lease agreement. Two years have passed without inspection and the pens here are fallow. There have been structural problems here and the applicant had previously submitted a permit for net pen replacement with the City of Bainbridge Island. The pens in Rich Passage have not been certified to receive fish regardless of species.

The permit should be denied generally, but denied until all inspections and repairs have taken place. Permit language allows the potential for the applicant to delay inspections until August of 2021 or later.

AKART

Similarly, AKART has been added and is not a condition of the permit modification, but with reapplication in 2024.

WAC 173-226-070

<https://apps.leg.wa.gov/WAC/default.aspx?cite=173-226-070&pdf=true>

Technology-based treatment requirements and standards reflecting all known, available, and reasonable methods of prevention, treatment, and control required under RCW **90.48.010**, **90.48.520**, **90.52.040**, and **90.54.020**

AKART

S10. AKART ANALYSIS REPORT contains the following language

In accordance with WAC 173-240-110, the permittee must conduct an analysis for all known, available, and reasonable methods of treatment or AKART. The analysis must include an economic and treatment analysis of the range of culturing techniques, including but not limited to all known in-water and uplands systems for the purpose of improved water quality of the effluent, reduced discharge, and less feed waste. Analysis shall also include the evaluation of best management practices and technology improvements to in-water systems that will lead to improved water quality of the effluent, reduced discharge, and less feed waste. Report must be submitted with the application for the renewal of this permit as required in S6.

| | | | |
|-----|-----------------------|------|---|
| S10 | AKART Analysis Report | Once | With reapplication: January 31, 2024 |
|-----|-----------------------|------|---|

On September 18, 1996, Ecology issued NPDES permits including the three in Rich Passage. Eight of these permits were administratively extended, without modification (other than to reflect the change in ownership), in 2007 and again in 2012. When was the last AKART analysis?

The public has voiced repeated concerns regarding discharges of feces, uneaten food, antibiotics, nitrogen and metals and their impacts on water quality and threatened and endangered species.

AKART should be a condition of the permit modification not the potential renewal of the permit in 2024.

Discharges to Marine Waters

In response to the reporting of the discard of debris from the harvesting operations into the Puget Sound waters, we were informed via phone conversation that Ecology considers the reported activity de Minimis in terms of water quality, but “technically” not in compliance with the permit requirements which should have resulted in at least a warning letter. The industry should be held to the requirements of the permit. The permit does not nor should it specify a matter of degree which is subject to interpretation. The permit should include language that is consistent with WDFW: *The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit.*

WDFW:

10. Prior to harvest, Cooke must provide WDFW, DNR, and Ecology the approximate dates for harvest. Within one month after harvesting is completed Cooke must provide to WDFW, DNR, and Ecology a report documenting the facility harvested, dates in which harvesting occurred, the total number of fish harvested per day, and any complications that may have occurred during harvesting. Cooke must report immediately if any live fish escaped during harvesting, or if any fish carcass, parts, or offal were discarded into the Puget Sound waters. The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit. Cooke also must report the number and species of bycatch caught during harvesting. If requested by WDFW, DNR, or Ecology, Cooke must allow appropriately trained personnel from these agencies to monitor the harvesting activities.

From Ecology's pollution prevention plan:

6.3 Carcass and Leachate Disposal During Harvesting

During harvesting operations, the harvest boat shall be tied securely to the net pens adjacent to the pen that is being harvested. The harvest fish are pumped from the pen and onto the harvest boat. Blood water from the harvesting operations (leachate) shall be contained within the fish harvesting machine that is located on the harvest boat. The harvested fish and blood water are contained and stored inside the fish holds of the harvest boat.

Upon completion of the harvesting operation by the harvest boat at the facility, the harvested fish and blood water are transported by the harvest boat to the upland fish processing plant. The harvested fish and the blood water are then pumped off the vessel at the fish processing plant and the blood water is disposed of into the sanitary sewer system located at the fish processing plant.

6.4 Solid Waste Storage and Disposal Practices

Solid wastes generated by the daily operation of the sites include feed bags, wooden pallets, used line, ordinary household wastes, and other non-hazardous items. Proper containment, handling and storage of these waste materials shall be the priority of all employees to ensure these materials do not enter the water. These items shall be stored in secured containers or bundles before transport to a land-based facility. Solid waste is collected and routinely removed from the facilities and transported to the land-based support facilities for proper disposal and/or recycling.

Earlier, Ecology had indicated via email that:

Pollution prevention plan must include

9. How solid and biological wastes are collected, stored, and ultimately disposed of at an upland facility. Among the solid wastes of concern are:

- a. Any fish mortalities under normal operations.*
- b. Fish mortalities due to a fish kill involving more than five percent of the fish within one week.*
- c. Blood and waste from harvesting operations*

Again, the language in the NPDES should be consistent with WDFW:

The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit.

Training

A key component of preventing fish escapes and pollution is appropriate training. From the Fish Escape Prevention Plan, the applicant states that:

Cooke will train all staff on the requirements and procedures of the Operations and Maintenance Manual, Pollution Prevention Plan, Fish Escape Prevention Plan, and Fish Escape Reporting and Response Plan annually by March 30 of each calendar year. New employees will be trained during their three-month probationary period. Additional training will be provided if plans are updated or changed. An employee training log will be maintained by the Site Manager at each location and will be updated as needed. Updated training logs are sent to the General Manager, Permit Coordinator and Business Support Analyst.

While Ecology reserves the right to inspect records with regard to training, actual inspections have only been recorded in PARIS three to four times in the past fourteen years. Given the poor record of the applicant, Ecology should consider more frequent site visits or request of records. Ecology should consider a response simulation exercise to verify the operator's ability to execute the plan.

Compliance Inspection Without Sampling

| Date | Fort Ward | Orchard Rock | Clam Bay |
|----------------|-----------|--------------|----------|
| December 2017 | X | X | X |
| September 2015 | X | X | X |
| November 2011 | | X | |
| October 2006 | X | X | X |

The fact that Ecology felt compelled to create an entire section related to *unusual events*, points to training deficiencies and/or inability of the operator to respond to potential emergency events.

Pollution and Threats to the Marine Environment

For two weeks now neighbors are watching with disgust as decades of industrial waste from marine finfish operations is being lifted from the seafloor in what we understand is from the 70's and 80's. The location is marked by the six or more orange buoys shown in the photos below.

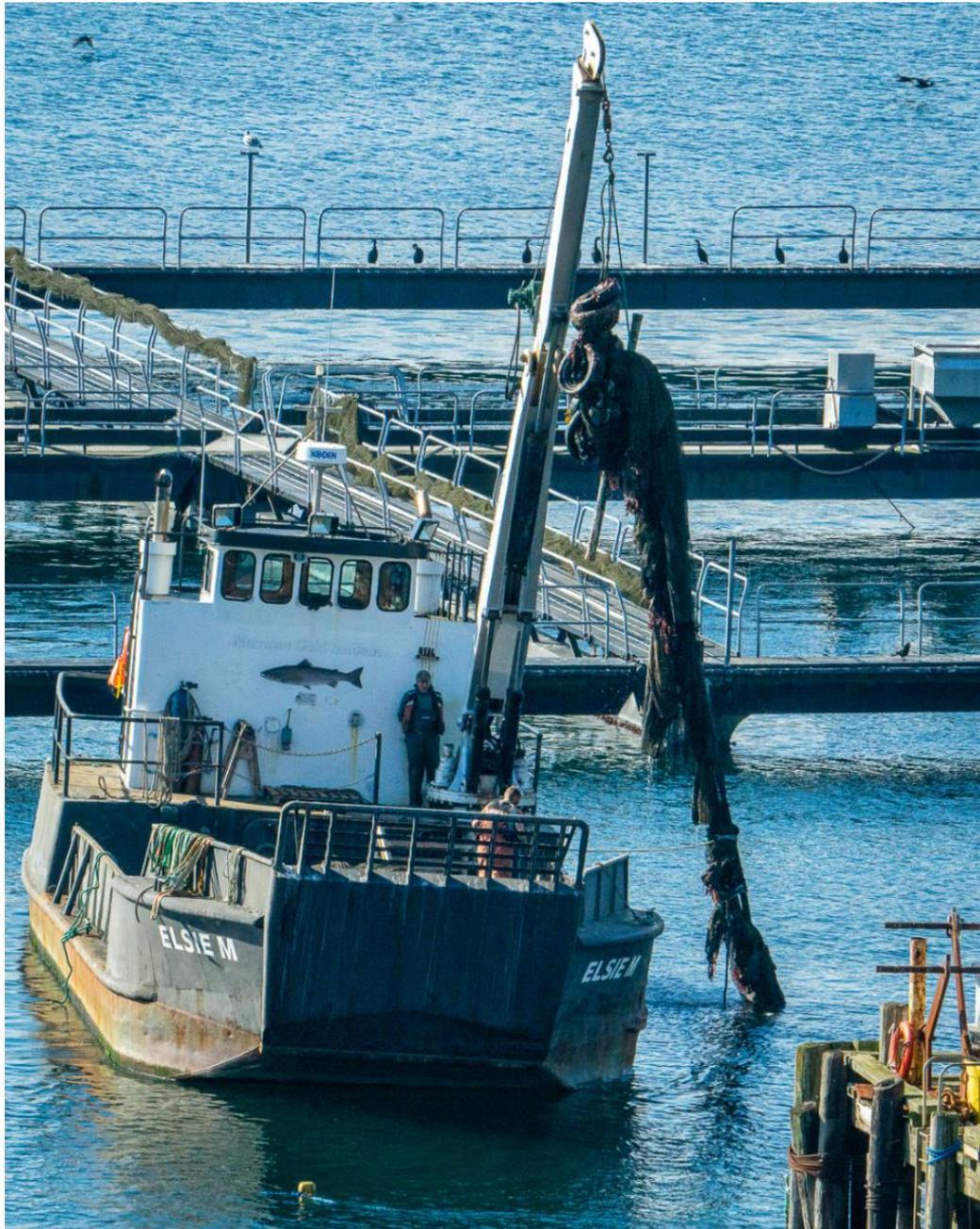
October 25, 2020



Buoy adjacent to protected Orchard Rocks Conservation area October 26, 2020



See the photo below of a net entangled in tires which was removed from the seafloor. October 24, 2020



Every NPDES permit disallows this type of dumping. Even our decades-old, two-paged, shoreline permit conditions that discarded net must be removed.

From the NPDES **draft** Operations and Maintenance Manual 7.4.4.

Dropped or Lost Nets

Any net accidentally dropped or lost during a storm event and not recovered immediately will be marked by GPS coordinates, a buoy, and reported to Ecology within 24 hours. The net will be recovered within 30 days and Ecology will be notified on the date it is recovered. Additional information on dropped or lost nets, major repair, or structural issues, can be found in the Fish Escape Prevention Plan, Sections 3 and 4. For more information on Emergency Structural Problems, notifications, and reporting, see the Fish Escape Prevention Plan, Section 2

From previous permits that were administratively approved in later versions ... *Permit No. WA-003153-4 Issuance Date: October 26, 2007 Expiration Date: October 26, 2012 Minor Modification Date: May 30, 2008.*

17. When in use, predator nets shall be maintained above the sea floor at all times. Nets may not impede the current flow or tidal exchange so as to contribute to the deposition of solids that would impair water quality standards. The storage of predator control or containment nets on the sea floor is prohibited. Any net accidentally dropped or lost during a storm event that is not recovered immediately shall be tagged with a float, positioned using differential GPS, and reported to Ecology within 24 hours. The net shall be recovered within 30 days from the date lost, unless Ecology allows a longer time in an individual case. Ecology shall be notified on the date the net is recovered.

From the current NPDES permit. No surprises here...the exact same language.

3. Operating Requirements

r. When in use, predator nets shall be maintained above the sea floor at all times. Nets may not impede the current flow or tidal exchange so as to contribute to the deposition of solids that would impair water quality or sediment standards. The storage of predator control nets on the sea floor is prohibited. Any net accidentally dropped or lost during a storm event that is not recovered immediately shall be tagged with a float, positioned using differential GPS, and reported to Ecology within 24 hours. The net shall be recovered within 30 days from the date lost, unless Ecology allows a longer time in an individual case. Ecology shall be notified on the date the net is recovered.

Net recovered from the sea floor October 26, 2020



Chains recovered from the sea floor as well as recovered nets onboard the vessel.

October 26, 2020



Tires recovered from the industrial operation. Photo taken October 24, 2020



The Department of Ecology says on its homepage, *We're proud to protect, preserve, and enhance Washington's environment for current and future generations.*

Who's watching here? Ecology? The Industry? Not even Cooke apparently for the last four years until now with respect to issue mentioned in the above section regardless of the fact that the same permit coordinator has been in place through several industry owners. The public is watching here and paying the price with threats that the industry has created to our public waters and endangered species.

On April 29, 2019 Cooke agreed to pay the State the full \$332,000 penalty for the Cypress Island disaster in Puget Sound. A little over two months later on July 11, 2019, Ecology issued the current NPDES permit.

<https://ecology.wa.gov/About-us/Get-to-know-us/News/2019/April-29-Cooke-Aquaculture-will-pay-full-penalty>

Elsewhere, in October of 2019, just weeks after Cooke Aquaculture agreed to pay the state more than \$150,000 to settle numerous violations at several of its salmon net pen sites in eastern Maine, the Department of Marine Resources is asking for public comment on the company's application for a 20-year lease renewal.

<https://www.mdislander.com/maine-news/cooke-aquaculture-seeks-renewal-of-salmon-pen-lease>

It all appears somewhat familiar and an NPDES permit modification is yet to be decided.

Cooke has proven to be an unreliable applicant as evidenced by their abysmal record in Washington during their short tenure. It is difficult to believe that the company who was responsible here for repeated water quality violations, structural failures and the Cypress Island disaster is capable of self-monitoring and self-reporting. Additional layers of requirements are not a guarantee of compliance. While the changes to the NPDES permit seem appropriate in theory, we seriously question the industry's ability to execute. Locally, the City of Bainbridge Island has pledged their support for an alternate Department of Natural Resources lease application submitted by the Wild Fish Conservancy to lease the waters now leased by the industry with the creation of Resolution 2020-18. We support the Conservancy's plan to restore polluted and industrialized waters to their natural state for the conservation of Puget Sound's ecosystem, and for the use, benefit, and enjoyment of present and future generations.

We strongly urge the Department of Ecology to deny the NPDES permit modifications.

Sincerely,

A handwritten signature in black ink that reads "Kathleen D. Hansen". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kathleen D. Hansen
Director
Rich Passage Estates HOA



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

WATER
DIVISION

May 29, 2020

Dr. Kim Kratz
Assistant Regional Administrator
National Marine Fisheries Service
Oregon & Washington Coastal Area Office
510 Desmond Drive Southeast, Suite 103
Lacey, Washington 98503-1263

Dear Dr. Kratz:

On April 8, 2011, the Environmental Protection Agency and National Marine Fisheries Service completed the Endangered Species Act Section 7 consultation on the Washington State Department of Ecology's Sediment Management Standards (WAC 173-204-412) regarding marine finfish rearing facilities. Following the collapse of a net pen facility near Cypress Island in August 2017, and the following escapement recovery efforts, Wild Fish Conservancy supplemented the existing litigation regarding disease transmission against both agencies. On August 7, 2018, in *Wild Fish Conservancy v. EPA et al*, 331 F. Supp. 3d 1210 (W.D. Wash. 2018), the Court issued an order denying the federal agencies' motion for judgment on the pleadings and addressing the legal duty of both agencies with regard to reinitiation of ESA consultation and the scope of such consultation.

The EPA disagrees with the Court's holding that it retains sufficient discretion over previously approved state water quality standards to reinitiate consultation. However, consistent with the Court's order, the EPA sent NMFS a letter requesting the reinitiation of consultation on October 1, 2018, which NMFS accepted in a response dated October 3, 2018.

Enclosed is the 2020 Biological Evaluation Addendum prepared by the EPA to facilitate the reinitiation of formal consultation with NMFS. The Addendum incorporates the following new information since the 2008 and 2010 BEs:

- Disease transfer from Atlantic salmon net pen fish to Pacific salmon, primarily relying on a letter from NMFS dated January 12, 2016, and accompanying memo.
- An escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture's Site 2 net pen off Cypress Island and the follow up and the associated response actions.
- Updated National Pollutant Discharge Elimination System permitting actions by the Department of Ecology to minimize escapement risk and covers the planned transition at

existing commercial net pens facilities to raise steelhead instead of Atlantic salmon, which must be phased out by 2022 per Washington state law.

- The EPA NPDES general permit which currently covers tribal enhancement net pen facilities and the reissuance of the general permit in late 2020. The EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.).

In accordance with ESA Section 7(a)(2), the EPA is hereby providing our analysis of potential effects on listed species and critical habitat resulting from the EPA’s approval of portions of the Sediment Management Standards at the Washington Administrative Code 173-204, including new information since the previous BEs. The EPA’s effects determinations for the species under NMFS’s purview are presented in Section 8 of the BE Addendum and summarized below.

| | Species | ESU/DPS/Population | Species Effects Determination | Critical Habitat Designation | Critical Habitat Effects Determination |
|---|---|---|--------------------------------------|-------------------------------------|---|
| 1 | Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | LAA | Yes | NLAA |
| 2 | Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | LAA | Yes | NLAA |
| 3 | Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | LAA | Yes | NLAA |
| 4 | Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | LAA | Yes | NLAA |
| 5 | Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | (Puget Sound/Georgia Basin DPS) | LAA | Yes | NLAA |
| 6 | North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | NLAA | Yes | NLAA |
| 7 | Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | NLAA | Yes | NLAA |
| 8 | Humpback Whale (<i>Megaptera novaeangliae</i>) | Pacific Coast, Mexico DPS and Central America DPS | NLAA | No | -- |
| 9 | Killer Whale (<i>Orinus orca</i>) | Southern Resident, DPS | NLAA | Yes | NLAA |

LAA – likely to adversely affect

NLAA – may affect, but not likely to adversely affect

We respectfully request your concurrence on the Agency's determinations for the species and critical habitat that are not likely to be adversely affected.

For the species and critical habitat that are likely to be adversely affected by the Agency's proposed action, we request that you notify the EPA of your agreement to reinitiate formal consultation within 30 days from the receipt of this letter. As described in the duration and extension of formal consultation section at 50 CFR 402.14(e), we anticipate receiving the biological opinion from NMFS within 135 days of initiating formal consultation and if an extension is necessary, procedures in this section will be followed.

The EPA appreciates the technical support from your staff, including the ongoing coordination to discuss NMFS's information needs. We remain available to provide any additional assistance and/or clarification of the enclosed Addendum.

If you have any questions or wish to discuss this matter further, please call me at (206) 553-1855 or contact Matthew Szelag, the EPA staff lead, at (907) 271-1208 or szelag.matthew@epa.gov.

Sincerely,

**DANIEL
OPALSKI**

Digitally signed by
DANIEL OPALSKI
Date: 2020.05.28
15:12:12 -07'00'

Daniel D. Opalski
Director

Enclosure

cc (e-copy): Jennifer Quan, NMFS
Jeff Vanderpham, NMFS
Caitlin Imaki, NMFS

**ADDENDUM TO THE UPDATED BIOLOGICAL EVALUATION
DATED DECEMBER 13, 2010**

**REGARDING THE EPA CLEAN WATER ACT ACTION ON
WASHINGTON'S MARINE FINFISH REARING FACILITY PROVISION
CONTAINED IN THE SEDIMENT MANAGEMENT STANDARDS AT
WASHINGTON ADMINISTRATIVE CODE 173-204-412**

PREPARED FOR:
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

PREPARED BY:
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE, SUITE 155
SEATTLE, WA 98101

May 29, 2020

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Preface

In the Biological Evaluation of April 17, 2008, and supplemented on August 6, 2008 (collectively referred to as the 2008 BE),¹ the EPA concluded that the approval of certain new and revised water quality standards at WAC 173-204, Washington's Sediment Management Standards, were not likely to adversely affect listed fish species or marine mammals or their designated critical habitat areas since the effects of such approval would be insignificant.

The EPA's approval, following the completion of Endangered Species Act consultation in 2008, of Washington's Sediment Management Standards was challenged in court by Wild Fish Conservancy. On April 28, 2010, the U.S. District Court for the Western District of Washington issued an order setting aside the 2008 consultation on Washington's Sediment Management Standards on grounds that the EPA and NMFS had failed to consider two NMFS recovery plans for Puget Sound Salmon and Southern Resident Killer Whales. *Wild Fish Conservancy v. U.S. Env'tl. Prot. Agency*, No. C08-156-JCC, 2010 U.S. Dist. LEXIS 41838, pp. 15-16 (Apr. 28, 2010). Following the Court's decision, the EPA reviewed the two NMFS recovery plans along with the data in the original 2008 BE and other updates to information and analysis and issued an Addendum to the 2008 BE on December 13, 2010 (referred to as the 2010 BE).²

1. National Marine Fisheries Service. 2007. Puget Sound Salmon Recovery Plan. Shared Strategy for Puget Sound adopted by National Marine Fisheries Service. Volumes I and II.³

2. National Marine Fisheries Service. 2008. Recovery Plan for Southern Resident Killer Whales (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington.⁴

Following a review of the information presented in the recovery plans, the EPA determined that although net pen operations in accordance with the provisions at WAC 173-204 may affect ESA listed species or their critical habitat, such effect is not likely to adversely affect (NLAA) the three species of salmonids and the southern resident killer whale. Therefore, the EPA reaffirmed the NLAA and no effect determinations contained in the 2008 BE. The EPA also provided an analysis and a NLAA determination for the three additional listed species of rockfish in Puget Sound: bocaccio, canary, and yelloweye rockfish. ESA consultation was completed on April 8,

¹ April 17, 2008. Supplemented August 6, 2008. U.S. EPA Region 10. *Biological Evaluation of Washington's Marine Finfish Rearing Facility Provision Contained in the Sediment Management Standards*. Prepared for U.S. Fish & Wildlife Service and National Marine Fisheries Service.

² December 13, 2010. U.S. EPA Region 10. *Update to the Biological Evaluation Submitted April 17 and August 6, 2008, Regarding EPA Action on Washington's Marine Finfish Rearing Facility Provision Contained in the Sediment Management Standards*. Prepared for National Marine Fisheries Service.

³ Available online at:

https://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/puget_sound/puget_sound_chinook_recovery_plan.html

⁴ Available online at:

https://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/recovery_plan.html

2011,⁵ and the EPA re-approved the applicable provisions on April 22, 2011.⁶

On November 4, 2015,⁷ Wild Fish Conservancy filed new litigation alleging that the informal consultation concluded in April 2011 was arbitrary, and that the EPA and NMFS had a duty to reinitiate consultation based on new information related to disease outbreak. On December 7, 2017, following the collapse of a commercial net pen and escape of Atlantic salmon, Wild Fish Conservancy filed a second amended complaint supplementing its litigation to claim that the net pen collapse presented additional information requiring both federal agencies to reinitiate consultation.⁸ The EPA acknowledged the net pen failure in a letter to NMFS on December 14, 2017.⁹ On August 7, 2018, the Court issued an order denying the federal agencies' motion for judgment on the pleadings and addressing the legal duty of both agencies with regard to reinitiation of consultation and the scope of such consultation.¹⁰ *Wild Fish Conservancy v. EPA et al*, 331 F. Supp. 3d 1210 (W.D. Wash. 2018).

The EPA disagrees with the Court's holding that it retains sufficient discretion over previously approved state water quality standards to reinitiate consultation. However, consistent with the Court's order, the EPA sent NMFS a letter requesting the reinitiation of consultation on October 1, 2018,¹¹ which NMFS accepted in a response dated October 3, 2018.¹²

This 2020 BE Addendum incorporates new information on several different topics. First, additional information regarding disease transfer from Atlantic salmon net pen fish to Pacific

⁵ April 8, 2011. Letter from William W. Stelle, Jr., Regional Administrator, NMFS to Jannine Jennings, Water Quality Standards Unit, EPA Region 10, *Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Proposed Approval of Finfish Rearing Facility Provision Contained in the Sediment Management Standards Rule Promulgated by the Washington State Department of Ecology (HUC 17110019, Puget Sound)*.

⁶ April 22, 2011. U.S. EPA Region 10. Letter from Michael A. Bussell, Director Office of Water and Watersheds, EPA Region 10 to Mr. Kelly Susewind and Mr. Jim Pendowski, Department of Ecology, *Re: EPA's Re-Approval of Washington's Revised Sediment Management Standards (WAC 173-204) including the Marine Finfish Rearing Facility Provision, as submitted on June 3, 1996*.

⁷ November 4, 2015. Case 2:15-cv-01731. WFC V. U.S. EPA and NMFS. *Complaint for Declaratory and Injunctive Relief*.

⁸ November 22, 2017. Case 2:15-cv-01731-BJR. WFC V. U.S. EPA and NMFS. *Plaintiff's Motions to Supplement Pleadings and Amend Case Schedule*.

⁹ December 14, 2017. Letter from Michael Lidgard, Acting Director, Office of Water and Watersheds, EPA Region 10 to Mr. Kim Kratz, Assistant Regional Administrator, NMFS, *Re: August 2017 Puget Sound Net Pen Failure*.

¹⁰ August 7, 2018. Case 2:15-cv-01731-BJR. WFC V. U.S. EPA and NMFS. *Order Denying (1) Federal Defendants' Motion for Judgment on the Pleadings and (2) Cooke Aquaculture's Motion to Dismiss*.

¹¹ October 1, 2018. Letter from Daniel D. Opalski, Director Office of Water and Watersheds, EPA Region 10 to Mr. Kim Kratz, Assistant Regional Administrator, NMFS *Re: Request to Reinitiate Endangered Species Act Section 7 Consultation on the Environmental Protection Agency's Approval of Washington State Department of Ecology's Sediment Management Standards (WAC 173-204-412) Regarding Marine Finfish Rearing Facilities*.

¹² October 3, 2018. Letter from Barry A. Thom, Regional Administrator, NMFS, to Dan Opalski Director Office of Water and Watersheds, EPA Region 10, *Re: Request to Reinitiate April 8, 2011 Endangered Species Act Section 7 Consultation on the Environmental Protection Agency's Approval of Washington State Department of Ecology's Sediment Management Standards (WAC 173-204-412) Regarding Marine Finfish Rearing Facilities (refer to NMFS No.: NWR-2010-6071)*.

salmon has been included, primarily relying on a letter from NFMS dated January 12, 2016,¹³ and accompanying memo in response to a request from the EPA on December 16, 2015.¹⁴ Second, further information regarding an escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture’s Site 2 net pen off Cypress Island, including the follow up and the associated response has been included in this 2020 BE Addendum. The Addendum incorporates updated National Pollutant Discharge Elimination System (NPDES) permitting actions by the Washington State Department of Ecology (Ecology), to minimize escapement risk and covers the planned transition at commercial net pen facilities to raise steelhead instead of Atlantic salmon which must be phased out by 2022. Lastly, the Addendum discusses facilities covered by the current EPA NPDES general permit (WAG132000),¹⁵ which covers tribal enhancement facilities. In their reissuance of the general permit in late 2020, EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.). Please note that throughout this Addendum, the EPA will refer to both the currently covered tribal enhancement facilities and the soon to be covered federal research facilities broadly as “facilities covered under EPA’s NPDES GP.” The current EPA general permit cites, but does not necessarily rely on, the Sediment Management Standards at WAC 173-204 for their permitted operations, and the reissued NPDES GP will be similar in this regard.

Given the gap between the 2010 BE and this 2020 Addendum, the EPA is providing updated information to be considered in this ESA consultation. Below is a crosswalk that explains the updates to each section of the 2010 BE that are included in this 2020 Addendum. The updates include:

1. Updates to the **Background** to revise the number of net pen facilities included in the consultation and Ecology’s permitting activities and moratorium on Atlantic salmon net pens
2. Minor updates to the **Description of the Agency Action** to reflect changes to the provisions at WAC 173-204
3. Updates to the **Description of the Action Area** to note the net pen facilities included in this consultation

¹³ January 12, 2016. Letter from Kim W. Kratz, Ph.D., Assistant Regional Administrator, Oregon Washington Coastal Office, NMFS, to Dan Opalski, Director Office of Water and Watersheds, EPA Region 10 with enclosed memo dated December 17, 2015 from Dr. Dickhoff to Dr. Kratz *Re: Scientific Review of Intent to Sue U.S. Environmental Protection Agency and National Marine Fisheries Service for violations of the Endangered Species Act associated with consultation of Washington State’s Revised Sediment Management Standards for Marine Finfish Facilities dated 25 August 2015.*

¹⁴ December 16, 2015. Letter from Daniel D. Opalski, Director Office of Water and Watersheds, EPA Region 10 to Mr. William Stelle, Administrator, West Coast Region, NMFS *Re: Washington’s Sediment Management Standards regarding Netpen Facilities.*

¹⁵ September 9, 2015. EPA Region 10. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-final-permit-2015.pdf>

4. Updates to the **Species Status and Life History** to include newly listed species of North American Green Sturgeon and Pacific Eulachon along with steelhead, bocaccio and yelloweye rockfish designated critical habitat since 2010
5. The **Environment Baseline** remains largely unchanged except where noted
6. Updates to the **Analysis of Effects** regarding the indirect effects associated with disease transfer, escapement events, permitting activity to minimize escapement risk/additional net pen facilities, and new native species reared
7. The **Cumulative Effects** section remains unchanged
8. New **Summary of Findings** to reflect the EPA's revised determinations
9. The **Sediment Testing Methodology Provisions** section remains largely unchanged except where noted
10. **References**
11. Updated **Maps**

1. Background

In 1991, the EPA approved Washington's Sediment Management Standards (SMS). On June 3, 1996, Ecology submitted revisions to WAC 173-204, which included minor revisions to the sediment testing methodology provisions and a new section for marine finfish rearing facilities at WAC-173-204-412. These revisions were subject to the Alaska Rule¹⁶ since they were adopted by Washington and submitted to the EPA for review prior to May 30, 2000, and the EPA took no action prior to that date. In accordance with 40 CFR 131.21(c)(1), Washington's 1996 sediment management standard revisions went into effect for Clean Water Act purposes as soon as they were effective under state law.

The addition of the marine finfish rearing facility section exempts net pen facilities in Puget Sound from portions of Washington's sediment management standards, underneath and around the immediate area of the net pen. The section also states that sediment quality compliance and monitoring requirements of net pen facilities are addressed through the NPDES permitting program. The section provides for a special sediment impact zone by rule within and including a distance of 100 feet from the outer edge of net pen facility structures; consequently, such facilities and their associated discharges are exempt from marine sediment quality standards, sediment impact zone maximum criteria, and sediment impact zone standards at WAC 173-204-415. The section also allows Ecology to authorize sediment impact zones beyond 100 feet via NPDES permits or administrative actions, subject to increased monitoring. The rule provides no exemptions to compliance with Washington's water quality standards for net pen facilities.

For commercially operated net pens, the Washington State Department of Natural Resources (WDNR) issues a site license for each facility (lease expiration date) and the Washington Department of Fish and Wildlife (WDFW) regulates disease control, fish health and escape management at each facility.

¹⁶ Rule specifying that new and revised standards adopted by States and authorized Tribes on or after May 30, 2000, become "applicable standards for Clean Water Act purposes" only when approved by EPA.
<https://www.federalregister.gov/documents/2000/04/27/00-8536/epa-review-and-approval-of-state-and-tribal-water-quality-standards>

Currently, there are four active commercially operated Atlantic salmon net pen facilities in Puget Sound operated by Cooke Aquaculture. Previously, there were eight active facilities, but due to the collapse of Site #2 off Cypress Island and the closure of the Port Angeles (Ediz Hook) net pen, among others off Cypress Island, the number of facilities has been reduced to four since the 2010 BE. The remaining net pens include one near Hope Island (Skagit Bay) and three in Rich Passage near Bainbridge Island. Although the operator may pursue using some of the previously active net pens in the future, the potential effects from those sites would be similar to the sites evaluated in this BE Addendum.

Ecology reissued NPDES permits for the four active commercially operated net pen facilities on July 11, 2019.¹⁷ The updated NPDES permit requirements allow Ecology to ensure that facilities are meeting water quality standards until the Atlantic salmon net pens are phased out. In 2018, following the collapse of Cooke's net pen facility Cypress Island—Site 2 and the resulting escape of approximately 250,000 Atlantic salmon, the Washington State Legislature passed House Bill 2957, phasing out marine rearing of all Atlantic salmon as the facility aquatic lands leases expire by 2022.¹⁸ More information regarding new permitting activity for these facilities is provided in the Analysis of Effects section of this BE Addendum.

These facilities are expected to be converted to steelhead (all-female triploid rainbow trout) facilities, as indicated in a permit application submitted by Cooke Aquaculture Pacific, LLC, to WDFW on January 18, 2019.¹⁹ On January 21, 2020, WDFW approved Cooke's application after completing the State Environmental Policy Act (SEPA) process.²⁰ The five-year permit enables Cooke to farm all-female, sterile (triploid) rainbow trout/steelhead in Puget Sound and applies to existing net pens in Puget Sound where Cooke holds valid aquatic land leases with the Washington Department of Natural Resources. This includes four pens currently operating near Rich Passage and Skagit Bay, but may later extend to three additional net pens owned by Cooke. Ecology is currently in the process of revising the NPDES permits authorizing Cooke to transition to rearing steelhead and is accepting public comments until June 8, 2020.²¹

To ensure a complete review and analysis in this 2020 Addendum, the EPA is also including facilities covered under EPA's NPDES GP. There are significant differences (such as the sizes of the facilities and types of operations, species raised such as Coho or sablefish, etc.) between the permittees covered under the EPA NPDES GP and Ecology's permitting of large commercial net

¹⁷ Washington Department of Ecology. Atlantic salmon net pen individual permits. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

¹⁸ March 26, 2018. Washington State House Bill 2957. Nonnative Finfish—Marine Aquaculture—Escape. Chapter 179, Laws of 2018.

¹⁹ January 18, 2019. Cooke Aquaculture Pacific, LLC. Fin Fish Aquaculture Permit – Plan of Operation. All-female Triploid Rainbow Trout (*Oncorhynchus mykiss*).

²⁰ January 21, 2020. WDFW. Justification for the Mitigated Determination of Non-Significance (MDNS) for Washington Department of Fish and Wildlife SEPA 19-056 and for the Approval of Cooke Aquaculture Pacific's Marine Aquaculture Permit Application. https://wdfw.wa.gov/sites/default/files/2020-01/marine_aquaculture_permit_justification-01-31-20.pdf

²¹ Washington Department of Ecology. Salmon net pen water quality individual permits. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

pen facilities. The permitting regulations distinguish between these two types of net pen facilities found in Puget Sound are discussed in more detail below in the Analysis of Effects.

2. Description of the Agency Action

The following is a list of the SMS provisions which could affect aquatic life and were addressed in the 2008 and 2010 BEs.

- WAC 173-204-200 (13): Definition of “Marine finfish rearing facilities.”
- WAC 173-204-315(1)(b)(ii)
- WAC 173-204-315(2)(b)
- WAC 173-204-315 (2)(d)
- WAC 173-204-320 (3)(d)
- WAC 173-204-412 (2): Applicability of marine finfish rearing facilities.
- WAC 173-204-412 (3)(a) and (3)(b): Sediment monitoring requirements of marine finfish rearing facilities.
- WAC 173-204-412 (4), (4)(a), (4)(a)(i), (4)(a)(ii) and (4)(b): Sediment impact zones for marine finfish rearing facilities.
- WAC 173-204-420 (3)(c)(iv)
- WAC 173-204-520 (3)(d)(iv)

This 2020 Addendum updates the following two provisions from the 2010 BE. These changes have no effect on the outcome of the consultations from 2010 and 2008. The remainder of the provisions have not been revised and there are no new additional provisions in the SMS to be included in this consultation.

1. On December 18, 2015, the EPA approved a minor non-substantive edit to the definition of “*marine finfish rearing facilities*” at *WAC 173-204-200 (13)*.²² The revisions are reflected below in strikeout. This minor revision has no effect on the updated consultation.

(13) “Marine finfish rearing facilities” (~~shall~~) means those private and public facilities located within state waters where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

2. The second provision that was revised is *WAC 173-204-520(3)(d)(iv)*. *Juvenile polychaete Puget Sound marine sediment cleanup screening levels and minimum cleanup level biological criteria*.

The state deleted and substantively replaced this provision as part of its revisions to the SMS in 2013. On December 18, 2015, the EPA rescinded its 2008 approval of this provision because it

²² December 18, 2015. Letter from Dan Opalski, Director, Office of Water and Watershed, EPA Region 10 to Maia Bellon, Director, Washington Department of Ecology, *Re: EPA’s Approval and Decision on Revisions to Washington’s Sediment Management Standards (SMS), Chapter 173-3014 WAC* and enclosed Technical Justification.

determined that Part V of the SMS is not a water quality standard. Therefore, this provision is no longer relevant to the consultation and this Addendum.

Note that the revisions outside of WAC 173-204-412 (and the definition of marine finfish rearing facilities) relate to sediment testing methodology. They were originally described in the EPA's August 6, 2008 supplement to the 2008 BE. The EPA reevaluated its conclusions in the August 6, 2008 supplement based upon new information and has not modified these conclusions since the provisions are applicable only to sediment testing methodology. See Section 9 of this Addendum for more information.

3. Description of the Action Area

The action area subject to this consultation on the SMS is the Puget Sound. The definition of Puget Sound has not been revised since the 2008 and 2010 consultation. Puget Sound is defined in the SMS at WAC-173-204-200(20): "Puget Sound basin" or "Puget Sound" means: (a) Puget Sound south of Admiralty Inlet, including Hood Canal and Saratoga Passage; (b) The waters north to the Canadian border, including portions of the Strait of Georgia; (c) The Strait of Juan de Fuca south of the Canadian border; and (d) All the lands draining into these waters as mapped in water resources inventory areas numbers 1 through 19, set forth in water resources management program established pursuant to the Water Resources Act of 1971, chapter 173-500 WAC.

The SMS for marine finfish rearing facilities are applicable to all commercially operated net pen facilities in Puget Sound, regardless of species reared. In this addendum, facilities covered under EPA's NPDES GP are also evaluated. Although the EPA's approval action of the SMS does not apply to, and thus the action area does not include, any waters within Indian Country (i.e., Native American reservations, Indian communities, and trust lands).

The EPA's view of the action area is informed by its understanding of the areas that may be affected directly or indirectly by its approval of the SMS related to marine finfish rearing facilities. Furthermore, the effects of the action – whether direct or indirect – occur within Puget Sound; therefore, the EPA continues to define the Puget Sound as the area that may be affected by this action. However, the EPA understands the concerns associated with escaped fish movement and recovery efforts related to the 2017 net pen collapse. To address such concerns, the EPA has chosen to voluntarily consider the effects of its action on freshwater steelhead critical habitat and freshwater Eulachon habitat and is making a corresponding effects determination in this Addendum.

4. Species Status and Life History of Fish Species Assessed

Subsequent to the 2010 BE and the addition of three rockfish species, two new species have been listed – North American Green Sturgeon and Pacific Eulachon (southern DPS). In addition, steelhead and two species of rockfish critical habitats have been designated for Puget Sound. Effective March 24, 2017, Canary Rockfish were delisted. The species status and life history for these newly listed species and critical habitat has been added below.

Please note the numbering in this section is consistent with the 2010 BE. There are no updates to 4.B.1. Chinook salmon and 4.B.2. Chum Salmon.

4.B.3. Steelhead Puget Sound DPS (Updated Critical Habitat)²³

Critical Habitat

Critical habitat designation for the Puget Sound steelhead was proposed on January 14, 2013. The areas under consideration include watersheds in Puget Sound and the Strait of Juan de Fuca in Washington.

Critical habitat was designated for the remaining five of Oregon and Washington listed steelhead on September 2, 2005 (70 FR 52630). Indian lands are excluded from critical habitat for these populations.²⁴

On February 24, 2016, NMFS issued a final rule designating critical habitat for threatened Puget Sound steelhead (81 FR 9251). The specific areas designated include approximately 2,031 miles (3,269 km) of freshwater and estuarine habitat in Puget Sound, including areas in the upper Elwha River that were not occupied by steelhead at the time of designation but that were determined to be essential for the conservation of the species. In keeping with the ESA and NMFS's past practice, the final designation excludes approximately 70 miles (113 km) of streams in Indian lands, 1,361 miles (2,190 km) of streams associated with approved Habitat Conservation Plans, and 28 miles (45 km) of streams associated with military lands where potential impacts on national security outweigh the benefits of designation as critical habitat. NMFS also excluded all habitat areas in three watersheds (Lake Washington, Lake Sammamish, and Sammamish River watersheds) where the economic impacts were deemed to outweigh the benefits of designation. A critical habitat map for this species is shown in the Maps section and is also available online.²⁵

On December 30, 2019, NFMS issued a recovery plan for the Steelhead Puget Sound DPS.²⁶

4.B.4. Bocaccio Puget Sound/Georgia Basin DPS

²³ This information has been adapted from the EPA's *Revised* Biological Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge within Federal Waters Off the Coasts of Washington and Oregon Permit No. WAG520000. Revised May 2017. <https://www.epa.gov/sites/production/files/2017-06/documents/r10-npdes-offshore-seafood-gp-wa-or-wag520000-biological-evaluation-2017.pdf>

²⁴ Further information from NMFS provided on ESA Critical Habitat for Puget Sound Steelhead website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/puget_sound/steelhead_recovery_workshop_2013/stone_habitat.html

²⁵ NMFS. Map of Designated Critical Habitat for Puget Sound Steelhead. Accessed May 26, 2020. https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/steelhead/s_teelhead_ps.pdf

²⁶ December 20, 2019. NOAA Fisheries. ESA Recovery Plan for the Puget Sound Steelhead Distinct Population Segment (*Oncorhynchus mykiss*). <https://www.fisheries.noaa.gov/resource/document/esa-recovery-plan-puget-sound-steelhead-distinct-population-segment-oncorhynchus>

Critical Habitat was designated for Bocaccio on November 13, 2014 (79 FR 68041). Critical habitat is found throughout Puget Sound. The specific areas in the final designation include 590.4 square miles of nearshore habitat and 414.1 square miles of deepwater habitat. A critical habitat map for this species is shown in the Maps section and is also available online.²⁷

Species range, critical habitat, life history and ecology, and population trends and risks for Bocaccio Puget Sound/Georgia Basin DPS can be found at https://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/rockfish/final_yel_loweye_rockfish_and_bocaccio_recovery_plan_508.pdf

4.B.5. Canary Rockfish Puget Sound/Georgia Basin DPS

Effective March 24, 2017, Canary Rockfish were delisted²⁸ and therefore are no longer part of this analysis.

4.B.6. Yelloweye Rockfish Puget Sound/Georgia Basin DPS

Critical Habitat was designated for Yelloweye Rockfish on November 13, 2014 (79 FR 68041). Critical habitat is found throughout Puget Sound. The specific areas in the final designation includes 414.1 square miles of deepwater habitat. A critical habitat map for this species is shown in the Maps section and is also available online.²⁹

Species range, critical habitat, life history and ecology, and population trends and risks for Yellow Rockfish Puget Sound/Georgia Basin DPS can be found at https://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/rockfish/final_yel_loweye_rockfish_and_bocaccio_recovery_plan_508.pdf

4.B.7. North American Green Sturgeon³⁰

The North American green sturgeon was officially divided into two Distinct Population Segments by the NMFS on January 29, 2003 (68 FR 4433). The Southern DPS, which includes

²⁷ NMFS. Map of Designated Critical Habitat for Bocaccio, Canary, and Yelloweye Rockfish Distinct Population Segments. Accessed May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf

²⁸ 82 FR 7711. January 23, 2017. Endangered and Threatened Species; Removal of the Puget Sound/Georgia Basin Distinct Population Segment of Canary Rockfish From the Federal List of Threatened and Endangered Species and Removal of Designated Critical Habitat, and Update and Amendment to the Listing Descriptions for the Yelloweye Rockfish DPS and Bocaccio DPS. <https://www.federalregister.gov/documents/2017/01/23/2017-00559/endangered-and-threatened-species-removal-of-the-puget-soundgeorgia-basin-distinct-population>

²⁹ NMFS. Map of Designated Critical Habitat for Bocaccio, Canary, and Yelloweye Rockfish Distinct Population Segments. Accessed May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf

³⁰ This information has been adapted from the EPA's *Revised* Biological Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge within Federal Waters Off the Coasts of Washington and Oregon Permit No. WAG520000. Revised May 2017. <https://www.epa.gov/sites/production/files/2017-06/documents/r10-npdes-offshore-seafood-gp-wa-or-wag520000-biological-evaluation-2017.pdf>

any coastal or Central Valley, California populations south of the Eel River in California (the only known population being in the Sacramento River), was listed as Threatened on April 7, 2006 (71 FR 17757).³¹

Species Range

Green sturgeon are the most broadly distributed, wide-ranging, and most marine-oriented species of the sturgeon family. The green sturgeon ranges from Mexico to at least Alaska in marine waters, and is observed in bays and estuaries up and down the west coast of North America (Moyle et al., 1995).

Critical Habitat

Critical habitat for the Southern DPS of North American green sturgeon was designated on October 9, 2009 (74 FR 52300). A critical habitat map for this species is shown in the Maps section and is also available online.³²

All of the freshwater riverine parts of the critical habitat are in California; there are none in Oregon or Washington.

Coastal bays and estuaries included in the critical habitat designation include Coos Bay, Winchester Bay, Yaquina Bay, and Nehalem Bay in Oregon; Willapa Bay and Grays Harbor in Washington; and the Lower Columbia River estuary in both states. Critical habitat in bays and estuaries includes tidally influenced areas as defined by the elevation of mean higher high water. The boundary between coastal marine areas and bays and estuaries are delineated by the COLREGS lines (33 CFR 80).

The marine portion of the critical habitat includes all U.S. coastal marine waters out to the 60 fathom (fm.) (110 m) depth bathymetry line (relative to MLLW) from Monterey Bay, California north and east to include waters in the Strait of Juan de Fuca, Washington. The Strait of Juan de Fuca includes all U.S. marine waters: in Clallam County east of a line connecting Cape Flattery, Tatoosh Island, and Bonilla Point, British Columbia; in Jefferson and Island counties north and west of a line connecting Point Wilson and Partridge Point; and in San Juan and Skagit counties south of lines connecting the U.S.-Canada border and Pile Point, Cattle Point and Davis Point, and Fidalgo Head and Lopez Island. Critical habitat in coastal marine areas is defined by the zone between the 60 (fm.) depth bathymetry line and the line on shore reached by mean lower low water (MLLW), or to the COLREGS lines.

The primary constituent elements of nearshore coastal marine critical habitat areas that are essential for the conservation of the Southern DPS of green sturgeon are:

- (i) Migratory corridor: a migratory pathway for the safe and timely passage within marine and between estuarine and marine habitats.
- (ii) Water quality: nearshore marine waters with adequate dissolved oxygen levels and acceptably low levels of contaminants (e.g., pesticides, organochlorines, elevated levels

³¹ Further information from NMFS provided on Green Sturgeon website accessed on May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/protected_species/green_sturgeon/green_sturgeon_pg.html

³² NMFS. Map of Designated Critical Habitat for Southern DPS of Green Sturgeon. Accessed May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/greensturgeon_ch_maps.pdf

of heavy metals) that may disrupt the normal behavior, growth, and viability of sub-adult and adult green sturgeon.

(iii) Food resources: abundant prey items for sub-adults and adults, which may include benthic invertebrates and fishes.

Certain areas in the Strait of Juan de Fuca and Whidbey Island, Washington that are owned or controlled by the Department of Defense, or designated for its use, are excluded from critical habitat.

All Indian lands of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw as well as the Coquille Indian Tribe in Oregon; and the Hoh, Jamestown S’Klallam, Lower Elwha, Makah, Quileute, Quinault, and Shoalwater Bay Tribes in Washington are excluded from critical habitat designation.

Life history and ecology

Green sturgeon are long-lived, slow-growing fish. Mature males range from 4.5-6.5 feet (1.4-2 m) in "fork length" and do not mature until they are at least 15 years old (Van Eenennaam, 2002), while mature females range from 5-7 feet (1.6-2.2 m) fork length and do not mature until they are at least 17 years old. Maximum ages of adult green sturgeon are likely to range from 60-70 years (Moyle, 2002).

Green sturgeon are believed to spend the majority of their lives in nearshore oceanic waters, bays, and estuaries. Early life-history stages reside in fresh water, with adults returning to freshwater to spawn when they are more than 15 years of age and more than 4 feet (1.3 m) in size. Spawning is believed to occur every 2-5 years (Moyle, 2002). Adults typically migrate into fresh water beginning in late February; spawning occurs from March-July, with peak activity from April-June (Moyle et al., 1995). Females produce 60,000-140,000 eggs (Moyle et al., 1992). Juvenile green sturgeon spend 1-4 years in fresh and estuarine waters before dispersal to saltwater (Beamsesderfer and Webb, 2002). They disperse widely in the ocean after their out-migration from freshwater (Moyle et al., 1992).

The only available feeding data on adult green sturgeon shows that they eat benthic invertebrates including shrimp, mollusks, amphipods, and even small fish (Moyle et al., 1992).

Population trends and risks

Little data on current population sizes exists and data on population trends is lacking. The principal factor in the decline of the Southern DPS is reduction of the spawning area to a limited section of the Sacramento River. Other threats to the Southern DPS include insufficient freshwater flow rates in spawning areas, contaminants (e.g., pesticides), bycatch of green sturgeon in fisheries, potential poaching (e.g., for caviar), entrainment by water projects, influence of exotic species, small population size, impassable barriers (dams) to spawning grounds, and elevated water temperatures.³³

³³ Further information from NMFS provided on Green Sturgeon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/green_sturgeon/green_sturgeon_pg.html

4.B.8. Pacific Eulachon (Southern DPS)³⁴

Eulachon (*Thaleichthys pacificus*), commonly called smelt, candlefish, or hooligan, are a small, anadromous fish from the eastern Pacific Ocean. The Southern DPS of the species was listed as threatened on April 13, 2011 (76 FR 20558).³⁵

Species range

Eulachon are endemic to the eastern Pacific Ocean, ranging from northern California to southwest Alaska and into the southeastern Bering Sea. In the continental United States, most Eulachon originate in the Columbia River Basin. Other areas in the United States where Eulachon have been documented include the Sacramento River, Russian River, Humboldt Bay and several nearby smaller coastal rivers (e.g., Mad River), and the Klamath River in California; the Rogue River and Umpqua Rivers in Oregon; and infrequently in coastal rivers and tributaries to Puget Sound, Washington. Eulachon occur in nearshore ocean waters and to 1000 feet (300 m) in depth, except for the brief spawning runs into their natal (birth) streams.³⁶

Critical habitat

Sixteen specific areas within the states of California, Oregon, and Washington, of which thirteen are in Washington and Oregon, were designated as critical habitat for the southern Distinct Population Segment (DPS) of Pacific Eulachon on October 20, 2011 (76 FR 65324). The designated areas are a combination of freshwater creeks and rivers and their associated estuaries, comprising approximately 539 km (335 mi) of habitat.

Critical habitat for this DPS includes portions of the Umpqua River, Tenmile Creek, and Sandy River in Oregon; Grays River, Skamokawa Creek, Elochoman River, Cowlitz River, Toutle River, Kalama River, Lewis River, Quinault River, and Elwha River in Washington; and Columbia River in both states. Tribal lands of four Indian tribes are excluded from designation.

A critical habitat map for this species is shown in the Maps section and is also available online.³⁷

Life history and ecology

Eulachon typically spend 3 to 5 years in saltwater before returning to freshwater to spawn from late winter through mid-spring. Spawning grounds are typically in the lower reaches of larger snowmelt-fed rivers with water temperatures ranging from 39 to 50° F (4-10° C). Spawning occurs over sand or coarse gravel substrates. Eggs are fertilized in the water column. After

³⁴ This information has been adapted from the EPA's *Revised* Biological Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge within Federal Waters Off the Coasts of Washington and Oregon Permit No. WAG520000. Revised May 2017. <https://www.epa.gov/sites/production/files/2017-06/documents/r10-npdes-offshore-seafood-gp-wa-or-wag520000-biological-evaluation-2017.pdf>

³⁵ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

³⁶ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

³⁷ NMFS. Map of Designated Critical Habitat for Southern DPS of Eulachon. Accessed May 26, 2020. https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/eulachon/eulachon-ch-maps.pdf

fertilization, the eggs sink and adhere to the river bottom. Most Eulachon adults die after spawning. Eulachon eggs hatch in 20 to 40 days. The larvae are then carried downstream and are dispersed by estuarine and ocean currents shortly after hatching. Juvenile Eulachon move from shallow nearshore areas to mid-depth areas. Within the Columbia River Basin, the major and most consistent spawning runs occur in the mainstem of the Columbia River as far upstream as the Bonneville Dam, and in the Cowlitz River.³⁸

Population trends and risks

Eulachon abundance exhibits considerable year-to-year variability. However, nearly all spawning runs from California to southeastern Alaska have declined in the past 20 years, especially since the mid-1990s. From 1938 to 1992, the median commercial catch of Eulachon in the Columbia River was approximately 2 million pounds (900,000 kg) but from 1993 to 2006, the median catch had declined to approximately 43,000 pounds (19,500 kg), representing a nearly 98 percent reduction in catch from the prior period. Eulachon returns to British Columbia rivers similarly suffered severe declines in the mid-1990s and, despite increased returns during 2001 to 2003, presently remain at very low levels. The populations in the Klamath River, Mad River, Redwood Creek, and Sacramento River are likely extirpated or nearly so.

Habitat loss and degradation threaten Eulachon, particularly in the Columbia River basin. Hydroelectric dams block access to historical spawning grounds and affect the quality of spawning substrates through flow management, altered delivery of coarse sediments, and siltation. The release of fine sediments from behind a U.S. Army Corps of Engineers sediment retention structure on the Toutle River has been negatively correlated with Cowlitz River Eulachon returns 3 to 4 years later and is thus implicated in harming Eulachon in this river system, though the exact cause of the effect is undetermined. Dredging activities in the Cowlitz and Columbia rivers during spawning runs may entrain and kill fish or otherwise result in decreased spawning success.

Eulachon have been shown to carry high levels of chemical pollutants, and although it has not been demonstrated that high contaminant loads in Eulachon result in increased mortality or reduced reproductive success, such effects have been shown in other fish species. Eulachon harvest has been curtailed significantly in response to population declines. However, existing regulatory mechanisms may be inadequate to recover Eulachon stocks.

Global climate change may threaten Eulachon, particularly in the southern portion of its range where ocean warming trends may be the most pronounced and may alter prey, spawning, and rearing success.³⁹

5. Environmental Baseline

The environmental baseline of Puget Sound and the surrounding area is largely unchanged from the previous consultation; however, additional studies and new information are provided

³⁸ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

³⁹ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

throughout this Addendum. The human population of the Puget Sound region has continued to grow and as a result the pollution sources have also increased. However, as noted above, the number of commercial Atlantic salmon net pen facilities has been reduced from eight to four and the state of Washington has passed legislation to phase out non-native net pen rearing entirely by 2022. Additionally, it is expected that these four facilities will transition to rearing steelhead prior to the 2022 deadline. The EPA has also incorporated facilities covered under EPA's NPDES GP into this analysis as discussed in more detail below.

Water quality standards enhance the effectiveness of many of the state, local, and federal water quality programs, including point source permit programs, nonpoint source control programs, development of total maximum daily load limitations (TMDLs), and ecological protection efforts. Data acquired during chemical, physical, and biological monitoring studies is utilized in evaluating the quality of the State's waters and designing appropriate water quality controls. Waters identified as "water quality limited" are included on the CWA section 303(d) list, submitted to the EPA biennially. None of the currently permitted net pen facilities operate in areas that are listed as impaired for sediment on Ecology's most recent 303(d) list of impaired waters.

6. Analysis of Effects

The EPA's approval of Washington's revised sediment management standards, and in particular the marine finfish rearing facility provision at WAC 173-204-412, did not directly affect ESA listed or proposed species. However, there are potential indirect effects to ESA listed species and critical habitat through NPDES permitting that includes the revised SMS provisions that the EPA approved in 2008. Therefore, the effects analysis below updates the 2010 BE based on new information for the potential indirect effects from the EPA's prior approval action. This analysis reflects the current number of commercial net pen facilities being reduced from eight to four, the change in species being raised, and includes facilities covered under the EPA's NPDES GP. While the operator may pursue using some of the previously active sites in the future, the potential indirect effect would be similar to those analyzed in this BE Addendum.

The Analysis of Effects in the EPA's 2010 BE, Section 6.A.:

The EPA's 2010 analysis, incorporated herein (in italicized text) and updated in the next section, assumed there would not be an increase in the number of net pen facilities in Puget Sound, that Atlantic salmon would be the fish species reared in those net pen facilities, and that the regulatory structure would remain intact.

The EPA's approval and ESA determinations are based on the following six key findings along with information contained within the recovery plans.

- *The designated uses of Puget Sound are protected.*
- *Net pen facilities have an insignificant impact on aquatic life in Puget Sound.*
- *The existing regulatory framework for net pens provides protection to surrounding habitat and other species.*
- *The effects on the benthic community are accounted for and monitored.*

- *The closure procedures of net pen facilities ensure the aquatic environment is restored to baseline levels.*
- *The indirect effects of net pen facilities carry a low risk.*

These six findings, described in further detail below, are supported by information contained in the following three documents:

1) “Beneficial Environmental Effects of Marine Finfish Mariculture” J.E. Rensel and J.R.M. Forster. July 2007.

This report discusses the findings of a NOAA survey that was conducted from 2004-2006 at a commercial net pen farm in northern Puget Sound. The study found that net pens in Puget Sound provide a beneficial effect since they provide enhanced habitat for diverse populations of invertebrates and seaweeds. Therefore, the biofouling associated with net pens can be considered “beneficial” to species diversity and richly-populated marine food webs. The study also found that vaccines are typically used in place of antibiotics, sea lice problems do not exist due to natural salinity levels and facility siting location accounts for depth and current conditions that distribute net pens wastes over large areas where it may be incorporated into the food web.

2) “Review of Potential Impacts of Atlantic Salmon Culture on Puget Sound Chinook Salmon and Hood Canal Summer-Run Chum Salmon Evolutionarily Significant Units” F. William Waknitz. June 2002.

This NOAA technical memorandum examines the impacts of Atlantic salmon net pens on threatened salmon species found in Puget Sound. The report finds that escaped Atlantic salmon present a low risk to infect wild salmon, a low risk to compete with wild salmon for food or habitat, and a low risk to adversely impact Essential Fish Habitat. The study also finds there to be little risk regarding: hybridization between Atlantic and Pacific salmon; colonization of wild salmon habitat; Atlantic salmon feeding on Pacific salmon; pathogen transmission from Atlantic salmon to wild salmon; and, antibiotic-resistant bacteria development as a result of Atlantic salmon farming.

3) “The Net-pen Salmon Farming Industry in the Pacific Northwest” Colin Nash. September 2001.

This NOAA technical memorandum evaluates the risks associated with salmon net pen farming in the Pacific Northwest. This analysis finds the following issues carry the most risk: the impact of bio-deposits from farm operations on the environment beneath the net pens, the impact on benthic communities by the accumulation of heavy metals, and the impact on non-target organisms by the use of therapeutic compounds. Several of these issues have been addressed by Puget Sound facilities since this report was written in 2001. This memorandum finds several issues which carry a low risk: the physiological effect of low dissolved oxygen levels, the toxic effect of hydrogen sulfide and ammonia from net pen bio-deposits, the toxic effect of algal blooms, changes in the epifaunal community caused by the organic waste accumulation in sediments, the proliferation of human pathogens in the aquatic environment, the proliferation of

fish and shellfish pathogens in the aquatic environment and the increased incidences of disease among wild fish. The technical memorandum also finds the escape of Atlantic salmon and the impact of antibiotic-resistant bacteria on native salmonids to carry very little or no risk.

Update to Section 6.A.6. of the 2010 BE: Indirect Effects of Net Pen Facilities.

This Addendum incorporates new information on the following indirect effects. First, additional information regarding disease transfer from Atlantic salmon net pen fish to Pacific salmon has been included, primarily relying on a letter from NFMS dated January 12, 2016,⁴⁰ and accompanying memo. Second, further information regarding an escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture's Site 2 net pen off Cypress Island and the follow-up and the associated response has been included in the Addendum. This Addendum also discusses potential future uses of commercially operated net pen facilities as steelhead rearing facilities instead of Atlantic salmon rearing facilities. Lastly, the Addendum discusses facilities covered by the current EPA NPDES general permit (WAG132000),⁴¹ which covers tribal enhancement facilities. In their reissuance of the general permit in late 2020, EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.). The current EPA general permit cites, but does not necessarily rely on, the Sediment Management Standards at WAC 173-204 for their permitted operations, and the reissued NPDES GP will be similar in this regard. The effects from the EPA NPDES GP are also discussed in the context of disease transmission and escape.

Disease Transmission

The information regarding disease transfer from Atlantic net pen fish to Pacific salmon is summarized below, relying primarily on a letter from NFMS dated January 12, 2016,⁴² and accompanying memo dated December 17, 2015.

On August 25, 2015, the EPA requested NOAA Fisheries' views on the allegations raised by Wild Fish Conservancy regarding an outbreak of infectious hematopoietic necrosis virus (IHNV) in 2012 at the Atlantic salmon net pen facilities near Rich Passage off Bainbridge Island. This request was made as a result of Wild Fish Conservancy's notice of intent to sue issued in August

⁴⁰ January 12, 2016. Letter from Kim W. Kratz, Ph.D., Assistant Regional Administrator, Oregon Washington Coastal Office, NMFS, to Dan Opalski, Director Office of Water and Watersheds, EPA Region 10 with enclosed memo dated December 17, 2015 from Dr. Dickhoff to Dr. Kratz *Re: Scientific Review of Intent to Sue U.S. Environmental Protection Agency and National Marine Fisheries Service for violations of the Endangered Species Act associated with consultation of Washington State's Revised Sediment Management Standards for Marine Finfish Facilities dated 25 August 2015.*

⁴¹ September 9, 2015. EPA Region 10. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-final-permit-2015.pdf>

⁴² January 12, 2016. Letter from Kim W. Kratz, Ph.D., Assistant Regional Administrator, Oregon Washington Coastal Office, NMFS, to Dan Opalski, Director Office of Water and Watersheds, EPA Region 10 with enclosed memo dated December 17, 2015 from Dr. Dickhoff to Dr. Kratz *Re: Scientific Review of Intent to Sue U.S. Environmental Protection Agency and National Marine Fisheries Service for violations of the Endangered Species Act associated with consultation of Washington State's Revised Sediment Management Standards for Marine Finfish Facilities dated 25 August 2015.*

2015. On January 12, 2016, NMFS responded via letter and an accompanying memo dated December 17, 2015 from Walton Dickhoff, Ph.D., Director, Environmental and Fisheries Sciences Division, Northwest Fisheries Science Center (NWFSC). That memo outlines scientific opinions on the information provided by Wild Fish Conservancy and concludes that the information provided does not substantiate the claims and that there were substantial errors in the assumptions and analysis of impacts.

In short, NOAA Fisheries' NWFSC's experts concluded that the technical claims in the notice of intent to sue were not supported by the best available scientific and commercial information. After reviewing NWFSC's memo, NMFS concluded that the factual allegations presented by Wild Fish Conservancy do not establish any potential for new or different effects of the commercial salmon farms in Puget Sound from what was already considered in the EPA's consultation with NOAA Fisheries that concluded on April 8, 2011, following the submission of the EPA's 2010 BE.

In addition, on March 5, 2019, NMFS provided additional documents to the EPA regarding disease transfer to be considered in this consultation building on those that have been part of the previous record for this consultation. These are listed in the table below. Although the EPA has reviewed these documents, and is including them in the administrative record, the EPA is relying upon the technical expertise from NMFS in evaluating these studies in detail. The EPA does not have additional technical information beyond what has been supplied by NMFS on this topic.

In the EPA's assessment of the technical information provided by NMFS, the EPA notes the following key findings regarding disease risk and transmission:

- “The 2012 outbreak of IHNV in Atlantic salmon does not represent a new or unexpected event, but is an example of the previously reported observation that diseases in Atlantic salmon farms are caused by local pathogens that they obtain from local Pacific salmon. This is known to occur, and was considered thoroughly in the original report by Nash et al., 2001. The 2012 netpen outbreak conforms to that description and is not a new phenomenon that was not previously considered.”... “For any Chinook salmon or steelhead that did become infected, the probability that the infection progressed to cause disease or mortality is extremely unlikely, and not expected to occur.” (Gael Kurath, page 6).
- “The ubiquitous nature of piscine orthoreovirus (PRV), its apparent historic presence in wild Pacific salmonid stocks in the Pacific Northwest and the lack of clear association with disease in Pacific salmonids suggest the virus poses a low risk to wild species of Pacific salmonids.” (T.R. Meyers, page 2).
- “In response to reported findings of infectious salmon anaemia virus (ISAV) in British Columbia (BC), Canada, in 2011, U.S. national, state and tribal fisheries managers and fish health specialists developed and implemented a collaborative ISAV surveillance plan for the Pacific Northwest region of the United States. ...All 4,962 completed tests were negative for ISAV RNA. Results of this surveillance effort provide sound evidence to support the absence of ISAV in represented populations of free-ranging and marine-

farmed salmonids on the northwest coast of the United States.” (Gustafson, L.L., Creekmore, L.H., Snekvik, K.R., Ferguson, J.A., Warg, J.V., Blair, M., Meyers, T.R., Stewart, B., Warheit, K.I., Kerwin, J. and Goodwin, A.E, pages 1-2).

- “Our analysis showed evidence of Heart and skeletal muscle inflammation (HSMI) histopathological lesions over an 11-month timespan, with the prevalence of lesions peaking at 80-100% in sampled fish, despite mild clinical signs with no associated elevation in mortalities reported at the farm level.” (Di Cicco, E., Ferguson, H.W., Schulze, A.D., Kaukinen, K.H., Li, S., Vanderstichel, R., Wessel, Ø., Rimstad, E., Gardner, I.A., Hammell, K.L. and Miller, K.M., page 1).
- “Viral genome sequencing revealed no consistent differences in (Piscine orthoreovirus Strain) PRV-1 variants intimately involved in the development of both diseases suggesting that migratory chinook salmon may be at more than a minimal risk of disease from exposure to the high levels of PRV occurring in salmon farms.” (Di Cicco E, HW Ferguson, KH Kaukinen, AD Schulze, S Li, A Tabata, OP Günther, G Mordecai, CA Suttle, and KM Miller, page 599).
- “We conclude that the longer-term presence of PRV in BC prior to 2001 has not been adequately described and that the evidence that the virus was introduced from Norway is more robust than the hypothesis that PRV is endemic to the eastern Pacific Ocean.” (Kibenge, M.J., Wang, Y., Morton, A., Routledge, R. and Kibenge, F.S., page 5).
- “Importantly, infectious salmon anemia virus, salmonid herpesvirus, salmon alphavirus, and infectious pancreatic necrosis virus were not detected. Furthermore, while the agents associated with proliferative gill disease (*D.lep*, *Ca.B.cys*, and gill chlamydia) were all detected, few fish showed evidence of lesions associated with this multifactorial disease. The majority of agents detected on BC salmon farms were known to be endemic, but new findings include the marine detections of some infectious agents reported to only cause freshwater or hatchery-based diseases (*Flavobacterium psychrophilum* and *Ichthyophthirius multifiliis*.” (Laurin, E., Jaramillo, D., Vanderstichel, R., Ferguson, H., Kaukinen, K.H., Schulze, A.D., Keith, I.R., Gardner, I.A. and Miller, K.M., page 220).
- “Overall, the assessment concluded that IHNV attributable to Atlantic Salmon farms in the Discovery Islands poses minimal risk to Fraser River Sockeye Salmon abundance and diversity under the current fish health management practices.” (Mimeault, C., Wade, J., Foreman, M.G.G., Chandler, P.C., Aubry, P., Garver, K.A., Grant, S.C.H., Holt, C., Jones, S.R.M., Johnson, S.C. and Trudel, M., page v).
- “These results suggest that PRV transfer is occurring from farmed Atlantic salmon to wild Pacific salmon, that infection in farmed salmon may be influencing infection rates in wild salmon, and that this may pose a risk of reduced fitness in wild salmon impacting their survival and reproduction.” (Morton, A., Routledge, R., Hrushowy, S., Kibenge, M. and Kibenge, F, page 1).

- “... we tested a subset of these samples for infectious salmon anaemia virus (ISAV) RNA with three additional published molecular assays, as well as for RNA from salmonid alphavirus (SAV), piscine myocarditis virus (PMCV) and piscine orthoreovirus (PRV). All samples (n = 2,252; 121 stock cohorts) tested negative for RNA from ISAV, PMCV, and SAV. In contrast, there were 25 stock cohorts from Washington and Alaska that had one or more individuals test positive for PRV RNA; prevalence within stocks varied and ranged from 2% to 73%. The overall prevalence of PRV RNA-positive individuals across the study was 3.4% (77 of 2,252 fish tested).” (Purcell, M.K., Powers, R.L., Evered, J., Kerwin, J., Meyers, T.R., Stewart, B. and Winton, J.R, page 347).

The EPA has discussed the scientific finding with NMFS and concluded that its analysis of effects for species and critical habitats remains unchanged from the findings in the 2010 BE regarding disease transmission. Further details are available in the December 17, 2015 memo by NWFSC and the documents identified in the table below and the EPA is relying upon the technical expertise from NMFS in evaluating these studies in more detail.

| Date | Author(s) | Title/Journal |
|-------------|--|---|
| 8/1/17 | Gael Kurath, M.S., Ph.D., U.S.G.S. Western Fisheries Research Center, Microbiologist | Scientific Review of the Risk Posed to Endangered Pacific Salmon in Puget Sound, Washington, by an Outbreak of the Salmon Virus, IHNV in Atlantic Salmon Farm Netpens in Puget Sound. RE: Case No. 2:15-CV-01731-MJP, <i>Wild Fish Conservancy v. United States Environmental Protection Agency and the National Marine Fisheries Service</i> . USGS. 26 pages. |
| 9/17 | T.R. Meyers, Alaska Department of Fish and Game, Juneau Fish Pathology Laboratory | Piscine Orthoreovirus (PRV) in the Pacific Northwest Appears to be of Low Risk to Wild Pacific Salmonids. The Pacific Northwest Fish Health Protection Committee. 6 pages. |
| 8/28/18 | Gustafson, L.L., Creekmore, L.H., Snekvik, K.R., Ferguson, J.A., Warg, J.V., Blair, M., Meyers, T.R., Stewart, B., Warheit, K.I., Kerwin, J. and Goodwin, A.E | A systematic surveillance programme for infectious salmon anaemia virus supports its absence in the Pacific Northwest of the United States. <i>Journal of fish diseases</i> , 41(2), pp.337-346. |
| 2/22/17 | Di Cicco, E., Ferguson, H.W., Schulze, A.D., Kaukinen, K.H., Li, S., Vanderstichel, R., Wessel, Ø., Rimstad, E., Gardner, I.A., Hammell, K.L. and Miller, K.M. | Heart and skeletal muscle inflammation (HSMI) disease diagnosed on a British Columbia salmon farm through a longitudinal farm study. <i>PLoS One</i> , 12(2), p.e 0171471. |
| 4/23/18 | Di Cicco E, HW Ferguson, KH Kaukinen, AD Schulze, S Li, A Tabata, OP Günther, G Mordecai, CA Suttle, and KM Miller. | The same strain of Piscine orthoreovirus (PRV-1) is involved in the development of different, but related, diseases in Atlantic and Pacific Salmon in British Columbia. <i>FACETS</i> 3:599–641. |
| 11/30/17 | Kibenge, M.J., Wang, Y., Morton, A., Routledge, R. and Kibenge, F.S. | Formal comment on: Piscine reovirus: Genomic and molecular phylogenetic analysis from farmed and wild salmonids collected on the |

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|----------|---|--|
| | | Canada/US Pacific Coast. PloS one, 12(11), p.e 0188690. |
| 8/29/18 | Laurin, E., Jaramillo, D., Vanderstichel, R., Ferguson, H., Kaukinen, K.H., Schulze, A.D., Keith, I.R., Gardner, I.A. and Miller, K.M. | Histopathological and novel high-throughput molecular monitoring data from farmed salmon (<i>Salmo salar</i> and <i>Oncorhynchus</i> spp.) in British Columbia, Canada, from 2011–2013. Aquaculture. |
| 12/1/17 | Mimeault, C., Wade, J., Foreman, M.G.G., Chandler, P.C., Aubry, P., Garver, K.A., Grant, S.C.H., Holt, C., Jones, S.R.M., Johnson, S.C. and Trudel, M. Fisheries and Oceans Canada (DFO). | Assessment of the Risk to Fraser River Sockeye Salmon Due to Infectious Hematopoietic Necrosis Virus (IHNV) Transfer from Atlantic Salmon Farms in the Discovery Islands, British Columbia. Canadian Science Advisory Secretariat (CSAS). |
| 12/12/17 | Morton, A., Routledge, R., Hrushowy, S., Kibenge, M. and Kibenge, F | The effect of exposure to farmed salmon on piscine orthoreovirus infection and fitness in wild Pacific salmon in British Columbia, Canada. PloS one, 12(12), p.e 0188793. |
| 9/6/17 | Purcell, M.K., Powers, R.L., Evered, J., Kerwin, J., Meyers, T.R., Stewart, B. and Winton, J.R | Molecular testing of adult Pacific salmon and trout (<i>Oncorhynchus</i> spp.) for several RNA viruses demonstrates widespread distribution of piscine orthoreovirus in Alaska and Washington. Journal of fish diseases, 41(2), pp.347-355. |

Additionally, the EPA has discussed the scientific findings on disease transfer with NMFS and understands that similar disease transmission concerns remain relevant between net pen facilities raising native species (Coho, sablefish, future steelhead facilities, etc.) and wild salmon; however, the risks and pathways may vary. The analysis of the net pen facilities in this Addendum addresses the low risk associated with disease transfer between the additional native species and wild salmon.

Escapement

Information regarding an escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture’s Site 2 net pen off Cypress Island and the follow up and the associated response is summarized below.

On March 5, 2019, NMFS provided documents to the EPA regarding the 2017 escapement event to be considered in this consultation. These are listed in the table below. Although the EPA has reviewed these documents and is including them in the administrative record, the EPA is relying upon the technical expertise from NMFS in evaluating these studies in more detail and providing analysis. The EPA does not have further technical information beyond what has been supplied by NMFS on this topic.

In the EPA’s assessment of the technical information provided by NMFS, the EPA notes the following key findings regarding the escapement event:

- “Cooke reacted to the August 19 failure with substantial resources in an attempt to save the net pen again. When its efforts were unsuccessful, the company then turned to

stabilizing the collapsed structure, extracting the dead fish, and salvaging the pen. Cooke removed the surface portions of the net pen by September 24. Although Cooke stated by letter that it had removed all debris from the bottom of Deepwater Bay, an inspection by DNR on October 27 showed that substantial debris remained. DNR required further cleanup that lasted into January 2018.” (D Clark, K Lee, K Murphy, A Windrope, pages 7-8).

- As a result of the 2017 net pen failure and escapement event, 56,810 fish were recovered and between 186,149-205,849 fish were not recovered. 390 fish were recovered through beach seining in Deepwater Bay by Cooke and the smelt fishery caught 2,261 fish in the San Juan Islands through beach seining efforts. (D Clark, K Lee, K Murphy, A Windrope, page 111 and page 97).
- “Recovering fish from Puget Sound required a detailed understanding of co-management, fish regulations, fish science and an existing relationship with the fishing fleets. In the future, it may be more effective for DFW and co-managers to work together to design and implement recovery efforts with input and support from the net pen operator. The combined recovery effort could be tested and refined similar to the preparations for oil spill response.” (D Clark, K Lee, K Murphy, A Windrope, page 112).
- “The recovery response plan was not adequately detailed and future response plans need to be tailored to the site such that they reflect site-specific conditions, geography, currents and best approaches for recovery given those specifics. Initial recovery efforts were successful as the fish kept close to shore and were within the immediate area. As the recovery period moved past the first few weeks, however, the fish became widely dispersed or died and recovery became very difficult. In the future, recovery efforts should be immediate and comprehensive prior to dispersal.” (D Clark, K Lee, K Murphy, A Windrope, page 112).
- “1) To date, there is no evidence that the escaped Atlantic salmon were eating native fauna nor is there evidence that they were sexually mature. 2) Over time, the fish in the marine system contracted native pathogens and have shown decreasing health status. 3) Atlantic salmon have been found in a limited number of rivers in Puget Sound (Skykomish and Skagit rivers). Atlantic salmon have not been seen at any DFW hatchery despite monitoring. There is no indication that Atlantic salmon have been caught in Nooksack drainage or at Whatcom Creek Hatchery drainage. DFW was present at the chum spawns in late fall at Bellingham Technical College and did not see any Atlantic salmon in Whatcom Creek. 4) The limited numbers of Atlantic salmon found in the freshwater system appear healthy. There is no evidence that they were feeding in the freshwater system nor were they sexually mature. The Atlantic salmon in freshwater may survive for some time.” (D Clark, K Lee, K Murphy, A Windrope, page 113).
- “The 2017 Deepwater Bay releases were significant in size but follow a long period of minimal releases in Washington State and British Columbia and do not redefine the declining trend in Washington or B.C.” (Rensel, J.E., page 2).

- “No self-sustaining runs of Atlantic salmon have been established in either Washington State or British Columbia, either from repeated intentional plantings by government agencies starting many decades ago or from farmed salmon escapes. It is apparent that the vast majority of these fish do not survive very long outside aquaculture facilities as stomachs of recaptured fish in marine or freshwater are almost always empty. Five hundred fish stomachs were sampled from recovered fish in the 2017 Deepwater Bay releases. All stomachs were empty and that pattern occurs for the vast majority of other releases in the past.” (Rensel, J.E., page 2).
- “Cooke agrees with many of the lessons learned, particularly with respect to need for greater and closer coordination with the state, tribes, and the federal government. Cooke has already drafted revisions to its Fish Escape and Response Plan, is evaluating whether other operational changes may be needed and invites continued dialogue with agencies on how to improve regulatory oversight of its operations.” (Steding, D.J., page 11)

The EPA has discussed the scientific finding and lessons learned from the 2017 escapement event with NMFS. The EPA has concluded that its analysis of effects for certain species should be modified from the not likely to adversely affect (NLAA) finding in the 2010 BE to likely to adversely affect (LAA) due to the escapement risks and associated response. Although the inbreeding risk between the two species is low as a result of the escapement, adverse effects to listed species and take could occur from the process of collecting escaped fish (and facility debris) and potential bycatch of ESA-listed species. See 6.B., 6.C., and 6.D. below for the analysis of those effects and the EPA’s modification of the determinations to species and critical habitat. Further details are available in the documents identified in the table below and the EPA is relying upon the technical expertise from NMFS in evaluating these studies in more detail.

| Date | Author(s) | Title/Journal |
|-------------|---------------------------------------|---|
| 1/30/18 | D Clark, K Lee, K Murphy, A Windrope. | 2017 Cypress Island Atlantic Salmon Net Pen Failure: An Investigation and Review. Washington Department of Natural Resources. Olympia, WA. 120 pages. ⁴³ |
| 2018 | Rensel, J.E. (Jack) | Escaped Atlantic Salmon in Washington State. Prepared by Rensel Associate Aquatic Sciences for Cooke Aquaculture Pacific, Inc. 59 pages. |
| 1/29/18 | Steding, D. J. | Letter to Investigation and Review Panel, RE: Draft of Incident Review Board Report. January 29, 2018. |

As noted previously, the EPA has discussed the scientific findings on escapement with NMFS and understands that escapement risks remain relevant between net pen facilities raising native species that are not intended for release (sablefish, future steelhead facilities, etc.) and wild salmon. The proposed steelhead rearing activities would only raise sterile all-female triploid trout; therefore, if escapement were to occur it is the EPA’s understanding that the fish would

⁴³ January 30, 2018. D Clark, K Lee, K Murphy, A Windrope. *2017 Cypress Island Atlantic Salmon Net Pen Failure: An Investigation and Review*. Washington Department of Natural Resources. https://www.dnr.wa.gov/sites/default/files/publications/aqr_cypress_investigation_report.pdf?vdqi7rk

have a low likelihood of reproduction. While the EPA anticipates that steelhead would not prey on other species, the Agency is relying upon the technical expertise from NMFS in evaluating the potential risks of steelhead escapement and any subsequent reproduction and competition for space and resources. The inclusion of these facilities in this Addendum addresses the low risk of escapement and the interaction between the additional native species and wild salmon. Fish from salmon enhancement facilities (like those covered under the EPA’s NPDES GP) will be released into the wild at a future date, and their time in the net pens only serves to imprint the fish for purposes of return. Therefore, the inclusion of those facilities in this Addendum does not impact the analysis of effects due to escapement.

NPDES Permitting Actions to Minimize Risk

Lastly, this Addendum incorporates updated NPDES permitting actions by Ecology to minimize escapement risk and the upcoming phase out and moratorium on non-native fish species rearing by 2022, as well as the inclusion of facilities covered under the EPA’s NPDES GP. This Addendum also discusses the proposed rearing of steelhead trout in the net pens facilities previously used for Atlantic salmon.

NPDES permitting regulations for net pen facilities are found in the following regulations: 40 CFR Part 451, 40 CFR Part 122.24, and 40 CFR Part 122 appendix C, which together comprise the permitting regulatory requirements for different types of net pen facilities. One main difference is that net pen facilities that produce 100,000 pounds or more per year of aquatic animals, except for facilities rearing native species released after a growing period of no longer than 4 months to supplement commercial and sports fisheries, must follow the Effluent Limitation Guidelines (ELGs) at 40 CFR part 451. Facilities that do not fall under the ELGs may require an NPDES permit to discharge if the facility operates for more than 30 days per year, produces more than 20,000 pounds of harvest or release weight of aquatic animals per year, and feeds more than 5,000 pounds of food during the calendar month of maximum feeding.

Commercially Operated Net Pen Facilities

As indicated in the Background section, currently there are four commercial net pen facilities still in operation in Puget Sound. The 2010 BE evaluated impacts from eight facilities, but due to the collapse of Cooke’s net pen facility Cypress Island—Site 2 and the closure of the Port Angeles (Ediz Hook) net pen facility among others off Cypress Island, the number of active facilities has been reduced to four, including three in Rich Passage near Bainbridge Island (Clam Bay, Fort Ward, and Orchard Rocks) and one near Hope Island (Skagit Bay). The locations are shown on the maps included at the end of this Addendum.

Below is a table with information on the four current commercial net pen facilities in Puget Sound permitted by Ecology:

| Waterbody | Rich Passage (Clam Bay) | Rich Passage (Fort Ward) | Rich Passage (Orchard Rocks) | Skagit Bay (Hope Island) |
|-----------------------|--------------------------------|---------------------------------|-------------------------------------|---------------------------------|
| Facility Owner | Cooke Aquaculture | Cooke Aquaculture | Cooke Aquaculture | Cooke Aquaculture |
| Permit Number | WA0031526 | WA0031534 | WA0031542 | WA0031593 |
| Latitude | 47° 34’ 17’’ N (47.57139) | 47° 34’ 30’’ N (47.5750) | 47° 34’ 30’’ N (47.5750) | 48° 24’ 28’’ N (48.4078) |

| | | | | |
|---|---|---|---|--|
| Longitude | 122° 32' 25'' W (-122.54028) | 122° 31' 30'' W (-122.5250) | 122° 31' 50'' W (-122.5306) | 122° 33' 32'' W (-122.5589) |
| Net Pen Area (in feet) | 1010 x 185 | 650 x 185 | 900 x 185 | 10 pens approximately 80 square feet |
| Minimum Water Depth at Site ^ | 65 feet | 45 feet | 45 feet | Between 113 and 80 feet |
| Lease Acreage | 98.62 total (for all Rich Passage facilities) | 98.62 total (for all Rich Passage facilities) | 98.62 total (for all Rich Passage facilities) | 31.47 |
| Lease Expiration Date⁴⁴ | 11/10/2022 | 11/10/2022 | 11/10/2022 | 3/31/2022 |
| Current Species | Atlantic Salmon | Atlantic Salmon | Atlantic Salmon | Atlantic Salmon |
| Future Species | Native species | Native species | Native species | Native species |

^ Depths are given at Mean Lower Low Water (MLLW).

Information obtained from WDNR and Ecology draft permits.

In 2018, following the collapse of Cooke's net pen facility Cypress Island—Site 2 and the resulting escape of approximately 250,000 Atlantic salmon, the Washington State Legislature passed House Bill 2957, phasing out marine rearing of Atlantic salmon as the facility aquatic lands leases expire in 2022. Under the provisions of House Bill 2957, Ecology is authorized to renew the NPDES permits for the marine Atlantic salmon net pen facilities until the leases administered by DNR expire. Until Atlantic salmon farming is officially banned from Puget Sound starting in 2022, companies are required to have water quality discharge permits (NPDES permits). The updated permits incorporate lessons learned from the Cypress Island net pen failure and include closure requirements for the phaseout.

Ecology issued new NPDES permits for these four commercial net pen facilities on July 11, 2019.⁴⁵ The previous permits for these facilities were issued in 2007 and administratively extended in 2012. The NPDES permits require Best Management Practices (BMPs), monitoring, and reporting to ensure water quality standards are met. These facilities are operated to rear fish for harvest and market sale. Uneaten fish food, fish feces, antibiotics and the accidental release of Atlantic Salmon are the primary pollutants resulting from the operation of these facilities. The requirements in the permits allow Ecology to ensure that facilities are meeting water quality standards.

Additional protective measures in the updated 2019 permits include:

- Increasing underwater video monitoring of net pens.
- Conducting inspections to assess structural integrity of the net pens and submit inspection reports certified by a qualified marine engineer to Ecology.

⁴⁴ December 21, 2018. Personal communication with Jeff Vanderpham, NMFS. Information regarding Washington DNR aquatic leases.

⁴⁵ Washington Department of Ecology. Atlantic salmon net pen individual permits website. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

- Improving net cleaning and maintenance procedures to prevent biofouling and fish escape.
- Requiring the permittee to develop site specific response plans in the event of a fish release, and to conduct and participate in preparedness trainings.
- Requiring improved maintenance of the net pens.
- Maintaining contact information to notify area tribes in the event of a fish release.⁴⁶

The fact sheet for the permits summarizes the updated requirements as follows:

“This permit increases the frequency of sediment sampling from twice per permit cycle to annually between August 15 and September 30, and to conduct additional sediment monitoring within two weeks before or after each fish harvesting. Underwater video survey is also required annually rather than twice per permit cycle. Daily dissolved oxygen (DO) sampling at the edge of the pens in August and September has been added to the permit, to verify that aeration of the pens, a BMP employed to maintain DO levels within the pens, is effective during this critical period. Monitoring of current velocity has been added to this permit, as strong currents contribute to wear on the net pen structures. With this issuance of the permit, the Permittee is required to use the Water Quality Permitting Portal to submit electronic discharge monitoring reports (DMRs) and other required permit submittals and reports.

As part of the required pollution prevention plan, fish escape prevention plan, and fish escape reporting and response plan, this permit adds requirements related to engineering documents, notification of structural issues and repairs, net cleaning to prevent excess biofouling, and staff training in escape prevention and response.”⁴⁷

While these NPDES permitting requirements for Atlantic salmon net pen facilities should reduce the risk of escapement and the effects of response efforts related to an escapement event interfering with listed species and their critical habitat, they do not eliminate them. These permitting activities do not affect facilities covered by the EPA’s NPDES GP.

As indicated elsewhere in this Addendum, all-female triploid rainbow trout are expected to replace Atlantic salmon at all commercial net pen facilities. On January 21, 2020, WDFW approved an application from Cooke Aquaculture to farm all-female, sterile (triploid) rainbow trout/steelhead in Puget Sound. Ecology is now in the process of revising the NPDES permits to authorize the transition to rearing steelhead and is accepting public comments until June 8, 2020. Those potential indirect effects have been discussed above.

Facilities Covered Under the EPA’s NPDES General Permit

Out of an abundance of caution, the EPA is including facilities covered under the EPA’s NPDES GP which cites, but does not necessarily rely upon, the SMS at WAC 173-204, in this 2020

⁴⁶ Washington Department of Ecology. Atlantic salmon net pen individual permits website. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

⁴⁷ Washington Department of Ecology. Atlantic salmon net pen individual permits website. Fact Sheets. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

Addendum. There are significant differences (including duration, size, operation, etc.) between the permittees covered under the EPA’s NPDES GP, which applies to tribal enhancement and federal research facilities, and those covered under Ecology’s NPDES permits for large commercial net pen facilities for fish harvest and sale.

The EPA’s NPDES GP, which expires October 31, 2020, covers five tribal enhancement facilities⁴⁸ and specifically limits coverage to facilities rearing and releasing native fish species. One federal facility does not yet have permit coverage but is expected to be covered by the reissued EPA NPDES GP by the end of 2020. The reissued EPA NPDES GP anticipates including the facilities listed in the table below:

Facilities Covered Under the EPA’s NPDES GP

| Waterbody | Agate Pass | Elliott Bay | Peale Passage | Port Gamble | Quilcene Bay | Clam Bay |
|--------------------------|-------------------|--------------------|----------------------|-----------------------------|---------------------|--|
| Facility Operator | Suquamish Tribe | Suquamish Tribe | Squaxin Island Tribe | Port Gamble S’Klallam Tribe | Skokomish Tribe | NOAA (Manchester Research Station) |
| Coverage Status | Covered | Covered | Covered | NOI Submitted | NOI Submitted | Applied – will be covered under new general permit |
| EPA Permit # | WAG132001 | WAG132002 | WAG132003 | WAG132004 | WAG132005 | N/A |
| Latitude | 47.7036 | 47.6222 | 47.2004 | 47.8454 | 47.7893 | 47.5734 |
| Longitude | -122.5750 | -122.3676 | -122.9042 | -122.5738 | -122.8519 | -122.5456 |
| lbs of fish | 45,000 | 90,909 | 47,500 | 45,850 | 13,000 | 58,429 |
| # Months/Year | March-June (4) | March-June (4) | January-June (6) | February – May (4) | January-May (5) | Year-round |

⁴⁸ September 9, 2015. EPA Region 10. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-final-permit-2015.pdf>

April 30, 2015. EPA Region 10. Fact Sheet. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-fact-sheet-2015.pdf>

| | | | | | | |
|---------------------------------------|-----------|---------|-------|------|---------|--------------------|
| Lease Acreage | 5.5 | Unknown | 20.89 | 1.62 | Unknown | Unknown |
| Current Species | Coho | Coho | Coho | Coho | Coho | Sablefish |
| Min Clearance to Seafloor (ft) | 15 | 15 | 9.7 | 23 | | |
| Mean Low Water Depth (ft) | 45 | 40 | 24.5 | 48 | 30 | ~36 (unknown tide) |
| Current (cm/sec) | 206 (max) | 77 | 7 | 82 | 257 | |

NOI – notice of intent

In the EPA’s NPDES GP, the Total Organic Carbon (TOC) reference value table for sediment characterization directly underneath each net pen facility from the SMS was used. Also, the EPA cited the SMS regulations and net pen provisions in the factsheet in response to Ecology’s CWA section 401 certification. However, the EPA did not permit the allowance of a sediment impact zone. The permit already includes language prohibiting anoxic sediments beneath the net pens and dissolved oxygen water column monitoring and evaluation.

In addition, the EPA acknowledges the existence of other net pens in Puget Sound, however, since there are no NPDES permits associated with these facilities, the SMS regulations at WAC-173-204-412 do not apply. Therefore, these facilities are not analyzed in this BE Addendum.

6.B. ANALYSIS OF EFFECTS ON FISH SPECIES

The analyses in this Addendum and the previous BEs with the support of the NOAA technical memorandums, conclude that the marine finfish rearing facility provision is protective of designated uses, including those related to wild salmon in Puget Sound, and net pen facilities carry an insignificant risk of negatively affecting wild salmon. However, due to escapement concerns and effects following the 2017 net pen collapse, the EPA has concluded that its approval of WAC 173-204-412 **is likely to adversely affect** the following listed species:

| | |
|---------------------------------|--|
| <i>Oncorhynchus tshawytscha</i> | Chinook Salmon (Puget Sound ESU) |
| <i>Oncorhynchus keta</i> | Chum Salmon (Hood Canal summer-run ESU) |
| <i>Oncorhynchus mykiss</i> | Steelhead (Puget Sound, DPS) |
| <i>Sebastes paucispinis</i> | Bocaccio (Puget Sound/Georgia Basin DPS) |
| <i>Sebastes ruberrimus</i> | Yelloweye Rockfish (Puget Sound/Georgia Basin DPS) |

Note that this determination is a result of the indirect effects of the operation of commercial net pen facilities. There is a low risk of competition between the escaped fish and ESA-listed species. The risk is also low associated with bycatch of ESA-listed species during potential recovery efforts.

The EPA has concluded that its approval of WAC 173-204-412 is unchanged from the 2010 BE as escape from commercial net pens is not likely to create an increased risk to non-salmon species. This analysis has been updated to include North American Green Sturgeon (Southern DPS) and Pacific Eulachon (Southern DPS). Therefore, the EPA has concluded its action **may affect, but is not likely to adversely affect** the following listed species:

| | |
|-------------------------------|--|
| <i>Acipenser medirostris</i> | North American Green Sturgeon (Southern DPS) |
| <i>Thaleichthys pacificus</i> | Pacific Eulachon (Southern DPS) |

6.C. ANALYSIS OF EFFECTS ON MARINE MAMMALS

The EPA has concluded that its approval of WAC 173-204-412 is unchanged from the 2010 BE as escape from commercial net pens is not likely to create an increased risk to marine mammals. Therefore, the EPA has concluded its action **may affect, but is not likely to adversely affect** the following listed species:

| | |
|-------------------------------|--|
| <i>Megaptera novaeangliae</i> | Humpback Whale (Pacific Coast, Mexico DPS and Central America DPS) |
| <i>Orinus orca</i> | Killer Whale (Southern Resident, DPS) |

6.D. EFFECTS OF THE ACTION ON CRITICAL HABITAT

The listed species with designated critical habitat analyzed in the 2010 BE are Chinook salmon (Puget Sound ESU), Chum salmon (Hood Canal summer-run ESU), and Killer Whale (Southern Resident, DPS). This Addendum has been updated to include critical habitat for Steelhead (Puget Sound, DPS), North American Green Sturgeon (Southern DPS), Pacific Eulachon (Southern DPS), Bocaccio (Puget Sound/Georgia Basin DPS) and Yelloweye Rockfish (Puget Sound/Georgia Basin DPS).

After evaluating escape concerns and effects following the 2017 net pen collapse, the EPA has concluded that its approval of WAC 173-204-412 **may affect, but is not likely to adversely affect** critical habitat for the following listed species. Despite concluding likely to adversely affect due to escapement and response efforts for these species, critical habitat is not implicated in the same manner as the species themselves.

| | |
|---------------------------------|--|
| <i>Oncorhynchus tshawytscha</i> | Chinook Salmon (Puget Sound ESU) |
| <i>Oncorhynchus keta</i> | Chum Salmon (Hood Canal summer-run ESU) |
| <i>Oncorhynchus mykiss</i> | Steelhead (Puget Sound, DPS) |
| <i>Sebastes paucispinis</i> | Bocaccio (Puget Sound/Georgia Basin DPS) |
| <i>Sebastes ruberrimus</i> | Yelloweye Rockfish (Puget Sound/Georgia Basin DPS) |

This analysis has been updated to include North American Green Sturgeon (Southern DPS) and Pacific Eulachon (Southern DPS) critical habitat. As with the determination above, the EPA has concluded its action **may affect, but is not likely to adversely affect** the critical habitat for the following listed species:

Acipenser medirostris
Thaleichthys pacificus

North American Green Sturgeon (Southern DPS)
 Pacific Eulachon (Southern DPS)

Consistent with the 2010 BE, the EPA is not revising the analysis of effects on critical habitat for the Killer Whale (Southern Resident, DPS) as escapement risk and the EPA’s action **may affect, but is not likely to adversely affect** critical habitat for that marine mammal species.

7. Cumulative Effects

The findings for this section are unchanged from the 2010 BE.

8. Summary of Findings

Table 8-1 Species and Critical Habitat that this Consultation May Affect (LAA or NLAA).⁴⁹

| | Species | ESU/DPS/Population | Critical Habitat Designation |
|---|---|---|------------------------------|
| 1 | Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | Yes |
| 2 | Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | Yes |
| 3 | Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | Yes |
| 4 | Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | Yes |
| 5 | Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | (Puget Sound/Georgia Basin DPS) | Yes |
| 6 | North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | Yes |
| 7 | Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | Yes |
| 8 | Humpback Whale (<i>Megaptera novaeangliae</i>) | Pacific Coast, Mexico DPS and Central America DPS | No |
| 9 | Killer Whale (<i>Orcinus orca</i>) | Southern Resident, DPS | Yes |

Table 8-2 summarizes the EPA’s determinations, updated from the 2010 BE, for ESA-listed species, under NOAA jurisdiction, analyzed for the EPA’s approval of Washington’s marine finfish rearing facility provision, WAC 173-204-412.

Table 8-2 LAA Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA’s Approval of WAC 173-204-412 |
|---|--------------------|---|
| Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | LAA |

⁴⁹ March 7, 2019. Personal communication with Jeff Vanderpham, NMFS. Species list/critical habitat for net pen consultation.

| | | |
|--|----------------------------------|-----|
| Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | LAA |
| Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | LAA |
| Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | LAA |
| Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | Puget Sound/Georgia Basin DPS | LAA |

LAA – Likely to adversely affect

Table 8-3 summarizes the EPA’s determinations, updated from the 2010 BE, for ESA-listed species, under NOAA jurisdiction, analyzed for the EPA’s approval of Washington’s marine finfish rearing facility provision, WAC 173-204-412.

Table 8-3 NLAA Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA’s Approval of WAC 173-204-412 |
|--|--|---|
| Humpback Whale (<i>Megaptera novaeangliae</i>) | Pacific Coast, Mexico DPS and Central America DPS | NLAA |
| Killer Whale (<i>Orcinus orca</i>) | Southern Resident, DPS | NLAA |
| North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | NLAA |
| Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | NLAA |

NLAA – May affect, but is not likely to adversely affect

Table 8-4 summarizes the EPA’s determination of No Effect for ESA-listed species, under NOAA jurisdiction, analyzed for the EPA’s approval of Washington’s marine finfish rearing facility provision, WAC 173-204-412. These findings are unchanged from the 2010 BE.

Table 8-4 NE Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA’s Approval of WAC 173-204-412 |
|---|--|---|
| Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Snake River Fall Run Lower Columbia River Upper Columbia River Spring Run Snake River Spring/Summer Run | NE |
| Chum Salmon (<i>Oncorhynchus keta</i>) | Columbia River | NE |
| Coho Salmon (<i>Oncorhynchus kisutch</i>) | Lower Columbia River | NE |
| Sockeye Salmon (<i>Oncorhynchus nerka</i>) | Ozette Lake | NE |

| Species | ESU/DPS/Population | Effects Determination for the EPA's Approval of WAC 173-204-412 |
|---|--|---|
| Steelhead (<i>Oncorhynchus mykiss</i>) | Snake River Basin Lower Columbia River Upper Columbia River Basin Middle Columbia River | NE |
| Southern Sea Otter (<i>Enhydra lutris neries</i>) | | NE |
| Green Sea Turtle (<i>Chelonia mydas</i>) | | NE |
| Leatherback Sea Turtle (<i>Dermochelys coriacea</i>) | | NE |

NE – No effect

Table 8-5 summarizes the EPA's determinations, updated from the 2010 BE, for critical habitat, under NOAA jurisdiction, analyzed for the EPA's approval of Washington's marine finfish rearing facility provision, WAC 173-204-412.

Table 8-5 Critical Habitat Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA's Approval of WAC 173-204-412 |
|---|----------------------------------|---|
| Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | NLAA |
| Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | NLAA |
| Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | NLAA |
| Killer Whale (<i>Orinus orca</i>) | Southern Resident, DPS | NLAA |
| Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | NLAA |
| Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | Puget Sound/Georgia Basin DPS | NLAA |
| North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | NLAA |
| Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | NLAA |

NLAA – May affect, but is not likely to adversely affect

9. Sediment Testing Methodology Provisions

The EPA is not changing the results of the findings in the 2010 BE for these provisions and the listed species/critical habitat covered in the 2010 BE (with the exception of WAC 173-204-520(3)(d)(iv)). As noted above, *WAC 173-204-520(3)(d)(iv). Juvenile polychaete Puget Sound marine sediment cleanup screening levels and minimum cleanup level biological criteria*, is no longer included in this ESA consultation. The state deleted and substantively replaced this

provision as part of its revisions to the SMS in 2013. On December 18, 2015, the EPA rescinded its 2008 approval of this provision and no longer views Part V of the SMS to be WQS. Therefore, this provision is no longer part of the consultation and this Addendum.

See the 2010 BE for more information and details on the remaining sediment testing methodology provisions. Because these provisions that the EPA included in the 2010 BE are solely focused on the quality of the control and reference sediment samples for juvenile polychaete growth and larval bivalve survivorship that serve to improve the reliability of test results for benthic community protection, the EPA concludes this action **may affect, but is not likely to adversely affect** endangered or threatened species or designated critical habitat for the following new species and critical habitat listed since 2010:

- North American Green Sturgeon, Southern DPS
- Pacific Eulachon, Southern DPS
- Steelhead Puget Sound DPS Critical Habitat
- Bocaccio Puget Sound/Georgia Basin DPS Critical Habitat
- Yelloweye Rockfish Puget Sound/Georgia Basin DPS Critical Habitat

10. References

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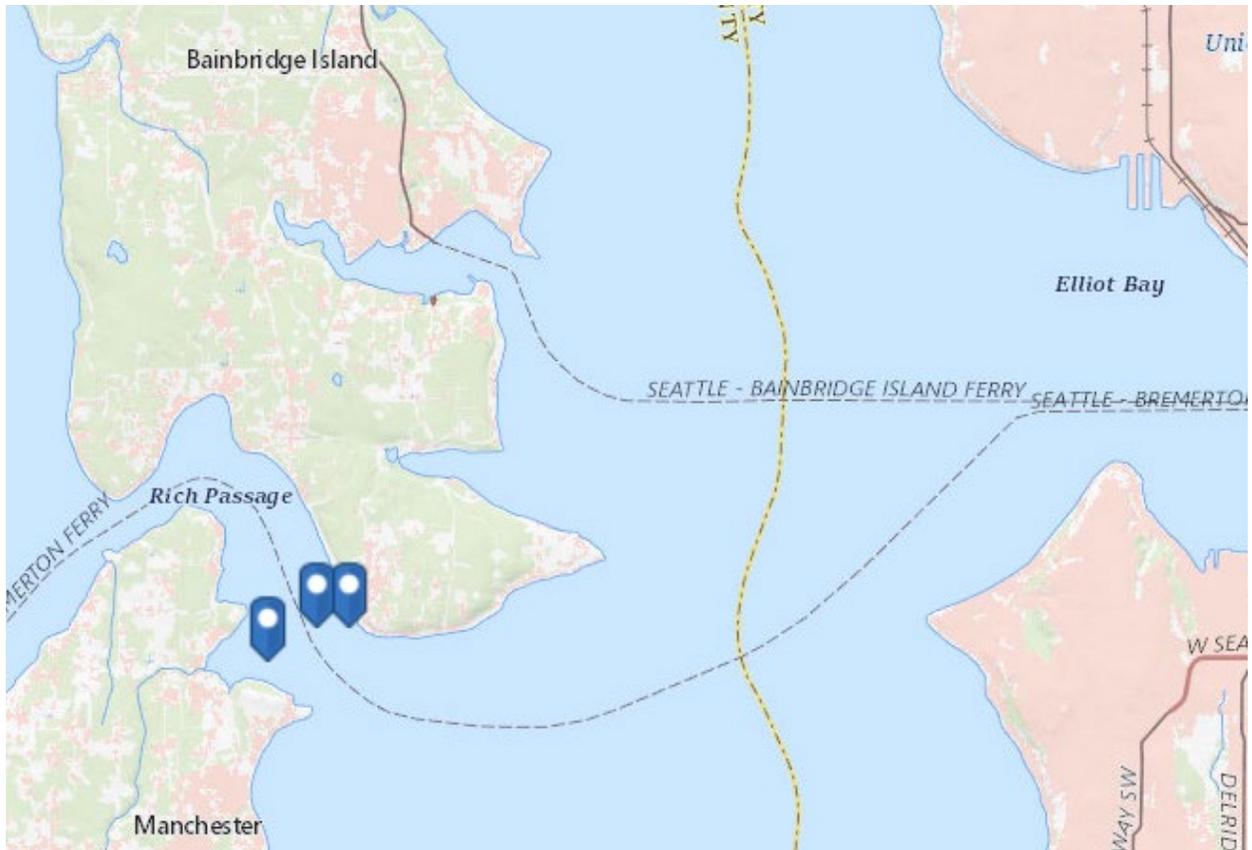
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11. Maps

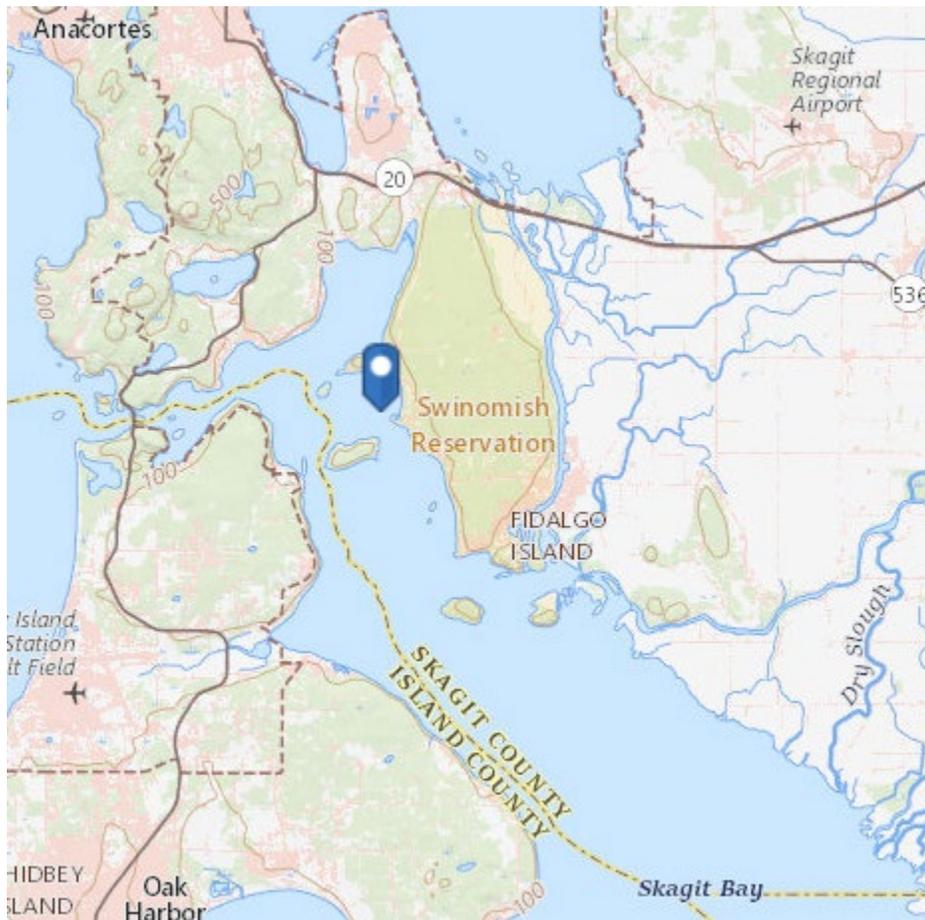
Figure 1. Rich Passage Atlantic Salmon Rearing Facilities



From Ecology (accessed May 26, 2020):

<https://ecology.wa.gov/DOE/media/Images/WATER-SHORELINES/Water%20quality/Regs%20Permits/3-netpens.PNG>

Figure 2. Hope Island (Skagit Bay) Atlantic Salmon Rearing Facility



From Ecology (accessed May 26, 2020): <https://ecology.wa.gov/DOE/media/Images/WATER-SHORELINES/Water%20quality/Regs%20Permits/skagit-netpen.PNG>

Figure 3. Facilities Covered Under EPA's General Permit



Figure 4. Puget Sound Steelhead Critical Habitat



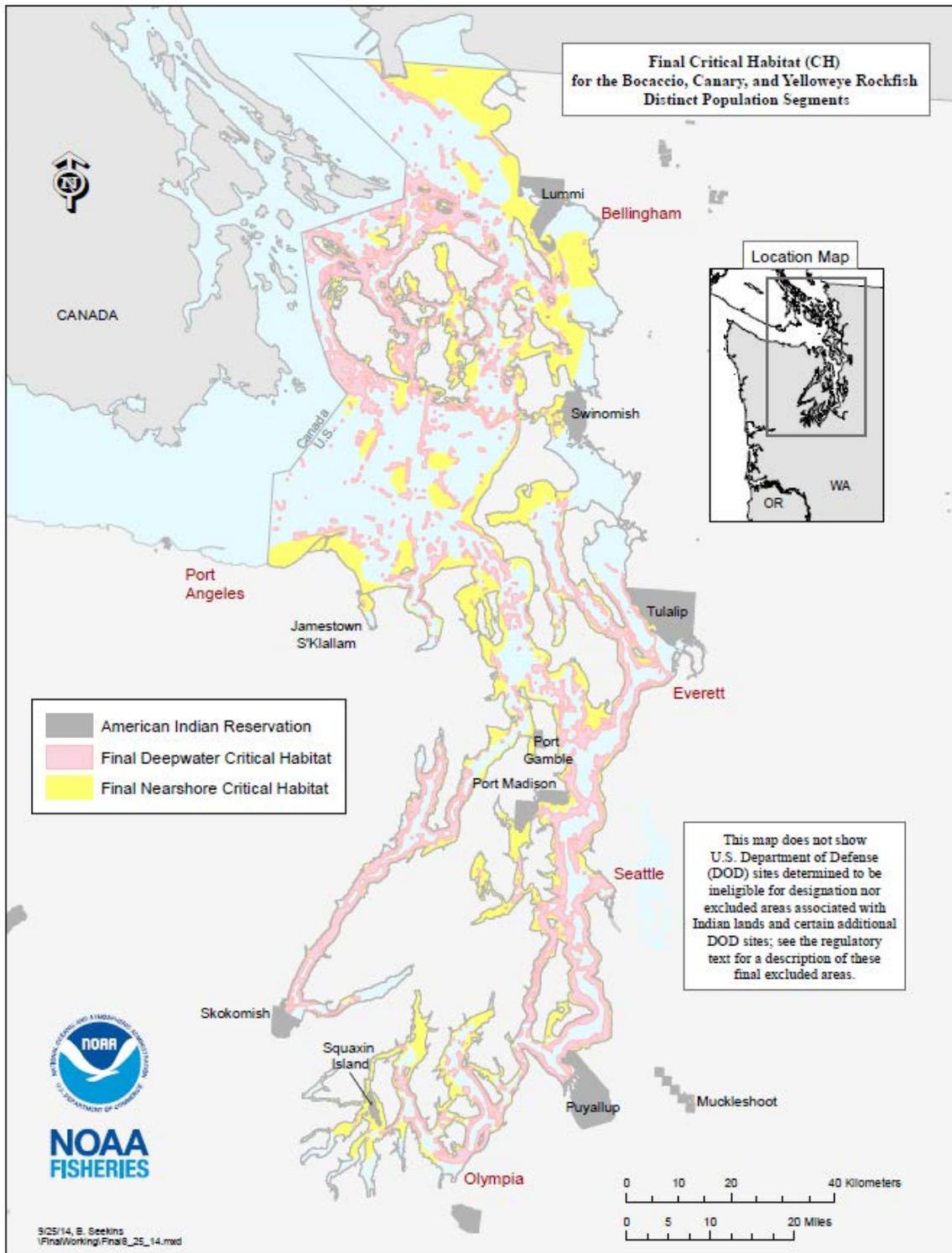
Final Critical Habitat
Puget Sound Steelhead



See Federal Register notice for detailed description of critical habitat (81 FR 9252, February 24, 2016)
DOC-NOAA Fisheries-West Coast Region

From NOAA Fisheries (accessed May 26, 2020):
https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/steelhead/steelhead_ps.pdf

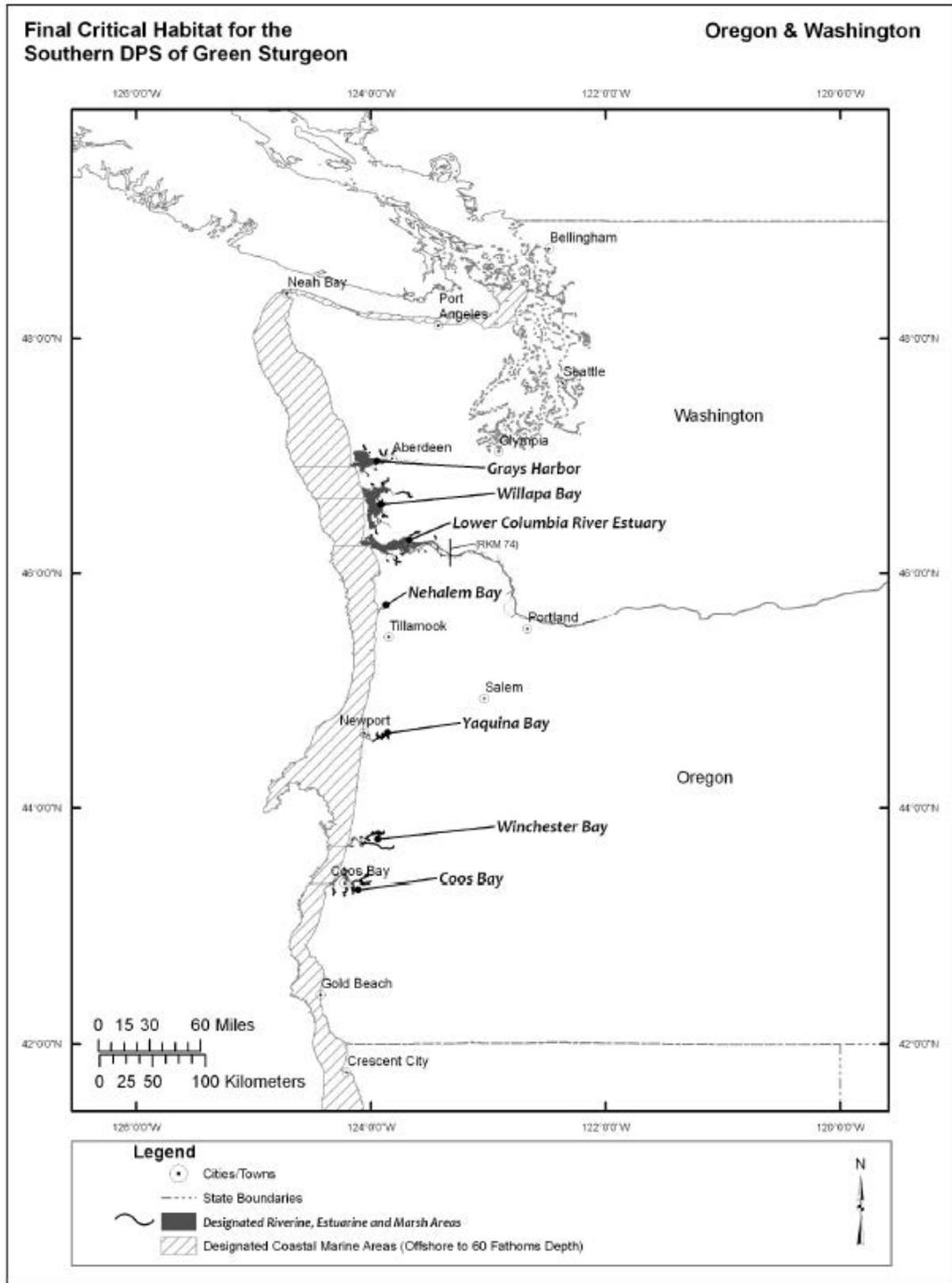
Figure 5. Bocaccio and Yelloweye Rockfish Critical Habitat



From NOAA Fisheries (accessed May 26, 2020):

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf Note: Effective March 24, 2017, Canary Rockfish were delisted.

Figure 6. Green Sturgeon Critical Habitat



See Federal Register Notice for detailed description of critical habitat (74 FR 52300)
DOC-NOAA Fisheries-West Coast Region

From NOAA Fisheries (accessed May 26, 2020):

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/greensturgeon_ch_maps.pdf

Figure 7. Eulachon Critical Habitat

**Final Critical Habitat for
the Southern DPS of Eulachon Northern Oregon & Washington**



Legend

-  Designated Critical Habitat for Southern DPS of Eulachon
-  State Boundary
-  Cities and Towns

From NOAA Fisheries (accessed May 26, 2020):
https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/eulachon/eulachon-ch-maps.pdf

SHORELINE MANAGEMENT ACT OF 1971
PERMIT FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT

NOTE - THIS PAGE FOR
LOCAL GOVERNMENT USE
ONLY

APPLICATION NO. 503
Administering Agency Kitsap County
Date Received January 25, 1988
Approved X Denied _____
Date June 13, 1988

Type of Action (Check if appropriate)

- Substantial Development Permit
- Conditional Use
- Variance

Pursuant to Chapter 90.58 RCW, a permit is hereby granted to

Global Aqua USA, Inc.
355 Ericksen, Suite 421 (Name of Applicant)
Bainbridge Island, WA 421

to undertake the following development (Please be specific) Replacement and reconfiguration
of existing floating netpens based on current state of the art standards and equipment.

Saltwater Site #1

upon the following property (please list the legal description, i.e., section to
the nearest quarter section, township, range)

SEE ATTACHED

The project will (~~be/xxxx~~) be within shorelines of statewide significance
(RCW 90.58.030). The project will be located within a (environment) Conservancy
designation. The following master program provisions are applicable to this development
(please state the master program section or page number)

USE ACTIVITIES - Section II - Aquaculture, p. 7-5 - 7-6

Section IV - Commercial Development, p. 7-10 - 7-11

EXHIBIT I

LEGAL DESCRIPTION
SW I Clam Bay

That portion of the bed of Clam Bay, owned by the State of Washington, situate in front of Government Lots 2 and 4, Section 15, Township 24 North, Range 2 East, W.M., included in a tract described as follows:

Commencing at U.S.C. and G.S. Monument "Middle," having a Y Coordinate of 215,334.05 and an X Coordinate of 1,577,992.46, as referred to the Washington Coordinate System, North Zone, and running thence S 4° 01' 19.734" E 1,875.456 feet to a point having a Y Coordinate of 213,463.213 and an X Coordinate of 1,578,124.098, and true point of beginning of this description, continuing thence S 4° 01' 19.734" E 802.337 feet, to a point on the four fathom line in front of said Government Lot 2, having a Y Coordinate of 212,662.852 and an X Coordinate of 1,578,180.286, thence easterly along said four fathom line 1,516.0 feet, more or less, to a point having a Y Coordinate of 212,085.50 and an X Coordinate of 1,579,515.46, thence N 31° 23' 10.563" E 573.977 feet to a point having a Y Coordinate of 212,575.49 and an X Coordinate of 1,579,814.39, thence N 48° 47' 30.397" W 804.936 feet to a point having a Y Coordinate of 213,105.78 and an X Coordinate of 1,579,208.82, and thence N 71° 45' 48.706" W 1,142.180 feet to the true point of beginning.

Dear Ms. Niewolny,

Please accept the following public comments from the Rich Passage Estates Homeowners' Association located on Bainbridge Island, Washington related to the Department of Ecology's announcement of permit modifications related to Cooke Aquaculture's application to raise all-female, triploid steelhead in its net pens on Bainbridge and Hope Island. The goal of the Department of Ecology should be to solicit public comment that will aid in the development of a robust NPDES permit that will ensure that a potential net pen operator is in compliance with maintaining water quality standards at the highest level.

Troubling, is the notion of forging ahead with this public comment during a global pandemic and constrained opportunities for public input. This net pen modification should include opportunities for public meetings when considered safe under Governor Inslee's Stay Home, Stay Healthy order. Ecology is the same agency that spanned 20+ months from the expiration of the last NPDES, October 26, 2017, to the issuance of the current permit on July 11, 2019 surrounding the Cypress Island disaster. There, Ecology provided several public comment opportunities in the communities where net pens operate. There is no urgency to populate Puget Sound net pens with Steelhead while the net pen operator has the necessary permits in place to continue farming Atlantic salmon for the near term. Further, there is no rush to proceed with the issuance of modifications to the NPDES permits until a determination has taken place related to lawsuits against the Washington Department of Fish and Wildlife brought by environmental groups.

As some of the closest neighbors to a Cooke facility, we are conveying concerns surrounding the lack of available updated science, resistance by Ecology to modify certain aspects of the permit conditions in the last NPDES permit, the company's failure to fully incorporate the lessons learned from the Cypress Island net pen disaster, issues related to transparency, and Cooke's appalling record in Washington State and elsewhere.

Updated permits issued in July 2019 incorporate lessons learned from the net pen failure

Lessons learned from the net pen collapse at a Cooke Cypress Island site in August 2017 and the investigation are reflected in the updated permits issued in July 2019. To protect Washington waters as much as possible, additional protective measures in the permits include:

- *Increasing underwater video monitoring of net pens*
- *Conducting inspections to assess structural integrity of the net pens and submit inspection reports certified by a qualified marine engineer to Ecology*
- *Improving net cleaning and maintenance procedures to prevent biofouling and fish escape*
- *Requiring the permittee to develop site specific response plans in the event of a fish release, and to conduct and participate in preparedness trainings*
- *Requiring improved maintenance of the net pens*
- *Maintaining contact information to notify area tribes in the event of a fish release*

Updated Science-Based Approach

Commenters on both sides of the proposal to modify the NPDES permit have recommended a science-based approach to decision making. Science is objective. It is not political.

The reality here is that the risks and guidance to mitigate the impacts are based on decades old science and outdated assumptions. The passage below is from the Department of Ecology fact sheet for NPDES permits and states that the conclusions from NOAA, which drive much of the guidance, are based on three major assumptions which may no longer be valid:

In 1990, at the direction of the Legislature, WDFW published a programmatic environmental impact statement of net pen aquaculture (Parametrix 1990). Risk to native fish by Atlantic salmon was determined to be low.

In 2002, NMFS published its review (Waknitz et. al 2002, NOAA Tech. Memo NMFS-NWFSC-53) of the impacts Atlantic salmon net pen aquaculture would pose to Puget Sound Chinook and Hood Canal summer-run chum salmon. This was done because the two native species were listed as threatened under the ESA in 1999.

Their conclusions were caveated with three major assumptions: 1) the industry remains near the current size at the time of the assessment (2002), 2) the net pens only reared Atlantic salmon, and 3) no new Atlantic salmon stocks than already are present be farmed in the net pens.

The NMFS concluded there were no serious or moderate risks posed by the Atlantic salmon net pen industry to native fish. Their findings included that there was one element with no risk, some with low risk, and some with little risk.

There was no risk of adverse genetic interaction from transgenic salmon because there are currently no transgenic salmon being commercially cultured. Transgenic fish, as defined in WAC 220-370-100, are not permitted (the regulatory authority being WDFW) to be used in Washington State.

After Cooke purchased assets from Icicle Seafood in 2016, they attempted to increase the limit on the size of net pen acreage by 150% in Rich Passage. Cooke has had an industry pattern of growth through acquisition and expansion which is counter to assumption number 1. From the Cooke story on their website: *“In recent years, we have embarked on an aggressive plan for growth, including acquisitions and an ongoing strategic search for development opportunities.”*

Steelhead have never been raised in salt water net pens on this scale in Washington State or elsewhere. Cooke has provided no evidence that they have experience in raising steelhead which is not consistent with assumptions 2 and 3.

The raising of Rainbow Trout and Steelhead in fresh water commercial applications has a long history of problem free operation. The risks for fresh water and marine water are different as are the mitigations to reduce risk. The following excerpt provides some relevant information on the U.S. Trout Industry as a whole. The U.S. Trout industry appears to use environmentally sustainable and responsible means in **fresh water**.
https://en.wikipedia.org/wiki/Rainbow_trout

*“Rainbow trout are commercially farmed in many countries throughout the world. The practice began in the late 19th century,[45] and since the 1950s commercial production has grown dramatically.[46] Worldwide, in 2007, 604,695 tonnes (595,145 long tons; 666,562 short tons) of farmed rainbow trout were harvested with a value of about US\$2.6 billion.[46] The largest producer is Chile. In Chile and Norway, sea cage production of steelhead has expanded to supply export markets. Inland production of rainbow trout to supply domestic markets has increased in countries such as Italy, France, Germany, Denmark and Spain. Other significant trout-producing countries include the U.S., Iran, the United Kingdom,[46] and Lesotho.[47] **While the U.S. rainbow trout industry as a whole is viewed as ecologically responsible,[48] trout raised elsewhere are not necessarily farmed with the same methods.[45]***

About three-quarters of U.S. production comes from Idaho, particularly the Snake River area,[45] due in part to the quality and temperature of the water available there.[49] California and Washington also produce significant numbers of farmed trout. In the east, Pennsylvania, North Carolina and West Virginia have

*farming operations.[45][50] Rainbow trout farming is one of the largest finfish aquaculture industries in the U.S.[45] **They are raised inland in facilities where raceways or ponds have continuously flowing water with little pollution and a low risk of escape.** The U.S. industry is noted for using best management practices.[48] Imports constitute only about 15 percent of farmed rainbows sold in the U.S., and nearly all domestic production is consumed within the country; very little is exported. The U.S. produces about 7 percent of the world's farmed trout.[45] Rainbow trout, especially those raised in farms and hatcheries, are susceptible to enteric redmouth disease. A considerable amount of research has been conducted on redmouth disease, given its serious implications for rainbow trout farming. The disease does not infect humans.[51]"*

With respect to Steelhead, or Rainbow Trout raised in saltwater, the U.S industry has not employed responsible measures. Per the Seafood Watch (Seafood Watch U.S. Farmed Trout March 28, 2006)

Rainbow trout is also marketed as 'steelhead or 'steelhead trout'. US farmed steelhead trout is raised in the same manner as farmed rainbow trout and therefore, is also included in this recommendation. A relatively small amount of farmed rainbow trout is also imported, however, production techniques for imported trout can be significantly different from the domestic production techniques. Imported farmed trout can be raised in saltwater net pens, which release waste directly in the ocean. Due to differences in production method, imported farmed trout are not included in this recommendation.

Similarly, the use of triploid Rainbow Trout by State Agencies for recreational purposes is consistent with State Goals related for the use of public waters. While controversial from angler's perspectives, there is a balance to catch large fish versus species preservation. Note, the program of using triploid rainbow trout in lakes and streams for recreational purposes in Washington was discontinued in 2017.

Unfortunately, for the second year in a row no triploid rainbows are being released due to state budget constraints. These popular fish are known as eating machines and really provided a boost to the trout fishery with their novelty. In the past they were purchased from an outside vendor. (Seattle Times March 26, 2019 Andy Walgamott)

Fresh-water rainbow trout/Steelhead are not the same as a large-scale first-time experiment in a marine environment that Cooke is now proposing. Cooke cited the following study in their annotated bibliography (Carasco et al 1998).

"In spite of the growing commercial use of triploids, their reproductive development remains poorly understood. Evidence to date indicates that the reproductive effects of induced triploidy vary in different fish species and between the sexes, from complete or partial sterility to functional reproduction."

While the use of induced triploidy in Rainbow Trout has been common, there has been limited **adoption** by the aquaculture industry with respect to marine salmonids. Below is an abstract from a researcher at the University of New Brunswick.

"The concept of using induced triploidy as a means of providing sterile fish for aquaculture and fisheries management is not new, having been first suggested over 30 years ago. Triploid Atlantic salmon were first produced almost 25 years ago, and they have been evaluated in the European, North American and Australian aquaculture industries. Through this work it has been demonstrated that it is easy to mass produce triploid salmon and that, when combined with simple and proven methods for producing all- female populations, triploidy is highly effective at suppressing gonadal development in Atlantic salmon. However, aside from Tasmania, there is currently no use of triploid Atlantic salmon in commercial aquaculture. This paper will review the development of triploidy as a management tool and outline some of the limitations of

triploid performance that have influenced the decisions of industry not to adopt this technology. Finally, suggestions will be made for how to approach genetic and husbandry improvements to enhance the potential of triploid Atlantic salmon in commercial culture.” (Tillmann J. Benfey, Triploid Atlantic salmon: current status and future prospects, 2009)

Previous owners and Cooke never acted on using Sterile Same Sex fish in the 30 years of operation.

This only became critical when the public and State Legislators sent a strong message limiting their future operations. Absent the passage of State Law, Cooke might still not be considering farming sterile monosexual fish of any species. When researching Triploid Salmonids online, a significant number of the research articles only address the commercial aspects such as growth rates, efficiency, and the potential for aquaculture. Very little information is available about issues of verification, adaptive to feeding, and dispersion from escapes. Most research on Steelhead was related to freshwater and almost none was focused on Marine environments. Even in the research cited by Cooke in their application, there is non-conclusive evidence plus a conclusion that more research needs to be done.

Nowhere in Cooke’s SEPA Checklist does Cooke state that they have had any experience farming sterile female Atlantic salmon or Steelhead on the scale that they are proposing in marine waters or dealing with the residual risks associated with triploid fish. This appears to be their first experiment for their global company. Washington State waters should not be used as a commercial aquaculture experiment.

“What Cooke is proposing right now is something that isn’t done in Washington, which is to raise the species in marine net pens for the entire duration of their grow out,” says Warheit. “No one is doing that in marine waters.” (Ken Warheit-- WDFW, From Crosscut, August 5, 2019)

To date the only experiments that we know of in the United States related to raising ocean steelhead in sea cages are the following: The University of New Hampshire and Maine have focused on the viability of raising steelhead in small sea cages that contain 2,000 fish in order to help commercial fisherman supplement their income. The focus has not been on either the effects of triploidy or environmental impacts but on commercial techniques to produce marketable fish.

“Chambers says Maine’s long, protected coastline offers many feasible spots to set up steelhead trout farms. Additionally, Chamber’s team hopes to develop submergible systems that could be sited farther offshore and be pushed under the surface of the water in the face of bad storms that otherwise could toss the pens around, damage them and potentially allow the trout to escape into the sea. If do they get out, they could cross-breed with wild fish, but proponents argue these fish have been stocked in lakes and river here for almost 60 years, and some have made their way to the ocean of their own accord without wreaking havoc. Another objection often heard to ocean-farmed fish is that they can pass diseases on to surrounding wild fish, but this IMTA approach helps keep diseases down, Chambers says. He also made it clear these pens are intended for small-scale farming, not for industrial fish production.” (Portland Press Herald, 2014)

Another project proposal by Chambers raises the question of marketability and scale of implementation:

<https://seagrant.unh.edu/project/research/seawater-acclimation-juvenile-steelhead-trout-onchorhynchus-mykiss>

One observation we, as well as commercial growers in Canada, have made over three years working with this species is that a portion of the cultured population (~10%) is stunted. This results in: (1) difficulty in the harvesting schedule because not all individuals are ready for market at the same time; and/or (2) loss of a portion of the crop if some individuals never reach market size.

“We are interested in finding the cause(s) of stunting, and trying to minimize or eliminate it. One potential cause relates to acclimation of the fish from their freshwater hatchery environment to seawater. In nature, juvenile steelhead trout migrate from freshwater rearing habitats, through estuaries, to ocean environments -

- a process that can take from weeks to months depending on the strain of steelhead. During this migration they undergo smoltification, a complex morphological, behavioral and physiological process that alters their appearance, behavior, and their osmoregulation from ion retention to ion excretion. In contrast to the gradual transition from fresh, to estuarine, to salt water that occurs in nature, cultured steelhead are typically moved from a freshwater hatchery directly into seawater, which may impair physiological functions in some individuals, and cause them to be stunted.

We propose to test the hypothesis that the rapid transfer of steelhead from fresh to salt water (no acclimation) can result in stunting. Further, we hope to determine if the length of time spent in estuarine (low salinity) conditions affects the proportion of stunted individuals. In a subsequent Sea Grant proposal, we plan to hold steelhead in replicate cages near the Jackson Estuarine Lab for varying lengths of time before moving them to the coast, and compare their survival, growth, blood chemistry and size frequency distribution to fish moved directly into seawater with no acclimation.

If fortunate enough to be funded by N.H. Sea Grant, the funding would not be available until 2014. We hope to gather some preliminary data in 2013, refine our methods, and work on the logistics of holding the fish at two different locations. Accomplishing this work would ensure our chances of success in the full proposal. Further, the supplies we purchase this year would decrease our budget request in the full proposal.

Our plan for 2013 would include purchasing 1000 steelhead trout (200g average weight) in late April. This number is needed since we see a small proportion of stunted fish, and we need to ensure an adequate sample size of small individuals. Half the fish would be held in a small net pen located in the estuary near Jackson Lab, and half the fish would be located in a similar net pen at the Judd Gregg Marine Research Facility. Temperature and salinity data loggers would be attached to both net pens to record these environmental variables. Fish would be fed 5% of their body weight in two daily feedings, and the number and size of any mortalities would be recorded. On the first day, and at weekly intervals thereafter, a random sample of fish from each location would be anesthetized, weighed, and measured. On the same schedule, a blood sample (caudal vein) from a random sample of 20 individuals would be obtained, and blood osmolarity would be measured. At the end of three weeks, fish held near JEL would be moved by boat (estuarine water in insulated containers) to a separate net pen at the coast. Sampling of length, weight, survival and blood chemistry would continue, for both groups of fish, over the following three weeks.

This project would give us good preliminary data on the value of acclimation, and allow us to work on the logistics of maintaining fish at a new location Great Bay (e.g. mooring a cage, feeding the fish twice per day).

As indicated, we have been working with six commercial fishermen on steelhead trout aquaculture over the last two years. In order to continue our outreach goals and support of this group, they would participate in this preliminary research, and we would donate the fish to them, for on growing and marketing, when we completed our studies.”

Basically, these experiments demonstrate that the focus is on growing and not protecting the environment or native species and nothing anywhere near the scale that Cooke is proposing.

The experiment that should be undertaken is using land-based, closed-containment systems. Cooke is presently experimenting with land-based systems in Chile. Why not here?

<https://thefishsite.com/articles/cooke-set-for-several-land-based-farms>

“The first of these projected projects will be in Chile, with the exact terms set to be finalised next month, while the deliveries of the land-based systems are forecast to occur between Q4 2019 and Q4 2021.”

DFW in their response to public comments provided a clear statement of the intent of EHB 2957. One of the key elements along with eliminating fish escapes is **that guidance be updated.**

1.1. 2018 law sunseting non-native finfish marine net-pen aquaculture

*EHB 2957: “AN ACT Relating to reducing escape of nonnative finfish from marine finfish aquaculture facilities.” EHB 2957 became 2018 session law June 7, 2018, after passing the Washington Legislative House on February 14, 2018 and Senate on March 2, 2018, and signed by Governor Inslee on March 22, 2018. In signing the bill, Governor Inslee issued a partial veto, deleting Section 1 of the bill from the enacted law. The Governor stated that “[s]ection 1 is unnecessary to implement the bill and [he does] not agree with all the assertions made in this section.” Despite the Acts title, the law’s intent is three-fold: (1) the elimination of commercial nonnative finfish marine aquaculture; (2) the elimination of escapes of finfish from commercial marine net-pens; and (3) **the completion of a guidance document for the planning and permitting of commercial finfish marine net-pen aquaculture.** With Governor Inslee’s veto of Section 1, the new law does not characterize commercial marine net-pen aquaculture as posing unacceptable risks to native salmon or the marine environment.*

The Governor’s decision to veto Section 1 of the bill ended all net pen guidance that began in 2016 which was based on guidelines published in 1986 and science best industry practices at that time with regard to Atlantic salmon. Since the operator has requested a change in species, there is a critical need to update both the guidance and the science as it relates to the raising of steelhead in marine net pens.

Ecology adopted discharge standards representing AKART for marine salmon net pens as part of chapter 173-221A WAC. From the permit fact sheets:

In 1995, Ecology adopted discharge standards representing AKART for marine salmon net pens as part of chapter 173-221A WAC. The adoption of these standards was required by RCW 90.48.220. In accordance with the marine salmon net pen discharge standards, the permit requires the same operational requirements applicable to all facilities (WAC 173-221A-110(4)). These requirements address feeding, disease control chemicals, chemical storage, and the development and implementation of a Pollution Prevention Plan designed to reduce or prevent the discharge of pollutants.

Prior to the issuance of the previous (2002) permit, the PCHB heard testimony on three alternative technologies to marine net pens. The Board ruled that none of the technologies constituted AKART because they were not technologically reliable and/or economically feasible, and dismissed with prejudice all AKART issues relating to all structural alternatives to net pens. Ecology will implement AKART in this permit by requiring compliance with the requirements in WAC 173-221A-110(4).

We recommend that the guidance be updated with current science and best industry practices with respect to raising steelhead in marine net pens. The State should withdraw their Mitigated Determination of Non-Significance, issue a Determination of Significance, and draft an Environmental Impact Statement to assess the full impacts of this proposed permit modification.

State Guidance for the Developing Marine Net Pen Aquaculture

If the document referenced in the links below was used to guide decision making related to the NPDES permit then, no decision to modify the NPDES permits should be made until the public has a chance to comment on State of Science on Net-Pen Aquaculture in Puget Sound, Washington. That document according the website:

- *Was not formally peer reviewed, although experts in marine aquaculture contributed to its development.*
- *Contains portions which may be inconsistent with the state's understanding of the biological, physical, and cultural environment in Washington.*
- *Is but one source of information that state agencies are using to inform their recommendations.*
- *Does not necessarily represent the management or policy views of the state.*

<https://fortress.wa.gov/ecy/ezshare/sea/Shorelines/StateScience.pdf>

<https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Aquaculture/State-guidance-for-net-pens>

No decision to modify the NPDES permits should be made until the public has a chance to comment on State of Science on Net-Pen Aquaculture in Puget Sound, Washington.

Conducting inspections to assess structural integrity of the net pens and submit inspection reports certified by a qualified marine engineer to Ecology

7.4.3 Net Pen Structural Integrity Report

Approximately every two years, when the farm site is fallow, Cooke contracts a licensed engineering firm to conduct inspections and assess structural integrity of the net pens. Inspections include environmental data and projections for the farm location, cage component, and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations. The net pen structural integrity assessment reports are certified by a licensed professional engineer and submitted to Ecology within 60 days.

To our knowledge, no inspection of this type has taken place for some of the net pens whose permits are under consideration that have been fallow for an extended period e.g. Fort Ward Pens. The last inspection, listed on Ecology's PARIS website, was conducted in December of 2017. If the net pen operator is working to comply with this element of the permit, why hasn't an inspection occurred? If some inspections have occurred, then they are not available on the PARIS website?

To further compound the process, two pens in the Orchard Rocks South Rocks array contain fish and the rest have been empty for many months. When does the testing occur? When all pens are fallow: Clam Bay, Orchard Rocks and Fort Ward? This means that the time line could be extended, depending on when pens are stocked, harvested and fallowed, well beyond the "Approximately every two year" permit requirement.

The need for increased inspections is highlighted during Ecology's last public comment period:

Response: *This requirement was codified in law in RCW 77.125.060 - Facility operator must hire marine engineering firm to conduct inspections. EHB 2957 was signed and it stated (bolded added): A new section is added to chapter 77.125 RCW to read as follows:*

1) For marine finfish aquaculture, the facility operator must hire, at their own expense, a marine engineering firm approved by the department to conduct inspections. Inspections must occur approximately every two years, **when net pens are fallow**, and must include topside and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations.”

Ecology interprets and conditioned the permit to have the assessment done approximately every two years but more importantly when it's fallow. Ecology added more clarity to this special condition to better define. It now states “. Inspections must occur within two years of the effective date of the **permit if not completed and to be done routinely, approximately every two years**, when net pens are fallow, and must include current Doppler data, topside and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations.

Also from WDFW related to net pen inspections:

In December 2019, a Consent Decree was reached between Cooke and Wild Fish Conservancy, where both parties agreed that before Cooke restocks any of their net-pen facilities, they are required to conduct a load analysis of the mooring and cage systems using environmental condition data that are consistent with the Norwegian aquaculture standard NS 9415. As part of the inspections mandated by EHB 2957, WDFW will require that Cooke provide an engineering analysis certifying that the net-pens conform to the parameters derived from the NS 9415 standard. Each net-pen facility will be evaluated independently as conformity to parameters derived from the NS 9415 standards require evaluation of the environmental conditions (e.g., currents, winds, waves, depth) specific to that net- pen facility.

The structural integrity of the pens becomes even more critical as the net pen structures age. Risk assessments should include both the impact and likelihood of an event over the life of an asset. There have been a number of events over the lifetime of net pens in Washington State and the probability of an event likely increases with age.

Mott MacDonald | Rich Passage Orchard Rocks
Atlantic Salmon Net Pens Engineering Assessment

4 Net Pen Structure

The three Rich Passage net pen structures were initially permitted and installed in the mid 1970's per the lease documents. The net pen structures have undergone several structural improvements, including complete replacement of the floating structures and anchoring equipment during its service life. The lease documents state the last replacement cycle began in 2000 when all three cage structures in Rich Passage (Clam Bay, Fort Ward and Orchard Rocks) were replaced with new steel floating structures. From GoogleEarth, the Orchard Rocks net pens appear to have been installed between 1994 and 5/31/2002. Orchard Rocks facility is composed of two separate net pen structures that are connected together with synthetic lines. Based on all available information, the age of the net pen structures (but not the mooring lines) is estimated to be approximately 17 years for Orchard Rocks. They are referred to by Cooke as Orchard Rocks North (ORN) and Orchard Rocks South (ORS). There are a total of 20 pens at Orchard Rocks north and south.

From the current DNR lease:

1.) Cage Descriptions and Useful Life of Improvements

The three Rich Passage net pen structures were initially permitted and installed in the mid 1970's. The cages have undergone several structural improvements, including the complete replacement of the floating structures and anchoring equipment since this time. The last replacement cycle began in 2000 and all three cage structures in Rich Pass (Clam Bay, Fort Ward and Orchard Rocks) were replaced with new steel cages.

The new cages have an average expected service life of approximately 15 years. Life spans of steel cage structures are variable depending upon exposure to storm energy, wave heights, wave frequencies, the corrosiveness of the marine environment, and the operational and maintenance programs of a company. Over the past 25 years, cage manufactures have made significant technological and structural advances in the design and the materials utilized to construct marine net pens. These advances have greatly increased the efficiency, durability, safety and life-span of the sea cages. The current cages deployed at the sites are well within the design and engineered capacity for this type of application.

Any modification of the NPDES permit should be conditioned on strict adherence to inspections that are required "approximately" every two years and the requirements of other legal actions. A decision to modify the current NPDES permit should be tabled until all pens are inspected and deficiencies addressed.

Structural integrity of the net pens and Emergency Contact Protocol

An NPDES permit that requires a structural engineering assessment every two years does not absolve the net pen operator of its duty to report and address structural deficiencies in the interim and we understand that the net pen operator is already supposed to be conducting visual inspections.

Recently, we observed and documented, in October of 2019, disregard for structural deficiencies which were apparent to the public and indications of the lack of appropriate contact information needed in case of emergency. According to the NPDES permit in place at the time:

The Permittee must maintain all structural and mechanical systems associated with the net pens, including but not limited to floats, walkways, mooring points, and all components of the anchoring systems in good working order. Maintenance and repairs to the structural or anchoring systems shall be documented and records maintained on site and available to Ecology upon request, as well as reported to Ecology as specified in Section S9.

The net pen structure, Orchard Rocks South shown in the photo below, with the southeast corner low and submerged for several days was, did not appear to be "in good working order". While the corner pen did not contain fish, it does support equipment and there are fish in at least two of the Orchard Rocks South pens at the other end. The low level of the pens was reported to Cooke Management on 10/20/20 who responded in part, "it is typical for that end to ride low on a flood tide." According to the farms DNR lease, the pens in Rich Passage are "designed to withstand maximum wave heights in excess of 12 feet." We are wondering how this compromised pen would have fared in a major storm or if it had been fully stocked?

Here are our observations:

On October 15th we observed the pens in Orchard Rocks south much lower than usual.



October 16, 2019 photo shows submerged corner of pen with what appears to be a generator covered with noise-abatement material and mort containers nearby



October 16, 2019

Photo shows a work boat on its way to Clam Bay



Photo taken about one hour before high tide on October 16, 2019



October 17, 2019

A generator appears to have been moved and noise abatement material removed to the walkway.



October 18, 2019



October 19, 2019

Photo of what appears to be noise abatement material floating in the pen



We observed what looked like noise abatement material floating in the submerged pen on 10/19/19. Later that same day, a neighbor emailed that what looked like something from the fish farm had washed up on the shore of nearby Fort Ward Park. We reported this to an employee on the dock who said he didn't have any contact information other than "Ronnie" on the Clam Bay side. The information was reported to farm management by us and, to our knowledge, debris retrieved the next day.

Photo of noise-abatement material washed up on the shore of Fort Ward Park



On October 20, 2019 we, reached out to Cooke Management with notice of the sinking pen.

Cooke's response: *"The south end of the farm is empty and has been for months. Please do not make uninformed assumptions. Divers are checking but it is typical for that end to ride low on a flood tide."*

October 20, 2019 10:00AM Photo showing forklift operator on the pen



October 20, 2019

Photo of diver in the small boat

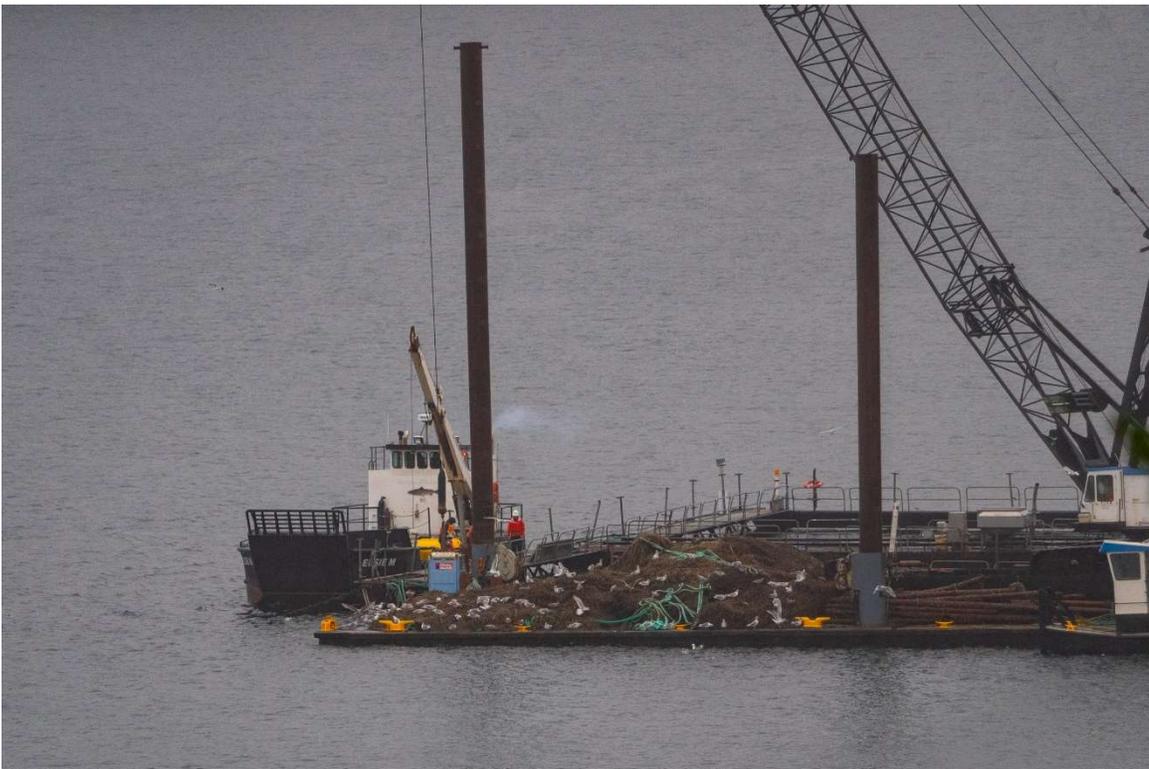


We are aware that the cause was a leaky pontoon that required days of work to re-engineer the net pen structure.

Media accounts minimized the failure by referring to a “dime-sized” hole in a pontoon, but the facts remain. The farm did not report a sinking net pen for days and did not do so until alerted by the Deputy Director of WDFW who, coincidentally, was visiting nearby and called the Coast Guard to secure the perimeter.

In this incident it is questionable if Cooke even noticed the sinking pen.

Needed repairs to the pen spanned over several days: Two photos taken on October 22, 2019



We are aware that updated NPDES guidance is in place to address this type of failure.

| | | |
|--------------------------|---|---|
| Steel Flotation Pontoons | Excess corrosion or mechanical damage leading to loss of airtight chambers in steel pontoons. | <ul style="list-style-type: none"> ■ Maintenance and repair reporting and recordkeeping through Weekly Surface Inspection Reports. ■ Annual below-surface inspections. ■ Ultrasonic survey of metal thickness of steel pontoons every two years. ■ Inspections every two years by marine engineering firm assessing structural integrity, mooring analysis, and analysis of risk. |
|--------------------------|---|---|

We do know, from direct conversation, that an employee who was on duty had little in the way of contact information to retrieve the debris that was washed ashore in the park. We have little confidence in the farm’s ability to reach out in the event of escapement or emergency. It is our understanding that the farm attempted to reach the Department of Ecology by email during the sinking net pen incident when a contact number is available, even to the public, online or from past Emergency Contact lists. The same 24-hour phone number has been in place for the Department of Ecology SW Regional Office in the past and is listed today in the farm’s current NPDES permit.

This is not the first failure in Cooke’s Emergency Contact protocol: A power boat incident that occurred in November 2018 and documented in Cooke’s 2018 annual Fish Release Report received by Ecology on 1/28/19, says that emergency personnel were unable to reach farm employees and that Cooke’s focus had been on *“improving how the company could notify various state and federal agencies...during an emergency situation.”*

Incident Response Review

Lastly, it should be mentioned that there was an incident during the past year that created an opportunity to test the agency contact procedures. In November, a small pleasure craft accidentally ran into one of the marine net pens during the middle of the night. While the fiberglass vessel suffered damage to the bow when it struck the steel net pen system, the cage system and fish containment nets were not damaged. A Coast Guard vessel was the first to arrive at the scene shortly after it was hailed by the vessel operator. There was however challenges for the Coast Guard and other emergency services to locate a contact number for Cooke representatives that caused some delay in communication to Cooke staff. A Cooke employee was eventually contacted and arrived at the site in the early morning hours. The Cooke employee did an assessment of the situation and determined there were no signs of damage to the stock containment nets and there was no risk of fish escapement posed by the vessel strike. The employee communicated this information to other Cooke management during the early morning

nours and that they would be doing a precautionary below surface inspection near the boat with the Cooke divers at first light in the morning. The state agencies were notified by Cooke personnel later that same morning with more details about the incident and specifically that company divers had completed a below surface check and confirmed there was no damage to the containment net or cage system. Cooke also made arrangements that same day with Ecology to facilitate the transport of an Ecology employee out to the fish pens to do an independent assessment of the event.

While the incident was minor, it did point out areas that could be improved upon in communications during an unusual event such as this and more specifically some challenges that occurred with information flow. Over the past several years, the primary focus by Cooke has been on improving how the company would notify various state and federal agencies and other emergency management services during an emergency situation. Less attention had been given as to how the emergency management services could find contacts for Cooke personnel during an emergency event if they were the first to arrive on scene.

A debrief conference call with the stakeholders was initiated by the Department of Natural Resources shortly afterwards that included state personnel from DNR, DOE and DFW and Cooke representatives. The focus of the conference call was to review what worked and what could be improved upon. As a result of this discussion, updated Cooke employee contact information has since been provided to the U.S. Coast Guard Sector Puget Sound and the Joint Harbor Operations Center (JHOC) dispatch personnel. Cooke contact information has also been provided to the various local law enforcement agencies and particularly the marine patrol units with jurisdiction near the net pen farm areas. Additionally, the company has since installed new emergency contact information signage at the various net pen sites and on the outside of nearby onshore Cooke office buildings at Bainbridge Island and Port Angeles. These actions should further improve the communications and information flow between company personnel, state agencies and the emergency management services.

The company is committed to working with the agencies on improving fish escape prevention, response and reporting procedures and continuing to raise a much needed future protein source in a sustainable manner that has minimal impact to the environment.

Sincerely,



Kevin Bright, Cooke Aquaculture Pacific
Permit Coordinator

The fish farm has a long history of inability to maintain an appropriate emergency contact protocol even though the same permit coordinator is in place even to this day. After a 2011 fire at a Bainbridge Island net pen, conclusions in a Department of Ecology report stated that:

SUMMARY AND CONCLUSIONS

It was evident in the early stages of this fire and spill event that local authorities had no contact numbers for the management or responsible officials for the net pens. Since this event, American Gold Seafoods has provided the City of Bainbridge Island and Kitsap County emergency personnel with contact numbers.

| | |
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| American Gold Seafoods - Saltwater IV Orchard Rocks~WA0031542~11-03-11.pdf | Inspection Related |
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Document

We are aware that NPDES permit calls for: *Requiring the permittee to develop site specific response plans in the event of a fish release, and to conduct and participate in preparedness trainings.*

The response during the sinking net pen incident leads us to doubt that the farm is able to follow and implement the requirement from Cooke's Pollution Prevention plan:

Cooke facility staff and Site Managers will be trained on the policies, procedures, and practices contained in the Plans. Staff training will occur annually for current employees and within the first 3-month probationary period for a new employee. If the plans are updated or changed, staff will be provided training on the new material. Annual training will occur by March 30th of each calendar year. The Site Manager will maintain an employee training log for each specific location and provide an updated copy of that log to the General Manager, Permit Coordinator and Business Support Analyst as updates or new training activities are made.

The annual training will cover safe handling practices, spill prevention and spill response procedures, review the locations of spill kits and contents, and emergency notification procedures. The training will include a full review of each facility's O & M Manual, Pollution Prevention Plan, Fish Escape Prevention and Fish Escape Response and Reporting Plans. The instructor will determine whether an employee understands the plan as it relates to their job duties and can competently perform the tasks described in the Plans. The Employee Training Log will include the instructors' name and signature, the employees' name and signature, the date of instruction and determination of competency.

The Fish Feeding Technicians are trained on the job through an apprenticeship. This Fish Feeding Technician's main duty is to supervise the feeding process to ensure the maximize ingestion of feed by the fish stocks and to reduce the occurrence of feed loss. Site Managers and employees receive periodic training on the latest feeding science research by outside professionals and researchers, and Cooke corporate staff.

We have documented failures in the emergency contact protocol in 2011, 2018 and 2019 here on Bainbridge Island alone. While records may be available to Ecology upon inspection, there is no internal or external audit to ensure that the process is being followed and that records are reliable.

Ecology should require, at the net pen operator's expense, an internal and external audit to ensure the reliability of training and emergency response protocols.

Marine Mammal Predation and Public/Worker Safety

We have concerns regarding the number of marine mammals that have significantly increased since first reported to the Department of Fish and Wildlife, Ecology and DNR in January 2020 and the possibility of escapements with their increasing numbers as well as impacts on public safety. Photos and videos in January document sea lions lining only the west side of the Orchard Rocks South pen and swimming freely in a pen containing Atlantic salmon. We were told by WDFW that:

Sea lion activity around these net-pens is normal, but seasonal, and what have you have documented is not out of the ordinary. At this point the net-pen structure itself and the sea lion activity on, in, and around the net-pens do not present a risk of escapes. Cooke is required to report back to us if the situation changes.

The number of sea lions has almost doubled than when first reported. We have been recently told by WDFW that the net pen structure is not at risk of collapse. WDFW calculations for 250 marine mammals is a combined weight of 75 tons. What are the impacts, in terms of water quality, from hundreds of marine mammals rafting on a man-made atoll? Many long-time residents here concur that there have **never** been marine mammals on the pens in these numbers. Additionally, if marine mammals can breach predator netting and swim freely in pens containing fish, how are fish, potentially, not able to escape?

Marine mammals are attracted to the pens for a reason. Sea lions are known to eat five to seven percent of their weight in food each day---about eighteen kilograms of fish and squid for a typical male. If not Atlantic salmon, except for the one who swam freely in the pen, then they may well be attracted to other fish that converge on the area including endangered species.

Escape Prevention, Response, and Reporting:

Other, often small-scale escapes, termed leakage, may occur due to errors during transfer of fish, maintenance errors, or small holes in nets caused by predators, floating debris, or vandalism (Jensen et al. 2010). Leakage of salmon from farms is typically undetectable (Britton et al. 2011, Fisher et al. 2014). There is a growing understanding that more gradual, low-level leakage of fertile fish can have a greater negative demographic and genetic impact on native species than the rarer, large-scale escape events (Baskett et al. 2013, Yang et al. 2019).

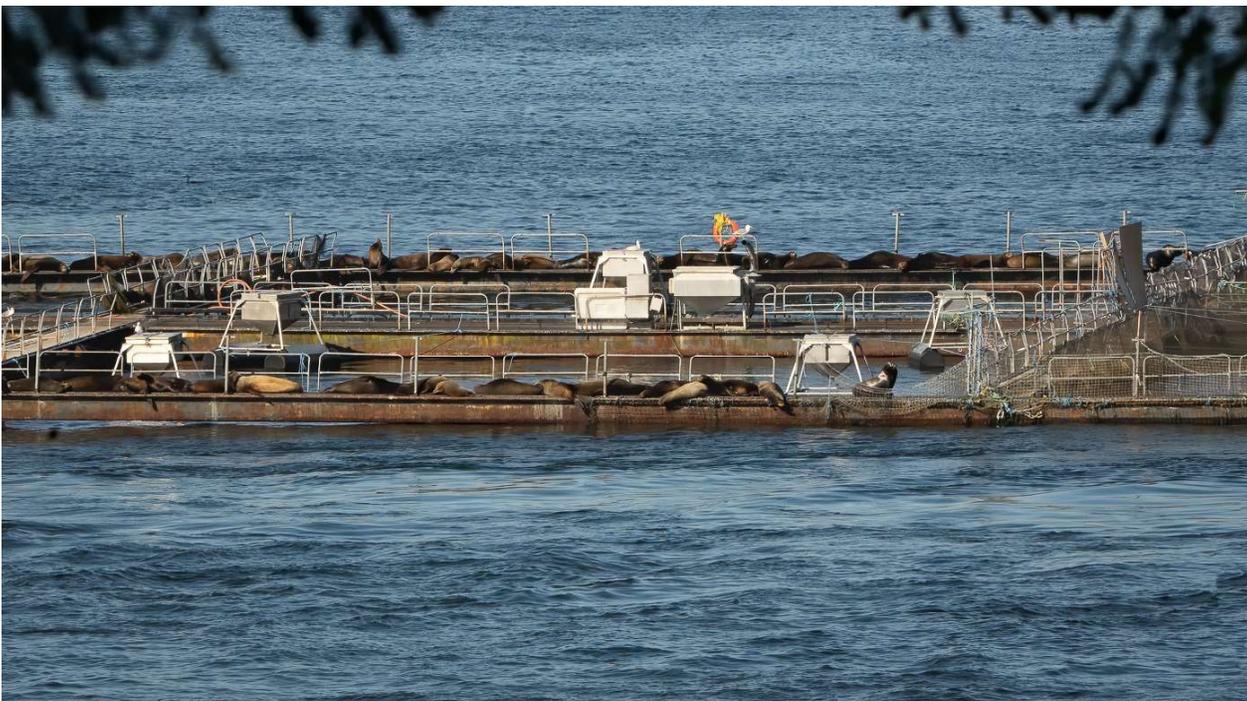
From WDFW Permit

Cooke must report to WDFW Fish Health Supervisor, Lead Veterinarian, or Aquaculture Coordinator within 24 hours of discovery of any fish that has been observed to have escaped from any net-pen facility or during transfer into or out of a net-pen facility, regardless of numbers of fish involved (i.e., the minimum reporting number is one)

December 8, 2019 East side of Orchard Rocks South



May 5, 2020 East side of Orchard Rocks South (pens to the right of the marine mammals contain fish)



Disconcerting, were farm worker initial attempts, allowed by NOAA, to displace these animals by traversing the walkway where they raft. The sea lions jumped back almost immediately after workers passed. The supply ship that had circled the pens, in what appeared to be an attempt to displace the sea lions, only temporarily forced them to nearby beaches where residents and kayakers are now threatened by the irascible and five-month residents on Cooke net pens. One area resident shared this recent account:

“On Monday June 1 A Boston Whaler was operating as a safety boat for a swimmer in front of our house. One Sea Lion approached, not a pack of 6-10 and the boat pulled the woman from the water. What will it take to realize that those pens attract Sea lions and that they aren't amiable toothless mammals. I imagine they could be eradicated if depredation permits were issued, but that's unlikely. Will it take a few kayakers or swimmers to be injured or killed for anyone to see the folly of this operation in such tight quarters?”

Efforts are currently under way to exclude them from Orchard Rocks with the use of some type of above-water skirting. The results remain to be seen. Cooke has a responsibility to put measures in place on all pens to reduce marine mammal predation and to protect the public and its own workers.

The population of marine mammals can be deterred by employing the guidance in the NPDES draft when pens are fallow. **This could be a clean set of predator nets or other barrier put in place after harvest to deter marine mammals on all net pen structures. Another way to prevent marine mammal predation and potential fish escapements is to disallow the partial stocking of a net pen array.** An additional benefit would be to ensure that all pens in an array are fallow at the same time and prevent delays in the net pen inspections that are required “approximately” every two years.

5. Review of Critical Structural Components

Floating marine net pen cage systems consist of a semi-rigid steel or plastic floating structure held in place by a series of external mooring lines attached around the perimeter of the structure. The fish containment nets (stock nets) attach to the floating cage structure above the surface of the water. The bottom of each square stock net attaches to sinker tubes or other types of weighting systems that submerge and hold the net in place. The combination of the semi-rigid floating structure and the net weighting system creates the open growing space (fish pen) in which the fish can be reared. Additional netting materials cover the surface of each fish pen to prevent avian predation and surround the perimeter of the submerged stock nets to protect against marine mammal predation.

Maintenance of Net Pen Structures

We have continued concerns regarding the methods for the maintenance of net pens structures that may be required and its impact on water quality. We are requesting, as we have in the past, that Cooke provide documentation that containment measures are in place for overwater maintenance/repair like the pounding off of rust on Orchard Rocks pens by sometimes multiple workers that took place from February 2018 until September 2018. There, the City of Bainbridge received multiple noise complaints, some from over a mile and a half away, which were mistakenly dismissed and closed by a city code compliance officer as related to an expired permit for dock repairs.

Photo of workers hammering rust off the Orchard Rocks facility 2018



In addition to the noise complaints with the city, Ecology was contacted as **no containment measures were observed. For all incidents related to noise and pollution, the public has to provide evidence that an infraction has taken place. Cooke is not required, in these instances, to provide evidence that their procedures are actually being followed and is allowed to continue on their good word. We urge you to employ the same type of proof from the net pen operator that you require from the public to ensure that containment measures are actually in place like photos or video evidence.**

In another example, while a permit to do work on the Bainbridge dock calls for replacement of creosote covered piles, we were told that no creosote-covered piles were actually removed and that the process would take place over three years (because the permitting was *easier*). At the time of the construction, a floating boom around the entire perimeter of the work area was required, but no boom was ever observed.

To our knowledge, the last phase has not been completed and the creosote-covered piles remain.

<https://ci-bainbridgeisland-wa.smartgovcommunity.com/PermittingPublic/PermitDetailPublic/Index/e11514bd-2df5-4218-877c-a68200f7df89? conv=1>

<https://ci-bainbridgeisland-wa.smartgovcommunity.com/PermittingPublic/PermitDetailPublic/Index/da07ef48-b0b8-46c6-af71-a61101186dc0? conv=1>

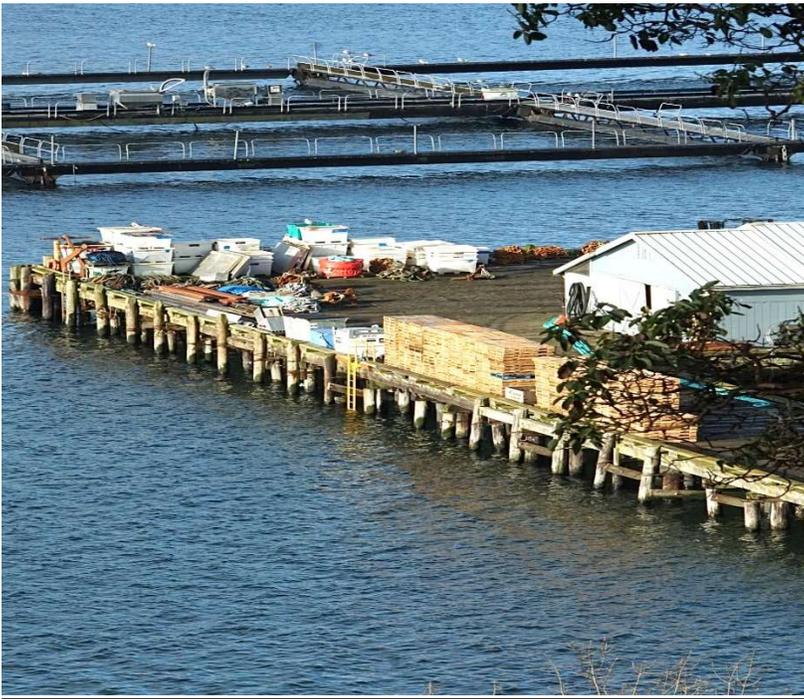
Solid Waste Disposal

We are again, as we have in the past, requesting a specific collection interval...weekly, bi-weekly related to the collection of recyclables like pallets and feed bags. This would prevent over accumulation as shown in the photo below and increased likelihood of their ending up in the water as has happened in the past. Permit language is not specific in terms of **how often** materials should be collected. **With no specific guideline, the net pen operator is the arbiter of what is routine and there is no basis for enforcement by the State agency.**

Solid Waste Storage and Disposal Practices

Solid wastes generated by the daily operation of the sites include feed bags, wooden pallets, used line, ordinary household wastes, and other non-hazardous items. Proper containment, handling and storage of these waste materials shall be the priority of all employees to ensure these materials do not enter the water. These items shall be stored in secured containers or bundles before transport to a land-based facility. Solid waste is collected and routinely removed from the facilities and transported to the land-based support facilities for proper disposal and/or recycling.

February 2, 2020 shows an over accumulation of pallets



Additionally, the sound barrier that washed ashore the park in October was not marked as Cooke property nor were Cooke personnel aware that it was missing even though it had been floating in the sunken pen prior to its release.

Preventable Discharges to State Waters

We are encouraged that the intentional pressure washing of equipment that resulted in fines had ended, but were surprised to document twenty minutes of washing of the dock in February of 2020 which included the outsides of containers that held dead fish or morts that were being stored on the dock. We understand that morts are supposed to be in totes lined with plastic and while not pressure washed per se, see no reason to wash the outside of these containers slated for transport or the dock itself.

Screen shot from video taken February 10, 2020



The four totes in the back contain dead fish shown in the close-up shot February 10, 2020



Any washing of containers that hold dead fish should be prohibited to prevent discharges to State waters.

Additionally, the dock is often traveled by eighteen wheelers, delivery drivers and workers in their personal vehicles who may not wish to walk the length of the dock from the parking area.

May 25, 2020



Permit language:

9. Discharges

No discharges are allowed of sanitary waste, floating solids, visible foam (other than in trace amounts), or oily wastes that produce sheen on the surface of the receiving water

Below is the Best Management Practices Manual that was sent to me in the past by Ecology:

<https://fortress.wa.gov/ecy/publications/documents/95056.pdf>

While parking over water might be restricted under general provisions of the Bainbridge Island Shoreline Master Program (SMP), we told by a former city planner that: *“The aquaculture facility predates the City, so there is no conditional use permit. They are essentially “grandfathered” and many of the City’s SMP do not apply to the facility.”*

According to Cooke’s NPDES application materials for their current NPDES permit modifications, the shoreline permit in place was issued by the Kitsap County Department of Community Development on June 13, 1988, over thirty years ago. (Permits 502 for Fort Ward and Orchard Rocks pens and Permit 503 for Clam Bay)

Parking of personal vehicles over water should be prohibited to prevent accidental discharges to Washington State waters.

Improving net cleaning and maintenance procedures to prevent biofouling and fish escape

With all due respect, we feel that it is important to address, once again, net washing procedures. From the Department of Ecology’s last public comment period:

From Rich Passage Home Owners Association, authored by Kathleen Hansen, letter sent to Ecology postmarked 2/16/2019

Comment: *At the end of the growing cycle all stock and predator nets must be removed from the facility by barge and transferred to an upland facility for complete cleaning and repair. And in-situ washing of nets with pressurized seawater may only be used during the growing cycle to minimize biofouling.*

Response: *Comment noted. In the Pollution Prevention Plan submitted in the application materials Cooke identifies net washing practices that are similar to your request but do not specify barging nets offsite.*

1. No anti-foulant paint will be used on the netting materials at the farm sites.

2. Fish containment nets are typically pulled to the surface once per year. Net rotations or net changes can occur during the production cycle of the fish and clean fish containment nets can be rotated into the farm during the growing period to minimize the amount of marine fouling growth on the nets.

3. Nets will be frequently rinsed in-situ with pressurized seawater to minimize bio-fouling growth. If large amounts of growth begins to occur it will be collected and taken to an upland soil composting facility.

4. At the end of the growing cycle after the fish have been harvested out, the nets are removed from the water and transported to a land based cleaning and repair facility.

5. Cleaning and repair of the nets is to be carried out by an approved net repair facility that is designed for this purpose. Materials washed from the nets will be captured and disposed of properly.

Comment: *During in-situ washing how are portions of the net pen structure itself not affected by underwater washing as reference in Section 2. O&M Manual Components, Subsection s? “The Permittee may not pressure wash any portion of the net pen structure or any equipment....”*

Response: *Comment noted. This requirement is meant to prevent intentional washing of the structure.*

Please require that nets be barged offsite and not warehoused on the dock. This would prevent additional discharges to State waters ensure that materials are captured and disposed of properly as required in point 5. *Cleaning and repair of the nets is to be carried out by an approved net repair facility that is designed for this purpose. Materials washed from the nets will be captured and disposed of properly.*

Nets, after removal have been stored on the dock in the past and Ecology can prevent unwanted discharges to Washington State waters by requiring that they be removed directly by barge.

Additionally, we are requesting that the Department of Ecology strictly adhere to point 4 of the permit language. *4. At the end of the growing cycle after the fish have been harvested out, the nets are removed from the water and transported to a land based cleaning and repair facility.*

From our public comment for the last NPDES permit:

Like thousands of others, we are well aware of the dangers of poor net-maintenance as demonstrated by the failures and mismanagement at Cypress Island. Last summer, at the end of the growing cycle, instead of predator nets being removed from the Fort Ward Pens here on Bainbridge, nets were cleaned by divers using power washers...the spray shooting many feet into the air.



The response from Ecology was:

“I spoke to Kevin Bright with Cooke regarding this activity. Kevin indicated that all the nets were removed from the Orchard Rocks site, but only the stock nets had been removed from the Fort Ward site. The reason was that Cooke anticipated approval of a transfer permit from DFW to re-stock the Fort Ward site. The permit was eventually denied due to problems with the fish they were going to stock. Cooke has procured new smolts to stock the Fort Ward pens and timing will not allow for removal of the predator net. Ecology is not overly concerned that the predator net was not removed (even though it is not in complete compliance with the Pollution Prevention Plan), and that it is being pressure washed in place. In situ pressure washing is in compliance with Cooke’s Pollution Prevention Plan. Net biofouling is not contingent on the presence of fish in the pens. Mussels and other marine organisms will accumulate regardless, especially during the summer months. So if nets are present, diligent washing of the nets is considered a BMP. A greater concern for Cooke

could be the transfer of any legacy fish health problems from the previous stocking being transferred to the next crop of fish from the uncleaned net. However even if the nets were removed there could still be transfer from the floating structure itself. “

Ecology appears to acknowledge that:

1. Cooke was not in complete compliance with its own Pollution Prevention Plan
2. No matter what cleaning methods are employed (in situ or net removal) there still could be transfer of fish health problems from the structure itself

Additionally, a warning letter to Cooke from Ecology for unpermitted net washing was issued August 25, 2016 for discharges. This warning letter followed a month-long incident of power washing stock nets into State waters. Cooke explained this activity as a cost saving measure that was approved by management. Prior net pens owners were known to transport nets at the end of the growing season by truck which left foul discharges on Bainbridge roads. The previous Cooke GM communicated that nets would be shipped away from the pens by barge.

In Attachment A, Cooke states that in 2012, it switched company-wide to a “single stocking production plan that allows ample time for the containment nets to be removed from the farms and transported to an upland net washing facility for complete cleaning and repairs”. These upland facilities are designed to handle the nets and dispose of materials properly. Cooke’s practices during the last two production cycles are inconsistent with their pollution prevention plan or best practices as described in Attachment A. On paper, Cooke’s recommendations seem reasonable. Actual practice, however, seems to favor actions that are expedient and cost efficient. A lack of specificity in permits makes it difficult for State agencies to ensure that the proper practices are being followed.

To date, no fish have been stocked in the Fort Ward Pens. The operator should not have the option of short-cutting the net cleaning process at the end of the growing cycle.

We are asking that the net cleaning procedures at the end of the growing cycle be strictly adhered to in the future. The net pen operator should be in full compliance with the NPDES guidelines. Less than optimal cleaning such as cleaning with hand-held washers, should not be conditioned on the farm’s desire to stock pens quickly at the end of a growing cycle when more rigorous net cleaning at a net cleaning facility is required as a condition of the permit.

Impacts of large-scale dispersal of feed

In 2019, over twelve million pounds of fish food was dispensed into Puget Sound, four percent of which was medicated feed according to annual feed reports in Ecology’s PARIS website. All of this feed is not eaten by the fish in the net pens. Anecdotal evidence leads us to believe that some of this feed makes its way into the surrounding waters and is responsible for attracting other types of fish to the net pens themselves.

- The Orchard Rocks group of net pens alone, for example, accounted for nearly 28% of the total amount of food dispersed in 2019 and is operating in 60% of its total pens for the current grow-out cycle.
- Fisherman regard the area near the pens as a fishing hot spot and can often be seen fishing right next to the net pen structures containing fish.
- Long-distance swimmers have begun to be threatened by marine mammals that are drawn to the pens and avoid, what they describe as, murky and fishy-tasting waters.
- The creation of an artificial attraction to pens by migratory seabirds.

May 13, 2020 Fishing next to Orchard Rocks



May 31, 2020 Fishing next to Orchard Rocks



Keep in mind that the Orchard Rocks South net pens are now the pens that are overrun with sea lions and are the only pens in Rich Passage that contain fish. What other types of native fish are attracted to the pens or pass through the pens themselves? We understand from the Pollution Prevention Plan dated 2017 that:

Feed quantities are recorded for each fish pen every day. The Feed Conversion Rates (FCR's) and Specific Feed Rates (SFR's) are to be closely monitored for signs of over feeding or under feeding.

The interest from fisherman, sea birds, and marine mammals would lead us to believe that, despite those efforts, something is leading to the attraction to the pens themselves.

January 26, 2020 Seabirds near Orchard Rocks pens



February 4, 2020 Seabirds near Orchard Rocks pens



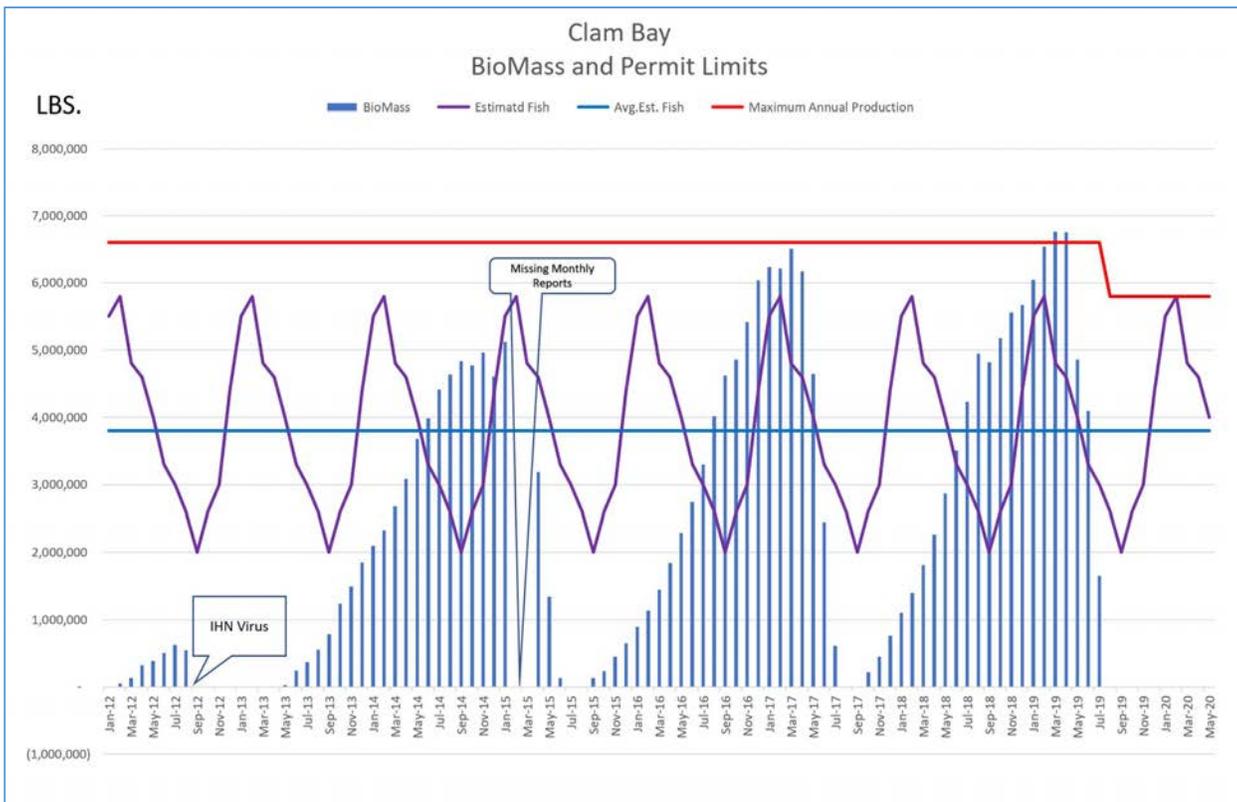
Data Monitoring Reports

We have concerns regarding how monthly monitoring reports are analyzed. Is the agency simply looking for exceptions or is there an overall model where trends can be visualized? In 2017 during net pen Guidance meetings, it was determined that monthly reports were being filed when they were input into PARIS rather than when they are received. Now they are categorized by date received, but the PARIS database is not organized or easily searchable. There is no transparency in terms of how the data is analyzed upon receipt.

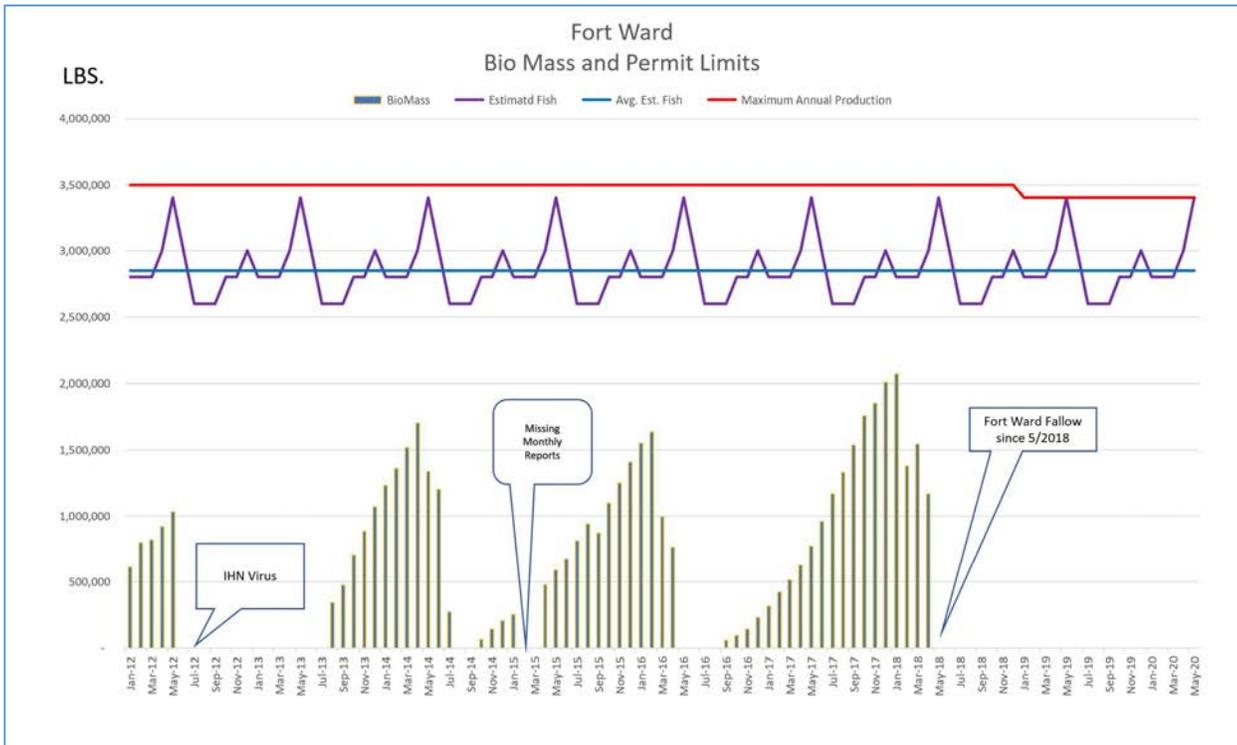
Bio Mass Data

Below, monthly bio mass data for Bainbridge Island Net Pens was analyzed from 2012 to present (Prior and Current NPDES Permits) along with permit application maximums and estimated fish. Most Sites when viewed independently appear to be operating generally within the permit parameters with some exceptions: Ecology failed to notice the significant decrease in Bio Mass during the 2012 IHN virus. Reported by the media but seemingly unreported by Ecology as well as missing reports on PARIS for February and March 2015.

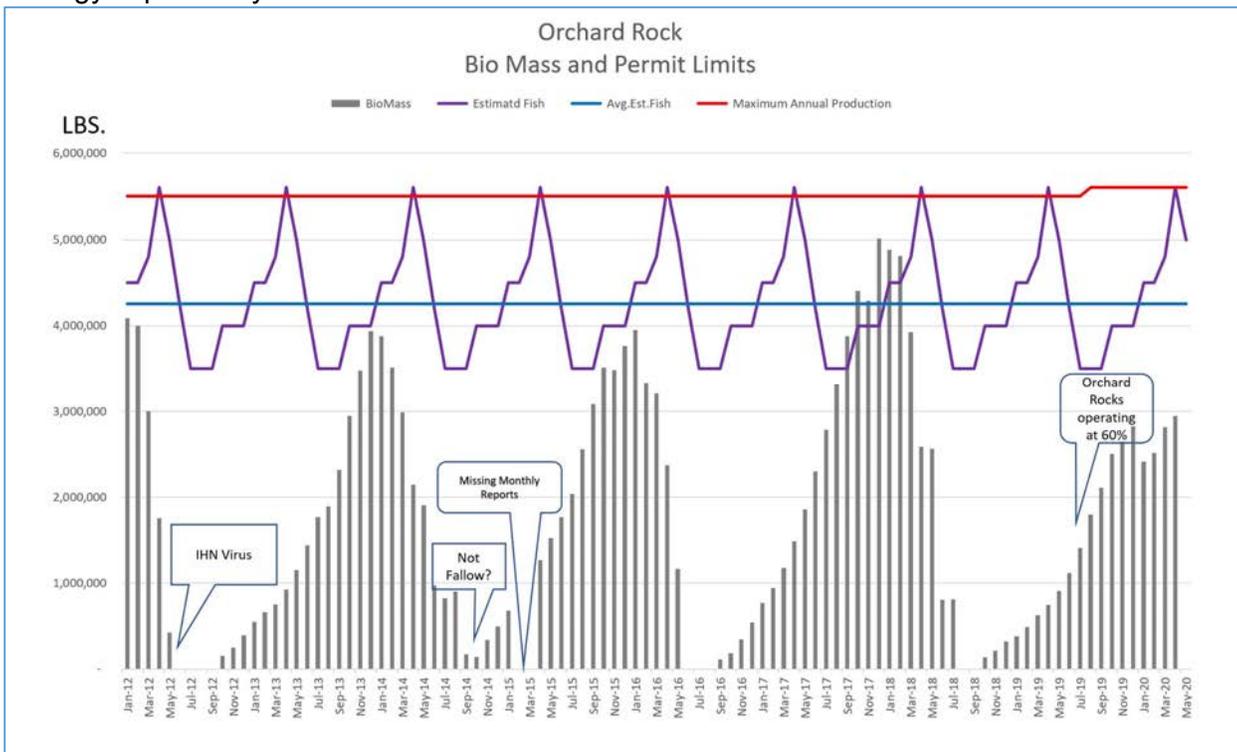
Clam Bay is reaching or exceeding the Production Maximum during the production cycles. Can Ecology explain why?



Fort Ward is operating significantly under due to long fallow periods for some unknown reason. Can Ecology explain why? Note: Fort Ward was denied a Fish Transfer Permit at the end of their last cycle in 2018.



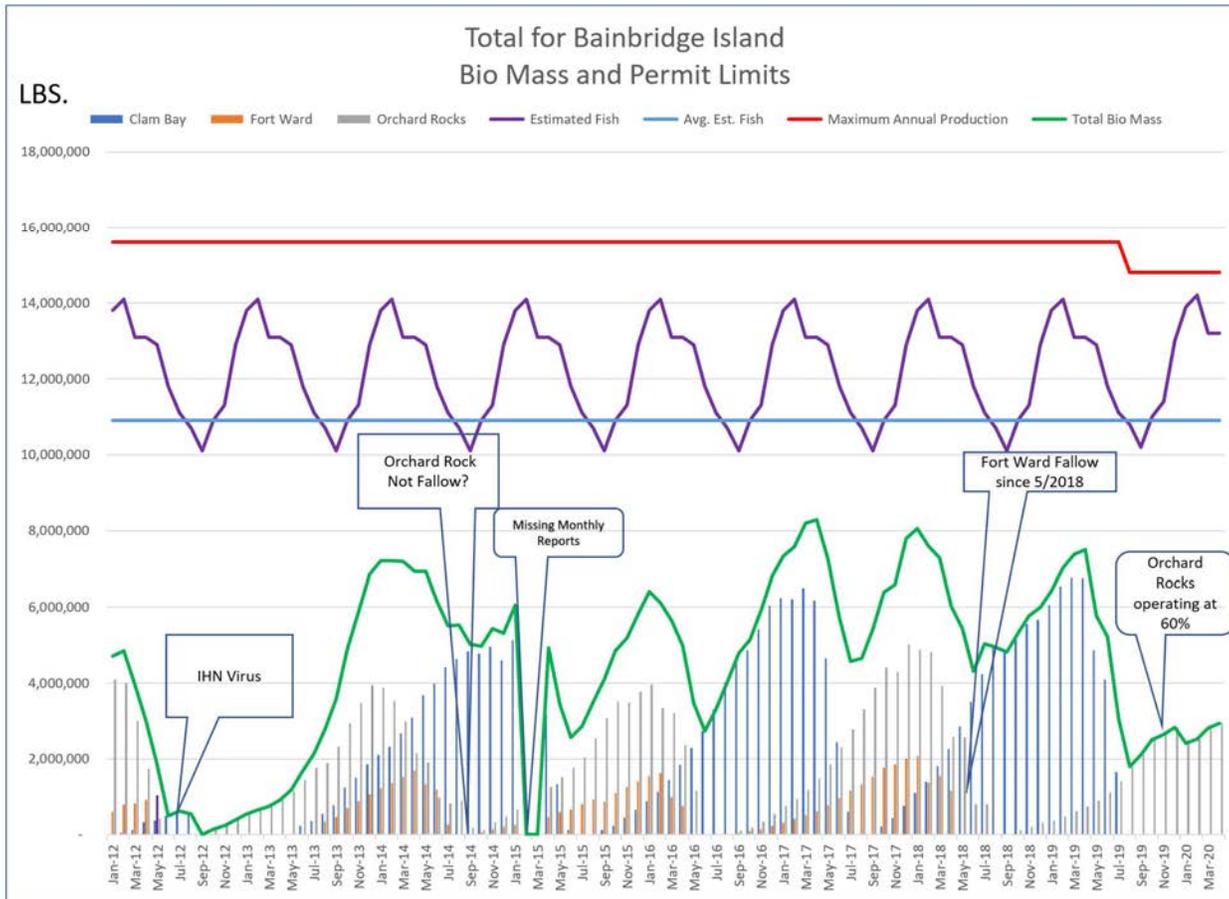
Orchard Rock appears to be within parameters currently operating at 60% capacity (12 of 20 pens) Orchard Rock appears to not have been allowed to stay fallow for two months in the 2014 production cycle. Can Ecology explain why?



Concerns:

If all sites were operating at their permit maximum level with their production cycles aligned in Rich Passage, there would be significant increases in biomass, regular and medicated feed, and fish waste above the historical levels and this could potentially lead to in a net loss in water quality.

Ecology needs to take into consideration a worst-case scenario.



The Department of Ecology should proceed with caution to prevent a situation in Washington like the one that occurred with Cooke in Maine:

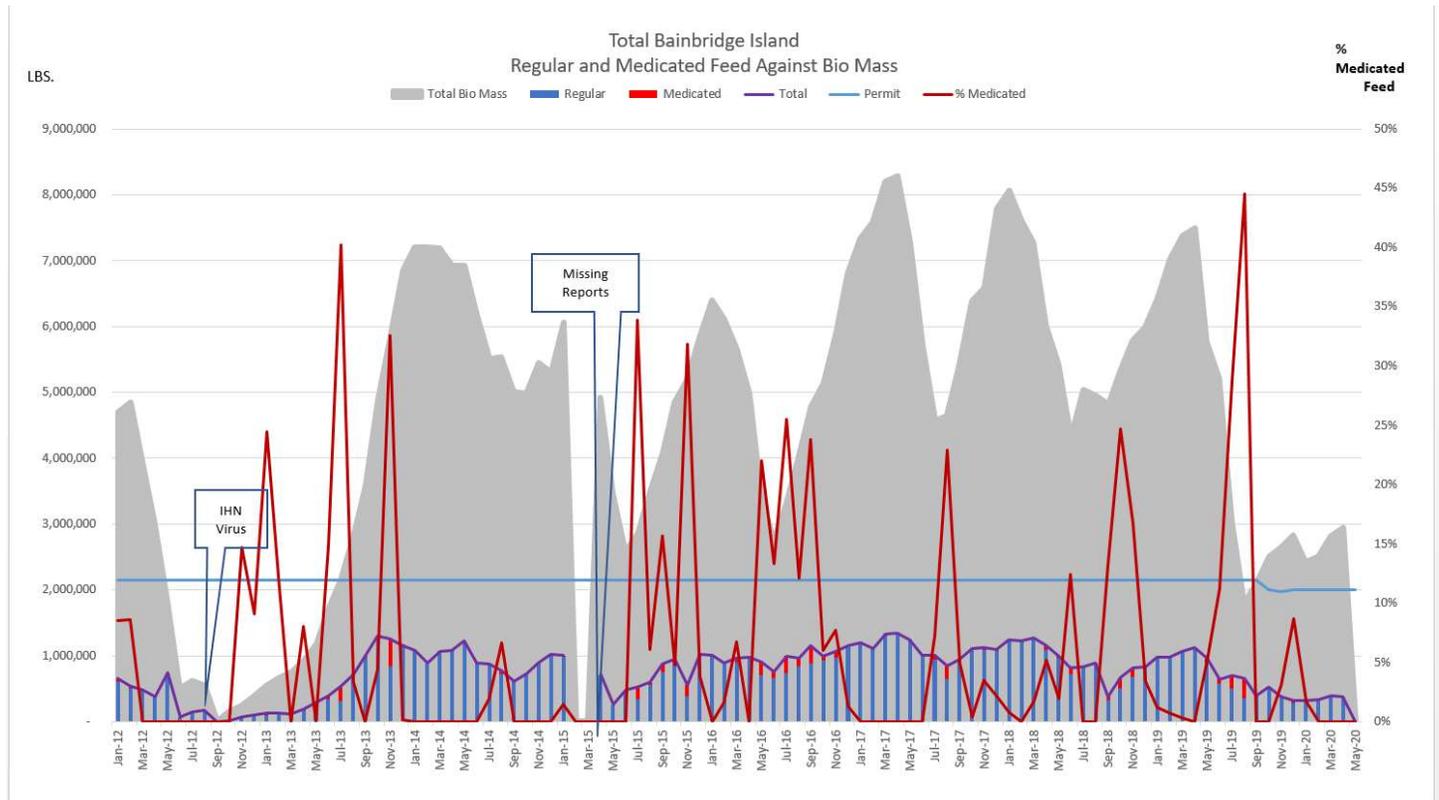
The Maine Department of Environment Protection has settled with Cooke Aquaculture for \$156,213 for a number of violations concerning its net pen facilities, an amount which will go to the funding of the Marine Rearing Atlantic Salmon Machias River Project.

Cooke violated the terms of the Maine Pollutant Discharge Elimination System (MEPDES) general permit for net pen aquaculture -- which was attained in 2014 -- by exceeding the maximum biomass in its pens and failing to submit a number of required notices and pieces of documentation.

We recommend that production maximums be reduced to align with historical levels and an annual maximum to control for a worst-case scenario.

Feed Data

For our purposes the analysis of feed, both regular and medicated, is shown in relation to biomass for 2012 until present using data available from the PARIS website for the Rich Passage net pens. In section S2.L. Antibiotic Resistance Monitoring of the current NPDES permit, Ecology is required to monitor unusually high usage levels of antibiotics by the Permittee.



The graph below appears to show consistent peaks in the use of medicated feed use. What monitoring is performed by Ecology?

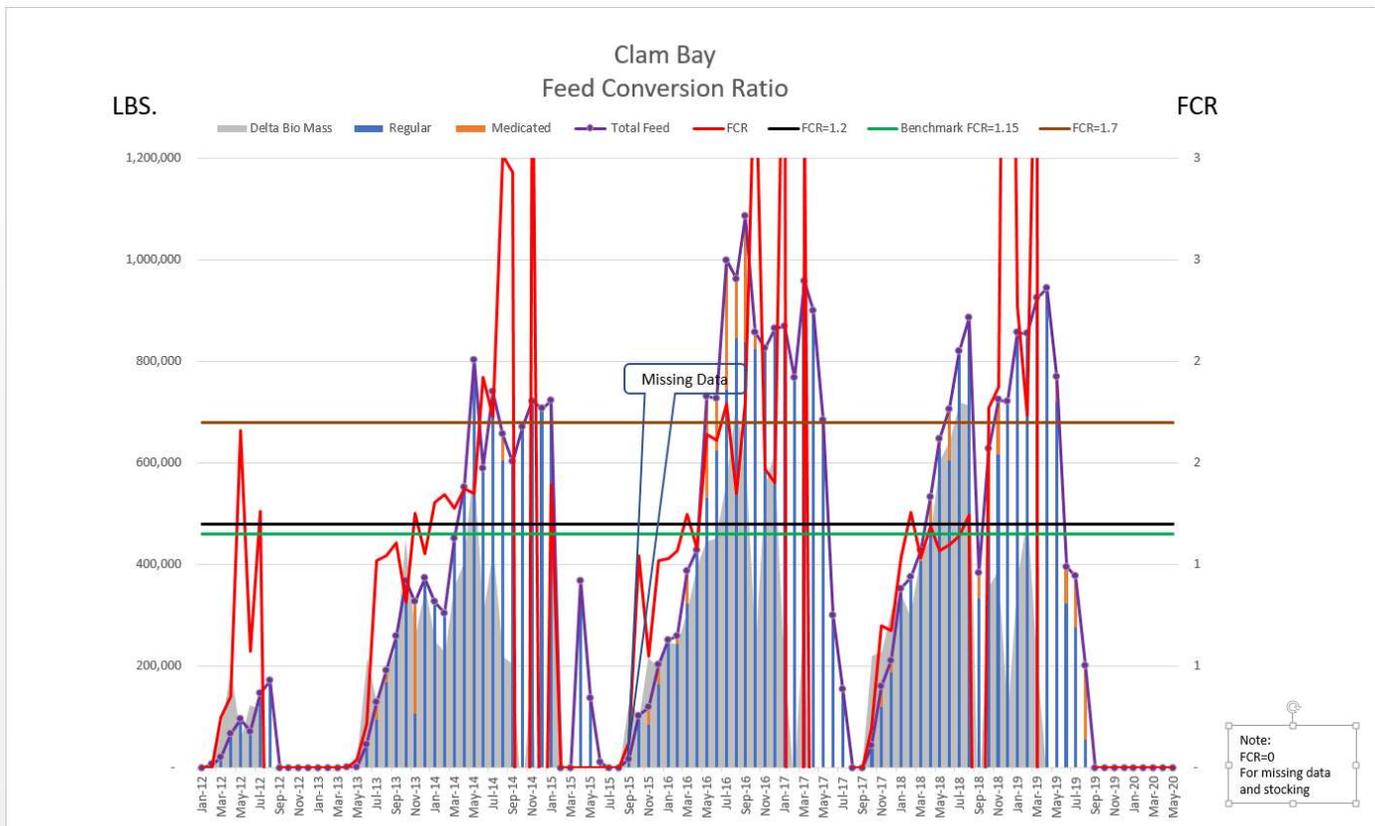
It is our understanding that medicated feed is generally removed prior to harvest. Why does the NPDES permit not contain specific requirements regarding the use of medicated feed during the harvest cycle?

We are also concerned that in all pens it appears, from review of your data, that medicated feed is consistently dispensed when pens are first stocked with what should be healthy fish. Can Ecology explain why?

Has Ecology ever audited the company's feed invoices compared to DMR data to test for reasonableness?

We are aware that: "Current biomass and feed reporting allows Ecology to calculate FCR providing a monthly monitoring point to compare with other months and note abnormalities. Currently, FCRs range from 1.2 to 1.7." (Related response from Ecology from last comment period.) Typically, Atlantic salmon need 1.15 kilograms of feed per one kilogram of body weight which is considered good for Atlantic salmon.

Not being fish scientists, we tried to view the simple relationship between Total Feed and delta Bio Mass for each month using the limited data available to the public. Using Clam Bay as an example, below, there would appear to significantly more variability than was described in Ecology's response during the last comment period. The Feed Conversion Ratio is critical to determining and controlling pollution from uneaten food and fish waste.



We recommend that a model for calculation and visualization be developed and additional data be added to the DMR data available to the public. These would include but not be limited to:

- Starting number of fish
- Number and weight of harvested fish
- Monthly Average Weight of Fish (based on sample)
- Monthly mortalities

The data needs to be auditable and independently verified. **Washingtonians have the right to know what is happening in Public waters.** Ecology has a responsibility to be transparent. It's easy to understand why the public in generally distrustful of the net pen operator and even the State agencies.

Other DMR Measures

During the 2017-2019 NPDES permitting process the Department of Ecology did not re-evaluate AKART based on an assumption that the net pen leases would be gone in the 2022. Because of the change in species, this is no longer a valid assumption and the Department should re-evaluate AKART before a determination of this permit.

Typically AKART is re-evaluated with each permit reissuance. However, with the passage of HB 2957, the marine Atlantic salmon net pen industry in Washington State will be phased out by 2022. Ecology concludes requiring any major changes to net pen siting is not feasible in the limited time the pens can continue to operate. With the legislative ban taking effect and the short anticipated lifespan of the industry, Ecology has determined that it is more important to reissue the permits for the net pens and continue to implement lessons learned since the previous permit issuance, and since the 2017 Cypress Island failure.

Update AKART parameters for the current NPDES Permit.

Impacts on Water Quality from Harvesting Operations

We understand from the permit that:

6.3 Carcass and Leachate Disposal During Harvesting

During harvesting operations, the harvest boat shall be tied securely to the net pens adjacent to the pen that is being harvested. The harvest fish are pumped from the pen and onto the harvest boat. Blood water from the harvesting operations (leachate) shall be contained within the fish harvesting machine that is located on the harvest boat. The harvested fish and blood water are contained and stored inside the fish holds of the harvestboat.

Upon completion of the harvesting operation by the harvest boat at the facility, the harvested fish and blood water are transported by the harvest boat to the upland fish processing plant. The harvested fish and the blood water are then pumped off the vessel at the fish processing plant and the blood water is disposed of into the sanitary sewer system located at the fish processing plant.

More on the harvesting process from the Cypress Island incident report:

The harvest vessel comes alongside the net pen and rigs a 12-inch diameter hose connection from a stock pen to a fish vacuum pump on the vessel. By pulling up on the sides of the stock net, the fish are crowded into a small location. Use of a grading net allows larger fish to be sorted for harvest first. The smaller fish stay in the stock containment net to grow for several more weeks before they too are harvested. The harvested fish are sucked through a pipe to a vacuum pump. Passing through the pump, which is designed to operate without the valves touching the fish, the fish are conveyed to a dewatering table. Workers stun and bleed the fish. The fish are placed in the hold, typically with refrigerated seawater. The vessel sails to Seattle where the fish are processed. All blood and any offal from the stunning and bleeding process is contained on the vessel and discharged into the sanitary sewer system in Seattle.

We're wondering then, **what** attracts large numbers of sea birds and marine mammals to the discharge from the Harvester pictured below during the harvesting operation? Has the discharge ever been tested? What is the potential impact from that outflow on water quality?

Harvesting operation Orchard Rocks net pen May 15, 2020



Harvesting as related to all three state agencies:

1. *Prior to harvest, Cooke must provide WDFW, DNR, and Ecology the approximate dates for harvest. Within one month after harvesting is completed Cooke must provide to WDFW, DNR, and Ecology a report documenting the facility harvested, dates in which harvesting occurred, the total number of fish harvested per day, and any complications that may have occurred during harvesting. Cooke must report immediately if any live fish escaped during harvesting, or if any fish carcass, parts, or offal were discarded into the Puget Sound waters. The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit. Cooke also must report the number and species of bycatch caught during harvesting. If requested by WDFW, DNR, or Ecology, Cooke must allow appropriately trained personnel from these agencies to monitor the harvesting activities.*

We encourage Ecology to test the outflow from harvesting activities to ensure their compliance with water quality standards.

Ecology should not ignore Cooke's record

We have attempted to address the modification objectively with constructive criticisms and solutions, but from the public's view point, it is impossible to ignore Cooke's past and ongoing behaviors. Cooke purchased the pens in Washington State in 2016. Let's take a look a time line of their corporate behaviors to gain a perspective on how they choose to operate as a company that is "...dedicated to producing a high-quality seafood in a sustainable and environmentally sound manner."

Documented incidents in Washington State:

| Date | Description | Source |
|-----------------|---|---|
| August 25, 2016 | Warning Letter: National Pollutant Discharge Elimination System | Department of Ecology PARIS |
| May 2017 | Anchor Slip/Break Clam Bay | Confirmed by facility personnel and photos. |
| July 24, 2017 | Ecology Illicit discharge noncompliance notification | Department of Ecology PARIS |
| August 23, 2017 | Notice of Violation | Department of Ecology PARIS |
| AUGUST 22, 2017 | It's open season on Atlantic salmon as the public is urged to help mop up a salmon spill from an imploded net holding 305,000 fish at a Cooke Aquaculture fish farm near Cypress Island . In a statement Tuesday morning, Cooke said "exceptionally high tides and currents coinciding with this week's solar eclipse" caused the damage. Cooke estimates several thousand salmon escaped following "structural failure" of a net pen. | https://www.thenewstribune.com/news/local/article168636307.html |

| Date | Description | Source |
|-------------------|---|---|
| October 10, 2017 | Just a week after the state Department of Fish and Wildlife approved shipment of 1 million more farmed Atlantic salmon to Cooke Aquaculture's fish farm near Bainbridge Island, another state agency says it has found a hole in the nets and corrosion in the structure of the facility. The Department of Natural Resources on Monday notified Cooke that it is in default of the terms of its lease at its Rich Passage operation. It ordered the facility repaired within 60 days, or the department may cancel the company's lease for the facility, which operates over public bed lands. | https://www.seattletimes.com/seattle-news/environment/fish-farm-has-60-days-to-fix-nets-outside-seattle-as-1-million-atlantic-salmon-move-in/ |
| December 12, 2017 | Administrative Order and Notice of Penalty Without water quality protections in place, Cooke Aquaculture Pacific (Cooke) has repeatedly cleaned dirty equipment and discharged polluted wastewater into Puget Sound. Cooke operates commercial Atlantic salmon net pens in Washington state. | Department of Ecology PARIS |
| December 17, 2017 | Cooke Aquaculture must shut down and remove its Port Angeles Atlantic salmon farm after the state deemed it unsafe and illegal and canceled its lease. | https://www.seattletimes.com/seattle-news/environment/violations-prompt-washington-state-to-cancel-atlantic-salmon-farm-lease-at-port-angeles/ |
| January 30, 2018 | Cooke Aquaculture Pacific vastly underrepresented the scope of a catastrophic Atlantic salmon net-pen spill at its Cypress Island farm last August and misled the public and regulators about the cause, according to a new report by state investigators that blames the pen collapse on company negligence. The investigation found that Cooke lowballed the number of escaped fish by more | https://www.seattletimes.com/seattle-news/fish-farm-caused-atlantic-salmon-spill-state-says-then-tried-to-hide-how-bad-it-was/ |

| Date | Description | Source |
|---------------------|---|---|
| | than half, and did not do essential maintenance at its farm, causing the escape | |
| February 18, 2018 | Cooke Aquaculture inspection finds problems at 2 other Atlantic salmon pens. At the Fort Ward facility in Rich Passage, inspectors found chain links on an anchor line had lost up to 75 percent of holding capacity because of corrosion. At Cooke's Hope Island facility, five miles from the mouth of the Skagit River, inspections conducted by Cooke also "do not appear in accordance with manufacturer's recommendations or industry standards," the report found. | https://www.seattletimes.com/seattle-news/environment/cooke-aquaculture-inspection-finds-problems-at-2-other-operations/ |
| Feb-Sept 2018 | Workers hammer rust off Orchard Rocks pens | Personal observations and communication from Ecology |
| Oct 15-20, 2019 | Orchard Rocks net pen sinking due to hole in pontoon | Personal observations and photos |
| December 18th, 2018 | The Washington Department of Fish and Wildlife considers the exotic strain of PRV to be an unacceptable risk to native stocks of Pacific salmon. Under the conditions of its permit, Cooke Aquaculture Pacific was required to destroy the fish. | https://www.seattletimes.com/seattle-news/environment/fish-farmer-destroys-800000-juvenile-atlantic-salmon-due-to-disease-second-purge-in-past-year/ |
| October 22, 2019 | "A small hole was identified in one bulkheaded pontoon on the Southeast portion of the Orchard Rocks net pen and we completed the necessary welding repairs immediately today. We will also have an engineer onsite tomorrow to assess the welding repair and pontoon. There were no fish in the corner section of the pen where the pontoon required repair," said a Cooke Aquaculture representative in a statement | https://www.king5.com/article/news/local/no-salmon-released-when-cooke-aquaculture-pen-sinks/281-b4741721-30f3-402a-bd2a-017edcc87b7b |

These types of incidents are not just unique to Cooke here in Washington State. Below is a recap of events in North America:

| Approximate Date | Description | Source |
|--------------------|---|--|
| March 4, 2016 | <p>New Brunswick-based multi-national farmed salmon producer Cooke Aquaculture had nothing but bad news during the past month, including yet another product recall from the Canadian Food Inspection Agency (CFIA), a valuable complaint from the mayor of the town housing Cooke's Nova Scotia headquarters and a notice to consumers to avoid eating Cooke's primary product, Atlantic salmon grown in Nova Scotia, New Brunswick and Newfoundland.</p> <p>Government product recalls</p> <p>In late January, CFIA issues a recall notice for salmon products produced by subsidiary True North Salmon, based on evidence that the fish might contain particles of a foreign substance. In 2012, CFIA issues a recall warning when Cooke distributed framed mussels which were alleged to contain marine biotoxins. Also in 2012, three Cooke executives - including CEO and founder Glenn Cooke - faced federal felony charges for dumping gallons of deadly insecticides near their salmon cages in the Bay of Fundy.</p> | <p>http://www.southcoasttoday.ca/content/more-troubles-cooke-aqua-product-recall-do-not-buy-notice-farmed-salmon-loan-demands</p> |
| September 11, 2017 | <p>Atlantic salmon, believed to be part of a cohort that escaped from a U.S.-based fish farm on Aug. 19, are being hauled in by anglers fishing out of French Creek on mid-Vancouver Island. Cameron Wheatley, owner of the French Creek Store at the marina just north of Parksville, received the head of an apparent Atlantic salmon from a local angler late Sunday morning, Sept. 10. He is freezing the head, along with two more fish heads and one whole farm-raised salmon, to turn over to Fisheries and Oceans Canada</p> | <p>https://fisherynation.com/archives/63166</p> |
| October 12, 2017 | <p>Cooke Aquaculture offered to pay a premium price for Atlantic salmon caught by the Lummi Nation after a major spill from the company's Cypress Island fish farm if the tribe would not advocate getting rid of net pen aquaculture. The tribe tartly rejected the offer. "Your demand to keep quiet for a few extra dollars is insulting," Timothy Ballew II, chairman of the Lummi Indian Business Council, responded in a Sept. 14 letter. Nell Halse, vice president for communications for Cooke, said Wednesday the offer "was not an attempt to muzzle or insult the Lummi Nation, but rather an effort to</p> | <p>https://mynorthwest.com/781546/lummi-chairman-calls-bribery-attempt-insulating-and-preposterous/?show=comments#comments</p> |

| Approximate Date | Description | Source |
|------------------|--|---|
| | negotiate toward common ground and respect the interests and concerns of both parties at the table | |
| March 30, 2018 | Cooke Aquaculture harvested all the fish at its site near Gaultois last October following the detection of five fish with the infectious disease, and did so again in a facility on the south coast of Newfoundland in February. | https://aquaculturemag.com/2018/04/03/isa-virus-found-in-salmon-at-southern-newfoundland-aquaculture-site/ |
| April 3, 2018 | Freedom of Information Act request asking for the status of a \$25 million loan extended to Cooke Aquaculture in 2012. A newspaper article disclosed that Cooke Aquaculture is eligible for \$4 million in “loan forgiveness” to fund a university research chair named after the company. The \$800,000 spent by Cooke funded a chair held by an industry friendly researcher. | https://www.halifaxexaminer.ca/featured/cooke-aquaculture-is-eligible-for-4-million-in-loan-forgiveness-to-fund-a-university-research-chair-named-after-the-company/#1 . We’re giving Cooke Aquaculture a free research cha |
| May 17, 2018 | For the second time in five years, a Canadian salmon aquaculture firm has admitted in a New Brunswick courtroom to illegally using a pesticide known to kill lobsters for treating salmon off an island that abuts the Maine border. Cooke was fined \$500,000 Canadian. | https://bangordailynews.com/2018/05/17/business/report-canadian-salmon-firm-admits-using-lobster-killing-pesticide-near-maine-border/ |
| August 7, 2018 | <p>Between 2,000 and 3,000 fish escaped from Cooke Aquaculture's Hermitage Bay salmon farm on Newfoundland's south coast in July, the company confirms. Incident happened after net extensions were sewn onto a pen at the operation. extensions were sewn onto a pen at the operation.</p> <p>The escape of thousands of farmed salmon on the south coast of Newfoundland is a significant concern, as is the lack of public notification about the incident.</p> | <p>https://www.asf.ca/news-and-magazine/salmon-news/salmon-escaped-from-cooke-aquacultures-farm-company-confirms</p> <p>https://fisherynation.com/archives/tag/cooke-aquaculture</p> |

Rich Passage Estates Homeowners' Association
 PO Box 11683
 Bainbridge Island, WA 98110

| Approximate Date | Description | Source |
|-------------------|--|--|
| December 14, 2018 | British Columbia will phase out 17 commercial salmon farms off the northeast coast of Vancouver Island to aid in the migration and restoration of wild West Coast salmon runs, under an agreement between the B.C. government and Aboriginal First Nations | https://www.seattlepi.com/local/politics/article/British-Columbia-salmon-orca-fish-farm-phase-out-13467254.php |
| August 20, 2019 | A pipe broke at the Deer Island Bay of Fundy Cooke facility while fish were being transferred from a net pen to a boat for sea lice treatment. Initial estimates by Cooke Aquaculture set the total of escapees at 2,500, but company representatives have since lowered that estimate to 1,000 fish, Researchers for the Atlantic Salmon Federation have captured and removed 53 Atlantic salmon from a New Brunswick river | https://www.asf.ca/news-and-magazine/news-releases/salmon-escape-in-bay-of-fundy |
| October 9, 2019 | Maine Department of Agriculture finds that unacceptable fish handling incidents have occurred at the Bingham hatchery after a video went viral. | https://www.timesrecord.com/articles/maine-1/bingham-aquaculture-facility-kept-fish-in-cruel-unsanitary-conditions-group-says/ |
| October 16, 2019 | As part of a consent agreement with the Maine Department of Environmental Protection, Cooke Aquaculture has agreed to pay \$156,213 to fund the Marine Rearing Atlantic Salmon Machias River Project, which aims to breed and restore native populations of Atlantic salmon in the Machias River. Cooke violated its operating permit by having too many fish in one or more pens, failing to conduct environmental sampling, and failing to follow a variety of clerical procedures that include timely filing of complete and accurate pollution sampling reports and timely submissions of fish spill prevention plans. The infractions violated the terms of Cooke's operating permit, DEP rules and state law. "The administrative consent agreement was created to determine a path forward and to start anew - wipe the slate clean," Cooke spokesman Joel Richardson said. | https://bangordailynews.com/2019/10/16/news/down-east/canadian-salmon-firm-will-pay-156k-over-fish-pen-violations-to-fund-salmon-restocking/ https://www.seafoodsource.com/news/aquaculture/cooke-to-pay-fine-for-overstocking-maine-salmon-farms-not-conducting-environmental-testing |
| October 31, 2019 | Just weeks after Cooke Aquaculture agreed to pay the state more than \$150,000 to settle numerous violations at several of its salmon net pen sites in eastern Maine, the Department of Marine Resources is asking for public comment on the company's application for a 20-year lease renewal. | https://www.ellsworthamerican.com/maine-news/waterfront/dmr-seeks-comment-on-cooke-aquaculture-lease-renewal/ |

| Approximate Date | Description | Source |
|------------------|---|---|
| November 6, 2019 | Last week, the Atlantic States Marine Fisheries Commission, the partnership, or “interstate compact,” that sets harvest limits for 27 fisheries up and down the Atlantic Coast, officially accused Virginia of allowing Omega Protein to overfish,, In a December 2017 press release on the deal, Cooke hinted at a new use: “The animal feed ingredients produced by Omega Protein are an important component in Cooke Aquaculture’s production of healthy Atlantic salmon, making this acquisition a strategic move that greatly enhances Cooke’s vertical integration.” So instead of rockfish, maybe the Bay’s menhaden will be feeding farm-raised salmon in Canada. | https://fisherynation.com/archives/ag/cooke-aquaculture |

Decisions to modify water quality permits should include Cooke’s record both past and present. The addition of more restrictions here is not a guarantee of future compliance.

Ecology should absolutely consider Cooke’s record in its decision to modify NPDES permits.

Conclusions

In some senses, we’re on the paradoxical road to Abilene where a group of people collectively decide on a course of action that is counter to the preferences of many. The general consensus among the public here is that marine net pen aquaculture should not be allowed to continue, but that is not what the current law allows.

Past experiences and ongoing patterns of behavior with this net pen operator alone should be enough to deny permit modifications and the continued operation of net pens in Puget Sound. Without incorporating the additional corrective measures as bulleted below, it is difficult to assess, control and mitigate critical aspects of the NPDES permit. We are asking the Department of Ecology to strongly consider each of the points below that have the potential to: provide needed information, improve water quality standards and reduce the risks associated with the net pen operations, and those designed to increase transparency:

- Discussions to modify the NPDES permits should be tabled until the lifting of Governor Inslee’s Stay Home, Stay Healthy proclamation has ended and Washington residents are afforded the opportunity to comment in the communities where these net pens currently operate.
- Discussions to modify the NPDES permits should be tabled until related lawsuits challenging the Department of Fish and Wildlife are concluded.

- We recommend that the guidance be updated with current science and best industry practices with respect to raising steelhead in marine net pens. The State should withdraw their Mitigated Determination of Non-Significance, issue a Determination of Significance, and draft an Environmental Impact Statement to assess the full impacts of this proposed permit modification.
- No decision to modify the NPDES permits should be made until the public has a chance to comment on State of Science on Net-Pen Aquaculture in Puget Sound, Washington.
- Any modification of the NPDES permit should be conditioned on strict adherence to inspections that are required “approximately” every two years and any other legally-binding provisions.
- A decision to modify the current NPDES permit should be tabled until all pens are inspected and deficiencies addressed.
- Ecology should require an internal and external audit to ensure the reliability of training and emergency response protocols.
- Require a clean set of predator nets or some other type of barrier after harvest on all pens to prevent predation by marine mammals on other stocked pens and disallow the partial stocking of pens in a particular net pen array to provide for public and worker safety.
- Require proof such as photo evidence or videos to document that containment measures are in place for activities related to structural maintenance that have the potential to impact water quality.
- Implement a specific collection interval...weekly, bi-weekly related to the collection of recyclables like pallets and feed bags to reduce the likelihood of discharge to State waters.
- Any washing of containers that hold dead fish should be prohibited to prevent discharges to State waters.
- Parking of personal vehicles over water should be prohibited to prevent accidental discharges to Washington State waters.
- Nets, after removal have been stored on the dock in the past and Ecology can prevent unwanted discharges to Washington State waters by requiring that they be removed directly by barge.
- Strict adherence to provisions related to the net cleaning requirement that at the end of the growing cycle, after the fish have been harvested out, that nets are

removed from the water and transported to a land based cleaning and repair facility.

- The Feed Conversion Rates (FCR's) and Specific Feed Rates (SFR's) calculated by the Department of Ecology should be made available in the PARIS website.
- We recommend that a model for calculation and visualization be developed and additional data be added to the DMR data available to the public. These would include but not be limited to:
 - Starting number of fish
 - Number and weight of harvested fish
 - Monthly Average Weight of Fish (based on sample)
 - Monthly mortalities
- Update AKART parameters for the current NPDES Permit.
- We recommend that production maximums be reduced to align with historical levels and an annual maximum to control for a worst-case scenario.
- We encourage Ecology to test the outflow from harvesting activities to ensure their compliance with water quality standards.
- Ecology should absolutely consider Cooke's record in its decision to modify NPDES permits. This alone should be enough to grant a denial to permit modifications.

SHORELINE MANAGEMENT ACT OF 1971
PERMIT FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT

NOTE - THIS PAGE FOR
LOCAL GOVERNMENT USE
ONLY

APPLICATION NO. 502
Administering Agency Kitsap County
Date Received January 25, 1988
Approved X Denied _____
Date June 13, 1988

Type of Action (Check if appropriate)

- Substantial Development Permit
 Conditional Use
 Variance

Pursuant to Chapter 90.58 RCW, a permit is hereby granted to

Global Aqua USA, Inc.
355 Ericksen, Suite 421 (Name of Applicant)
Bainbridge Island, WA 98110

to undertake the following development (Please be specific) Replacement and reconfiguration
of existing floating netpens based on current state of the art standards and equipment.

upon the following property (please list the legal description, i.e., section to
the nearest quarter section, township, range)

SEE ATTACHED

The project will (be/~~not be~~) be within shorelines of statewide significance
(RCW 90.58.030). The project will be located within a (environment) *SEE BELOW
designation. The following master program provisions are applicable to this development
(please state the master program section or page number)

USE ACTIVITIES - Section II - Aquaculture, p. 7-5 - 7-6
Section IV - Commercial Development, p. 7-10 - 7-11

- * Salt Water II, Fort Ward - Urban
Salt Water IV - Orchard Rocks

**LEGAL DESCRIPTION
SW II Fort Ward**

That portion of the bed of Rich Passage, owned by the State of Washington, situate in front of a portion of Government Lot 1, Section 15, Township 24 North, Range East, W.M., included in a tract described as follows:

Commencing at the section corner common to Sections 10, 11, 14, and 15, in said township and range running thence S 84° 06' 17" W 472.63 feet, thence S 72° 14' W 295 feet, more or less, to the line of extreme low tide and true point of beginning of this description, continuing thence S 72° 14' W 105 feet, thence N 17° 46' W 175 feet, thence N 72° 14' E 105 feet, more or less, to the line of extreme low tide, and thence southerly along said line of extreme low tide to the true point of beginning.

LEGAL DESCRIPTION
SW IV Orchard Rocks

That portion of the bed of Rich Passage, owned by the State of Washington, situate in front of a portion of Government Lot 1, Section 15, Township 24 North, Range 2 East, W.M., included in a tract described as follows:

Commencing at the Northeast corner of Section 15, Township 24 North, Range 2 East, W.M., and running thence S 83° 30' W 1,600 feet to the point of beginning, thence due west 608 feet, thence due south 1,093 feet, thence due east 608 feet, thence north 1,093 feet to the point of beginning, containing an area of 16 acres, more or less

Conditions:

1. The uses of the subject site are limited to the uses proposed in the applications for Substantial Development Permit and Shoreline Conditional Use Permit. Any other uses will be subject to further review pursuant to the requirements of the Kitsap County Zoning Ordinance and Kitsap County

Shoreline Management Master Program. Approval of this application shall not be construed as approval for more extensive utilization of the subject site than is authorized by the permits if granted nor shall it imply any precedential value for other commercial developments in the area.

2. The applicant shall be required to satisfy and or obtain the following permit approvals:

State of Washington:

Department of Fisheries hydraulic project approval
Department of Fisheries aquatic farm registration
Department of Fisheries salmon egg importation permit
Department of Ecology water quality certification
Department of Agriculture annual food processing license.

Federal:

US Army Corps of Engineers Section 10/404 permit

3. There shall be no activity conducted on the site which would create hazards of fire, explosion or other danger.
4. The applicant shall implement annual monitoring as described in Section 6.3 of the Recommended Interim Guidelines (pp. 42 to 46) and submit results to Kitsap County Health Department, Kitsap County Department of Community Development and State and Federal agencies.
5. No over-the-water structures shall be permitted, except net pens.
6. Discarded nets under SWII must be removed.
7. The net pen/aquaculture operation will not preclude residential uses of the upland properties or water-oriented recreational uses associated therewith.
8. No transfer of ownership or subleases of the total or any part of the facility may be granted without prior review by Kitsap County to insure consistency with the Shoreline Management Act, Kitsap County Shoreline Management Master Program and the individual shoreline permit.

Orca Conservancy

Please add the following two attachments to the administrative record on behalf of Orca Conservancy.



October 26, 2020

Sent electronically via: laurie.niewolny@ecy.wa.gov

Laurie Niewolny
Aquaculture Specialist and Permit Coordinator
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504

RE: *Draft Cooke Aquaculture National Pollutant Discharge Elimination System (NPDES) permit modifications to raise steelhead (*Oncorhynchus mykiss*) in Puget Sound open water net pens.*

Dear Laurie,

Thank you for the opportunity to comment on the Draft Cooke Aquaculture (Cooke) permit modifications to rear *Oncorhynchus mykiss* steelhead National Pollutant Discharge Elimination System (NPDES) water quality permits for Cooke. Please add the following comment(s) to the administrative record.

Orca Conservancy is a 501c3 Washington State nonprofit working on behalf of *Orcinus orca*, the killer whale, and protecting the wild places on which it depends. Our urgent attention is on the 74 remaining critically endangered Southern Resident killer whales (SRKWs) which inhabit the waters of Washington State. SRKWs are dietary fish-specialists and depend on abundant populations of healthy, wild salmon for their survival, social cohesion and reproductive success. Orca Conservancy works towards increasing prey resources, reducing the accumulation of marine toxins, including reducing the destruction of salmon spawning and nearshore habitats; nurseries of the Salish Sea.

Southern Resident Killer Whales (SRKW):

On November 18, 2005, after evaluating the five listing factors of the Endangered Species Act, 16 U.S.C. §§ 1531-1544, the National Marine Fisheries Service (NMFS) issued a final ruling listing the Southern Resident Killer Whale, a distinct population segment (DPS), as endangered under the Act. The SRKW population is

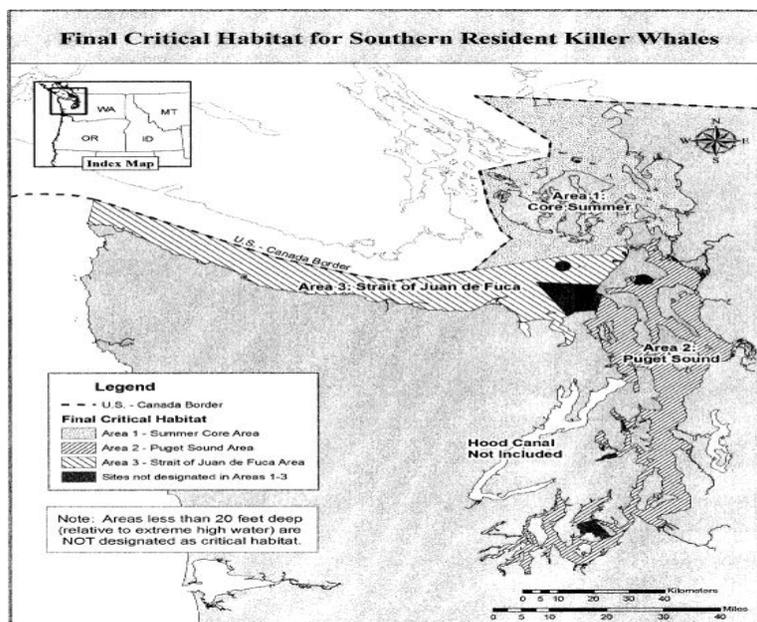
comprised of three pods (identified as J-, K-, and L-Pods) and is arguably the most familiar killer whale population to the general public, especially here in the Pacific northwest.

Critical habitat is defined Critical habitat is designated for the SRKW as described below. The textual descriptions of critical habitat in section **§226.206** are the definitive source for determining the critical habitat boundaries. The overview map (below) is provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *Critical Habitat Boundaries.* Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, *King*, *Kitsap*, Island, Mason, Pierce, San Juan, *Skagit*, Snohomish, Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous shoreline delimited by the line at a depth of 20 feet (6.1 m) relative to extreme high water in each of the following areas:

1. *Summer Core Area:* All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.).
2. *Puget Sound Area:* All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.), and east of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at 48°12'30" N./122°44'26" W.; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°8'39" N./ 122°45'12" W.) and a point on Whidbey Island located at latitude 48°12'30" N./122°44'26" W., and north of the Hood Canal Bridge (Highway 104) (47°51'36" N./122°37'23" W.); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51'36" N./122°37'23" W.); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.
3. *Strait of Juan de Fuca Area:* All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23'10" N./124°43'32" W.), Tatoosh Island, Washington (48°23'30" N./124°44'12" W.), and Bonilla Point, British Columbia (48°35'30" N./124°43'00" W.); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.), and west of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at 48°12'30" N./122°44'26" W.

(b) An overview map of final critical habitat for the Southern Resident killer whale follows:



(c) *Primary Constituent Elements*. The primary constituent elements essential for conservation of the SRKW are:

1. Water quality to support growth and development;
2. Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and
3. Passage conditions to allow for migration, resting, and foraging.

The Department of Ecology (Ecology), an agency whose mission is to protect, preserve, and enhance Washington's environment for current and future generations, has determined switching species from Atlantic salmon to steelhead at Clam Bay, Fort Ward, Orchard Rocks (Rich Passage), and Hope Island (Skagit County) would not change potential impacts on water quality, and claims to be strengthening regulations within the draft permits to ensure water quality is protected.

Since 1996, Orca Conservancy continues to work with best available science and evidentiary records here in the PNW, and internationally, which continue to factually document the severe environmental risks that commercial open water net pens -- also known as concentrated animal feeding operations (CAFOs) -- pose to species listed under the Endangered Species Act (ESA). This includes the water quality standards under the Clean Water Act (CWA), and ultimately, the entire ecosystem of Puget Sound.

Thus, reviewing the Department of Ecology's (Ecology) modifications to the existing NPDES permits, there are still severe environmental risks and consequences related to rearing high densities of highly domesticated fish - in this case steelhead - within marine open water net pens. Ecology is not adhering to well-documented risks which are inherent to what open water net pens can and do to materialize and endanger the health of our waters. Waters which are working harder than ever to support our culture, economy, wild salmon, and killer whales; especially the critically endangered SRKW population.

It would be reckless to issue permits that could allow the planting of steelhead in Puget Sound net pens since Ecology is well aware of the ongoing legal and scientific reviews including the potential to release new environmental impacts to water quality and marine ecosystem.

1. Ecology should not authorize Cooke's modified NPDES permits while the underlying SEPA review is being challenged. In October 2020, WDFW posted a SEPA “mitigated determination of non-significance” (MDNS) analyzing the potential genetic and environmental impacts of Cooke’s proposal to transition from farming Atlantic salmon to farming steelhead in several of the company’s existing facilities. WDFW’s decision to issue MDNS without fully analyzing and considering the potential significant environmental consequences posed by net pen aquaculture may have violated the State Environmental Policy Act (SEPA). WDFW’s decision to grant Cooke’s permits based on the MDNS is currently being litigated in a Washington Superior Court with a pending ruling from Judge Johanna Bender, who held trial on this issue September 24, 2020¹.

Given the magnitude of scientific evidence WDFW failed to consider during the review, it is possible that the Court could rule that WDFW violated SEPA, invalidating the MDNS and permits granted to Cooke, and requiring WDFW to reinstate the SEPA process to conduct additional environmental review such as an environmental impact statement. As a partner agency in this SEPA review, Ecology should not authorize NPDES permits until the Court announces their final decision in this legal matter. Furthermore, comprehensive environmental review of the impacts posed by Puget Sound net pens has not occurred since the 1990 EIS. If an EIS is required by the Court, it is likely to unveil significant pollution and water quality risks and harms posed by net pen aquaculture that Ecology would need to address and review through the NPDES permitting process. This would include environmental impacts associated with the practice of net pen aquaculture in general, as well as environmental impacts associated with the expansion to steelhead.

2. Ecology should not authorize Cooke's modified NPDES permits while federal ESA consultation on the impacts of Puget Sound net pens are ongoing. NOAA Fisheries is currently preparing a biological opinion of Puget Sound net pens in response to the Environmental Protection Agency’s initial determination in May 2020² that Puget Sound net pens “are likely to adversely impact” ESA-listed Puget Sound salmon, steelhead, and rockfish populations. This consultation is addressing water quality standards needed to issue the permits and therefore it would be premature and inappropriate for Ecology to finalize the NPDES permit review and issue permits while this federal ESA consultation is ongoing and without fully addressing and reviewing NOAA Fisheries’ findings. Additionally, that determination released a new analysis directly related to impacts of Puget Sound finfish net pens pose to ESA-listed species and designated critical habitat.

It is clear that the legislature intended to alter the risk assessment framework used for marine finfish aquaculture in general from the status quo. The Environmental Protection Agency (EPA) made an initial species effects determination that Puget Sound’s marine finfish net pens “*are likely to adversely affect*” the following ESA-listed fish populations: Chinook salmon (Puget Sound ESU), Chum Salmon (Hood Canal summer-run ESU), Steelhead (Puget Sound DPS), Boccaccio (Puget Sound/ Georgia Basin DPS) and the Yelloweye Rockfish (Puget Sound/ Georgia Basin DPS).

¹ 2020. (September 24). Wild Fish Conservancy, Center for Biological Diversity, Center for Food Safety, Friends of the Earth. https://www.goskagit.com/news/environment/judge-hears-lawsuit-over-fish-farms/article_bee1ad57-88c7-5b8a-9e59-b30a378765fd.html
² 2020. (May 29). Environmental Protection Agency (EPA). BA. Addendum. https://drive.google.com/file/d/1o_-bsup2_W6qBz80PedBznLddCxqJEQL/view

Notably, Chinook and other salmonid species currently listed under the ESA are continuing to decline in Washington state and the inability to control Nonpoint Source Pollution (NPS) is merely a fraction of the larger picture. Endangered Southern Resident killer whales rely on Chinook and chum salmon for survival and social cohesion.

Congress passed the Clean Water Act (CWA) to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U. S. C. §1251(a); see also PUD No. 1, 511 U. S., 700, 714, the “national goal” being to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U. S. C. §1251(a)(2). Section 401 is a critical piece of the CWA which was specifically written to block or reduce environmental impacts from fossil fuel pipelines, hydroelectric and other dams, cooling water intakes, large commercial and housing developments, mining, dredging, and other destructive projects that require a federal license or permit.

Under the NPDES, the CWA defines a ‘point source’ as “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft from which pollutants are or may be discharged.”³ ‘Nonpoint sources’ are defined as those sources not traceable to a single conveyance.⁴

3. Clarifying that any fish reared in Cooke’s net pens are prohibited from release.

The Washington Pollution Control Board (WPCB) has found that escaped salmon are “*agricultural or industrial waste*,” another statutory example of the definition of pollutant.⁵ As the federal government also considers aquaculture to be a form of agriculture, escaped salmon may similarly be treated as *agricultural or industrial waste* under the CWA.⁶ Meaning, said pollutant, must be introduced into the water from outside the water.⁷ Therefore, open net fish farms, “*physically introduces a pollutant into water from the outside world.*”⁸

4. Adding requirements and details on how to notify state agencies of events that could potentially lead to fish escape.

Escapes from an aquaculture facility can occur for a variety of reasons, including an overflow during flooding events, equipment failures, or improper facility design. Reducing the potential for escape events is extremely important in preventing unintentional introductions of invasive species into state waters. States generally focus on regulating the location and design of aquaculture facilities to mitigate the risk of escapes.

Orca Conservancy encourages Ecology to acquire enacting and enforcing more specific requirements. Meaning, Ecology must not issue a permit until said aquaculture facility (Cooke), has submitted substantiated details that prevent the escape and/or release of organisms including the discharge of biological effluents which include procedures intended to protect marine life, animals and humans against disease of harmful biological agents, and are willing to submit monthly pathogen reporting made available to the general public.

3 33 U.S.C. 1362(14)

4 William H. Rodgers, Jr., Handbook on Environmental Law, 4.4, at 375 (1977); S. Rep. No.92-414, at 212 (1972), reprinted in 1972 U.S.C.C.A.N. 3668, 3760. Senator Bob Dole defined a nonpoint source as “one that does not confine its polluting discharge to one fairly specific outlet, such as a sewer pipe, a drainage ditch or a conduit. . . .” *Id*

5 1998. Wash. Rev. Code Ann. 15.85.010 (West)

6 1996. Robert R. Stickney, Aquaculture in the United States: A Historical Survey 228 (stating that the Department of Agriculture was involved in the aquaculture industry in the late 1970s and that it controlled the specific area of inland species which were of commercial interest) [hereinafter Stickney, Historical Survey]; 33 U.S.C. 1362(6)

7 *Consumers Power*, 862 F.2d at 588-89; *Gorsuch*, 693 F.2d at 174-75

8 *Gorsuch*, 693 F.2d at 175; see *Consumers Power*, 862 F.2d at 584

As we stated in our letter dated, June 8, 2020 (see attached), Cooke has shown time and time again that they are not a trustworthy permit operator, let alone a good neighbor. Orca Conservancy is opposed to allowing any industry, especially Cooke, to self-monitor and self-report violations.

While the safety of human life is undoubtedly a priority, securing the net pen should happen simultaneously with the emergency notification and recovery of feral fish, not afterward, and not at the discretion of Cooke.

Having said that, we recognize any NPDES permit can be revoked or modified in whole or in part during its terms for: violation of any term or condition of the permit; obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or a determination that the permit activity endangers human health of the environment, or contributes to water quality standard violation.

While the state agency report on the investigation into Cooke's August 19, 2017 catastrophic net pen failure are damning, said report highlights outright lies and misinformation that Cooke told state agency officials and tribal governments. Additionally, the 2018 investigation report found, among other things; the "probable cause of both the July incident and the August failure was due to the lack of accountability by Cooke to adequately clean the nets containing the fish. 35 33 WAC 173-220-150(1)(d); WAC 172-220-190. 34 WAC 173-220-190(3).

And yet knowing all that, the state agencies did NOT investigate further.

Since endangered SRKWs rely on healthy wild Chinook salmon for their survival, we believe Ecology should engage in its own SEPA analysis under RCW Ch. 43.21c due to: 1. Cooke's Pollution Prevention Plan being incomplete and deficient, 2. that Cooke's Fish Escape Prevention Plan is incomplete and deficient, 3. given Cooke's history of non-compliance should have more accountability measures, 4. that Cooke's Fish Recovery and Recapture Plan is still incomplete and deficient, 5. an analysis for ESA-listed Steelhead and Chinook must be included in Ecology's water pollution data, and 6. the new tier II analysis should be required in accordance to Washington's Antidegradation Policy (WAP). Meaning, SRKWs, as a species listed under the ESA, falls under the Antidegradation policy⁹ as 'existing uses' and is covered under the water quality standards. Simply put, antidegradation means that no pollutant discharges or activities will be permitted if these may cause surface waters already meeting water quality standards to drop below those standards.

⁹ 2020. EPA. Key Concepts Module 4: Antidegradation. <https://www.epa.gov/wqs-tech/key-concepts-module-4-antidegradation>

In closing, said modified permits still fail to account for changes in risk assessment imposed by HB2957¹⁰, which clearly states to eliminate commercial marine net pen escapement, and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife as intended by the Washington state legislature in passing this law.

Ecology is incorrect to treat Cooke's current permit application as an extension of an existing practice, and permitting should not occur and especially without thorough consultation with local, state, federal and tribal governments.

Sincerely,

A handwritten signature in blue ink that reads "Shari L. Tarantino". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Shari L. Tarantino
Executive Director

¹⁰ 2017-18. Reducing escape of nonnative finfish from marine finfish aquaculture facilities. Sponsors: Lytton, Peterson, Robinson, Wilcox, Talor, Stambaugh, Sawyer, Chapman, Pollet, Stanford. <https://app.leg.wa.gov/billsummary?BillNumber=2957&Year=2017>



June 5, 2020

Sent electronically to: laurie.niewolny@ecy.wa.gov and <http://wq.ecology.commentinput.com/>

Washington State Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504-7600
Laurie Niewolny

RE: Cooke Aquaculture National Pollutant Discharge Elimination System (NPDES) Application to rear *Oncorhynchus mykiss* in Puget Sound | Open Water Net Pens

Dear Laurie Niewolny,

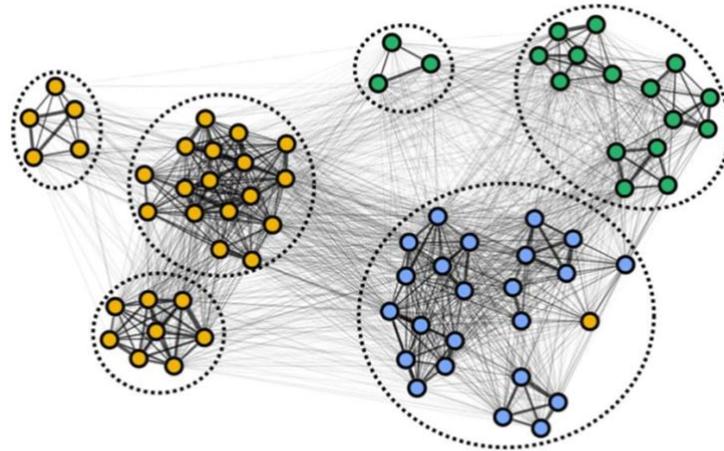
Thank you for the opportunity to comment on decisions regarding Cooke Aquaculture's National Pollutant Discharge Elimination System (NPDES) Application to rear *Oncorhynchus mykiss* (*O. mykiss*) in Puget Sound with open water net pens. Orca Conservancy and its 35,000+ members and supporters are in opposition of granting Cooke Aquaculture (Cooke) permit(s) to rear *O. mykiss* in Washington State waters; Puget Sound. Please add the following comment to the record, and review our November 3, 2019 comment (attached) sent to the Washington Department of Fish and Wildlife (WDFW). Additionally, Orca Conservancy is an active member of the Our Sound, Our Salmon Coalition, a campaign coordinated by the Wild Fish Conservancy.

Orca Conservancy is a 501c3 Washington State nonprofit working on behalf of *Orcinus orca*, the killer whale, and protecting the wild places on which it depends. Our urgent attention is on the 72 remaining critically endangered Southern Resident killer whales (SRKWs) which inhabit the waters of Washington State. SRKWs are dietary fish-specialists and depend on abundant populations of healthy, wild salmon for their survival, social cohesion and reproductive success. Orca Conservancy works towards increasing prey resources, reducing the accumulation of marine toxins, including reducing the destruction of salmon spawning and nearshore habitats; nurseries of the Salish Sea.

In November 2005, the critically endangered SRKW population was listed under the Endangered Species Act (ESA). Today, June 5, 2020, the 72 remaining SRKWs are down FIFTEEN family members from when they were

initially listed. Scientifically, this population needs to maintain a *minimum* of 200 members to reach historical levels.¹

The remaining 72 critically endangered SRKW population consists of three pods: J-Pod (**blue**), K-Pod (**green**), and L-Pod (**yellow**):



Endangered orcas' social networks. Dashed ovals show orcas' main social clusters, while line thickness indicates the likelihood of a whale in J (blue), K (green) or L (orange) pod surfacing close enough to inhale another orca's breath.

CREDIT: WEISS ET AL., "MODELLING CETACEAN MORBILLIVIRUS OUTBREAKS IN AN ENDANGERED KILLER WHALE POPULATION," BIOLOGICAL CONSERVATION, 2020. »

Instead of focusing on how to assist with recovery of the 72 SRKW left, we must change our mindset and start focusing on the 128+ SRKW that are essentially **missing** from this population due to human destruction, and corporate greed. Bold decisions are not only necessary in protecting the environment, but it will allow the SRKW population a much clearer path towards recovery.

Critical habitat is designated for the SRKW as described below. The textual descriptions of critical habitat in section **§226.206** are the definitive source for determining the critical habitat boundaries. (The overview map (below) is provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *Critical Habitat Boundaries.* Critical habitat includes three specific marine areas of Puget Sound, Washington, within the following counties: Clallam, Jefferson, *King*, *Kitsap*, Island, Mason, Pierce, San Juan, *Skagit*, Snohomish, Thurston, and Whatcom. Critical habitat includes all waters relative to a contiguous

¹ 1972. Palo G.J. put forth a tentative estimate of 225-300 whales for Puget Sound and the Georgia Basin in 1970. Notes on the natural history of the killer whale (*Orcinus orca*) in Washington State. Murrelet 53-22-24

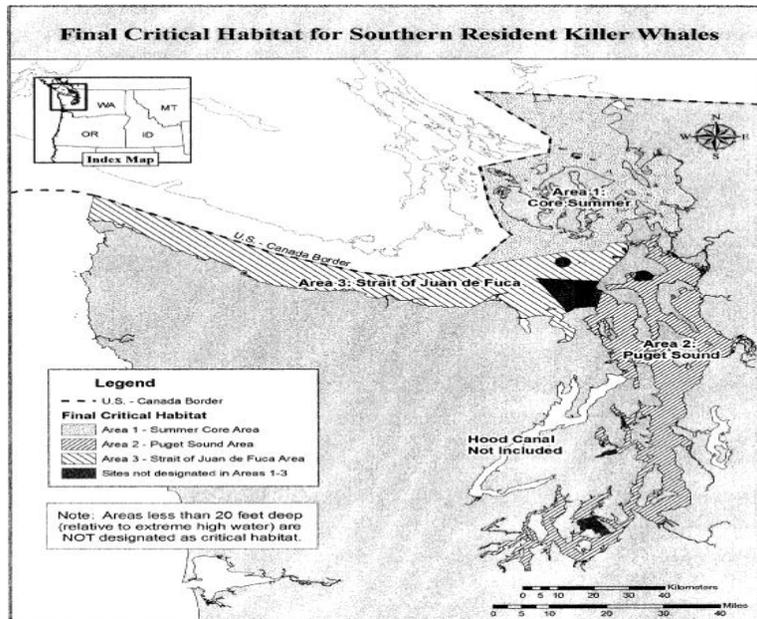
shoreline delimited by the line at a depth of 20 feet (6.1 m) relative to extreme high water in each of the following areas:

(1) *Summer Core Area*: All U.S. marine waters in Whatcom and San Juan counties; and all marine waters in Skagit County west and north of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.).

(2) *Puget Sound Area*: All marine waters in Island County east and south of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.), and east of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at 48°12'30" N./122°44'26" W.; all marine waters in Skagit County east of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.); all marine waters of Jefferson County east of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at latitude 48°12'30" N./122°44'26" W., and north of the Hood Canal Bridge (Highway 104) (47°51'36" N./122°37'23" W.); all marine waters in eastern Kitsap County east of the Hood Canal Bridge (Highway 104) (47°51'36" N./122°37'23" W.); all marine waters (excluding Hood Canal) in Mason County; and all marine waters in King, Pierce, Snohomish, and Thurston counties.

(3) *Strait of Juan de Fuca Area*: All U.S. marine waters in Clallam County east of a line connecting Cape Flattery, Washington (48°23'10" N./124°43'32" W.), Tatoosh Island, Washington (48°23'30" N./124°44'12" W.), and Bonilla Point, British Columbia (48°35'30" N./124°43'00" W.); all marine waters in Jefferson and Island counties west of the Deception Pass Bridge (Highway 20) (48°24'25" N./122°38'35" W.), and west of a line connecting the Point Wilson Lighthouse (48°8'39" N./122°45'12" W.) and a point on Whidbey Island located at 48°12'30" N./122°44'26" W.

(b) An overview map of final critical habitat for the Southern Resident killer whale follows.



(c) *Primary Constituent Elements*. The primary constituent elements essential for conservation of the SRKW are:

- (1) Water quality to support growth and development;
- (2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and
- (3) Passage conditions to allow for migration, resting, and foraging

Congress passed the Clean Water Act (CWA) to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U. S. C. §1251(a); see also PUD No. 1, 511 U. S., 700, 714, the “national goal” being to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U. S. C. §1251(a)(2). Section 401 is a critical piece of the CWA which was specifically written to block or reduce environmental impacts from fossil fuel pipelines, hydroelectric and other dams, cooling water intakes, large commercial and housing developments, mining, dredging, and other destructive projects that require a federal license or permit.

Thus, Congress, responding to the nation’s need for clean water supplies, passed the CWA to create a means by which to reduce the amount of water pollution nationwide.² In order to correct the water pollution problem...³ the CWA defines the term “discharge of pollutants” to mean “*any addition of any pollutant to navigable waters from any point source.*”⁴

The CWA defines a ‘*point source*’ as “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, *concentrated animal feeding operation*, or vessel, or *other floating craft from which pollutants are or may be discharged.*”⁵ ‘*Nonpoint sources*’ are defined as those sources not traceable to a single conveyance.⁶

The CWA defines “*pollutant*” as “dredged spoil, *solid waste*, incinerator residue, sewage, garbage, sewage sludge, munitions, *chemical wastes*, *biological materials*, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and *industrial, municipal, and agricultural waste* discharged into water.”⁷ The CWA extends to both animate and inanimate pollutants.⁸ The statute, for example, regulates fecal coliform (living bacteria) as conventional pollutants.⁹ The Washington Pollution Control Board has also found that escaped salmon are “*agricultural or industrial waste*,” another statutory example of the definition of pollutant.¹⁰ As the federal government also considers aquaculture to be a form of agriculture, escaped salmon may similarly be treated as *agricultural or industrial waste* under the CWA.¹¹ Meaning, said pollutant,

² 1996. Jeff L. Todd, Note, *Environmental Law: The Clean Water Act—Understanding When a Concentrated Animal Feeding Operation Should Obtain an NPDES Permit*, 49 Okla. L. Rev. 481, 482–83

³ 33 U.S.C. 1311(a)

⁴ *Id.* 1362(12)

⁵ 33 U.S.C. 1362(14)

⁶ William H. Rodgers, Jr., *Handbook on Environmental Law*, 4.4, at 375 (1977); S. Rep. No.92–414, at 212 (1972), reprinted in 1972 U.S.C.C.A.N. 3668, 3760. Senator Bob Dole defined a nonpoint source as “one that does not confine its polluting discharge to one fairly specific outlet, such as a sewer pipe, a drainage ditch or a conduit. . . .” *Id.*

⁷ 33 U.S.C. 1362(6)

⁸ 1997. *Marine Env'tl. Consortium v. Department of Ecology*, PCHB No. 96–257, 1997 WL 394651, at *4 (Wash. Pol. Control Bd. May 27, 1997)

⁹ 33 U.S.C. 1314(a)(4)

¹⁰ 1998. Wash. Rev. Code Ann. 15.85.010 (West)

¹¹ 1996. Robert R. Stickney, *Aquaculture in the United States: A Historical Survey* 228 (stating that the Department of Agriculture was involved in the aquaculture industry in the late 1970s and that it controlled the specific area of inland species which were of commercial interest) [hereinafter Stickney, *Historical Survey*]; 33 U.S.C. 1362(6)

must be introduced into the water from outside the water.¹² Therefore, open net fish farms, in theory... *“physically introduces a pollutant into water from the outside world.”*¹³

Cooke Aquaculture’s (Cooke’s) track record of prior CWA violations including not following adopted plans has been well documented. From the 2017 failure at the Cypress Island location in Skagit County, and then again with the 2019 partial sinking at the Orchard Rocks location. Cooke clearly demonstrates an inability to ensure adequate emergency response measures. Following the 2017 Cypress Island net pen collapse, [Wild Fish Conservancy sued Cooke Aquaculture under the Clean Water Act](#) (CWA). That suit resulted in rulings that the company (Cooke) had violated the terms of its permits, including by failing to conduct required inspections of net pen moorings and anchors, to accurately monitor and report the number of fishes escaping from pens, to develop operational plans that include necessary procedures for inspecting cages, storing chemicals, disposing of harvest blood, and to track the number of fishes in its cages and lost to predation. Finally, the discharges of pollutants from aquaculture fish farms result in numerous adverse environmental effects:

- (1) decreases in oxygen levels in the water;
- (2) increased harm to benthic ecosystems;
- (3) greater numbers of toxic algae blooms;
- (4) an increase in the adverse effects on organisms due to toxic chemical pollutants; and,
- (5) increased competition between native salmon and escaped fish for food and resources

Further, the investigative process of the 2017 collapse shows a perverse lack of consideration by Cooke in regards to record keeping, proper maintenance protocol, and principle of the net pen structures -- which ultimately resulted in the failure. Additionally, the investigation report concluded that Cooke withheld information and details about the pen failure to Washington State agencies responsible for their regulation. Cooke then went a step further and reported they had cleaned up their debris and the seafloor under the failed pens as directed by the State. However, the State, upon inspection, found that there was still debris on the seafloor and had to force Cooke to complete the mandated work. Cooke’s history of CWA violations is important to consider in this process, if nothing else to ensure that the permits are drafted to ensure that violations are detected before catastrophe ensues.

Incidents like the partial sinking of the Orchard Rocks pen in October, 2019, mentioned above, demonstrates that the risks of additional escapes are very real, given the state of the existing pen structures. The response to the 2019 incident was conducted by several Washington State agencies, including Ecology, and the records from the aforementioned incident, and the state agencies’ documentation of Cooke’s inadequate emergency response must be included in this record to ensure that emergency plans incorporate lessons learned, and acknowledge the degraded state of the surviving pens as identified by state inspectors and Cooke’s own contractors.

In large part HB 2957 was passed into law during the 2018 65th Legislative Session because, *‘evidence emerged that nonnative marine finfish aquaculture may endanger Washington’s native salmon populations, so too has evidence emerged that marine finfish aquaculture in general may pose unacceptable risks not only to Washington’s native salmon populations but also to the broader health of Washington’s marine*

¹² *Consumers Power*, 862 F.2d at 588–89; *Gorsuch*, 693 F.2d at 174–75

¹³ *Gorsuch*, 693 F.2d at 175; see *Consumers Power*, 862 F.2d at 584

environment'.¹⁴ HB 2957 instructed the State of Washington to create new and stricter regulatory management specifically for net pen aquaculture, and to phase out Atlantic salmon aquaculture by 2022. That places the Ecology, and other agencies in charge of regulating said open water net pens, to eliminate commercial marine net pen escapement, and to include the elimination of negative impacts to water quality and native fish, shellfish, and wildlife. The new standards introduced with HB 2957 also requires the re-examination of past decisions and to hold Cooke to a much higher standard of eliminating risks. Ecology should not limit the scope of their review to risks associated with a change of species. Changing the species to the biologically altered, domesticated *O. mykiss* does not eliminate the very foundation that the passage of HB 2957 into law has granted.

The change in species poses new and different risks in addition to the harms open water net pen aquaculture has caused for decades. While Washington State has granted permits to its salmon fish farms, the requirements of these permits are known to be not very strict.¹⁵ Therefore, some policies which may have been permitted for Atlantic salmon under the pre-2017 status quo, pose additional risks with the proposal to introduce a highly-domesticated and partially-sterile form of steelhead. The differences in this circumstance were considered as far back as 1990, when the last comprehensive Environmental Impact Statement (EIS) was drafted. The prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with biologically-altered, domesticated steelhead and Puget Sound's federally-listed steelhead population, again, different risks apply. More importantly, the standards laid out in the 1990 Environmental Impact Statement (EIS) have not been met for these purposes:

- The “a minimum distance of separation between farms and river mouths” has never been considered and adopted in state policy, as section 5.7.2.2 of the 1990 EIS would require for aquaculture involving native fish (and as is required in many other nations). Since escapes, and their risks to threatened steelhead and rainbow trout, constitute pollution and are within the scope of Ecology's review, this guidance and an analysis of the proximity of pens to steelhead spawning rivers should be included in Ecology's review of these NPDES permits. In addition, the assessment of risks from pollution (including diseases) should account for the migration corridors in areas like Rich Passage, which may concentrate wild salmon near the pens
- The behavioral response of wild steelhead to a large aggregation of wild steelhead may be different than it was to Atlantic salmon. If wild schools are attracted to the captive domesticated steelhead in pens, the pollution from the pens may do greater harm to hatchery-reared steelhead and to threatened wild Puget Sound steelhead
- Despite treatment to render the fish infertile (triploid), many fish in the pens will be capable of reproducing. When a net pen collapses, it will release more fertile female steelhead than exist in many endangered wild steelhead runs. When an escape happens, it will be nearly impossible to manage a recovery effort that removes farmed steelhead and does no harm to endangered wild steelhead and bull trout, endangered and threatened salmon, endangered southern resident killer whales, and other protected wildlife in Puget Sound
- The escape of steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, will pose risks to native salmon, steelhead, and rainbow trout

¹⁴ 2018. Reprs: Lytton, Peterson, Robinson, Wilcox, Taylor, Stambaugh, Sawyer, Chapman, Pollet, and Stanford. Engrossed House Bill 2957. Passed. 65th Legislature 2018 Regular Session. <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/House%20Passed%20Legislature/2957.PL.pdf#page=1>

¹⁵ Goldberg & Triplett, *supra* note 2, 296–98

rearing in nearshore marine habitats and rivers due to competition for food and foraging space. This will be particularly true in the case of Cooke's proposed triploid (treatment to render the fish infertile) steelhead because as noted in Cooke's materials, triploid fish have appetites that are likely to be considerably greater than wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish. This means escapees may outcompete wild steelhead, or indeed predate upon them¹⁶

All that being said, decades of experience show real effects on water quality in the plumes around net pens, which the terms of Cooke's current permit application does not eliminate. This NPDES review should re-examine existing data on effluents from industrial products, medicines, feed, fish waste, and dead and rotting fish to assess whether the current plans eliminate all of those risks. Open net fish farms discharge significant amounts of wastewater containing nutrients, chemicals, and pharmaceuticals that have impacts on the surrounding environment. These aqua-farm wastewater contaminants include fish excrement, uneaten chemical-laden food, and swarms of parasites, which spread pollution and disease to ocean fish in the area and surrounding ocean.¹⁷ The water flowing out of an aquaculture facility can carry with it; excessive particulates, bacteria, diseased organisms and polluting chemicals harming surrounding habitats, causing algal blooms, poisoning marine wildlife and other severe disturbances.¹⁸ Furthermore, feed and fecal matter from these facilities can deplete the dissolved oxygen concentrations around and certainly within the facilities. Even the anti-fouling agents to keep the cages and pens clean are highly toxic.¹⁹ Small fish species, such as forage fish species and out-migrating and rearing wild salmon and trout (including ESA-listed Chinook and steelhead), have to migrate past net pens as they swim across the shoreline, and may be attracted by net pen feed to the point where they physically enter a net pen facility and are vulnerable to disease associated with farmed salmon in the pens-regardless of species.

Washington's Department of Fish and Wildlife's (WDFWs) January 2020 decision to issue a Mitigated Determination of Non-Significance (MDNS) to now farm *O. mykiss*, granted Cooke some key permits and ended the environmental review process under SEPA. This decision was flawed, and is currently being legally challenged in Washington State Court by members of the Our Sound, Our Salmon Coalition to have the Court render the MDNS invalid and require WDFW to reinitiate the SEPA process to conduct additional environmental review such as an updated EIS.

Ecology should not authorize Cooke's modified NPDES permits until this ongoing lawsuit challenging the SEPA environmental review process and determination is complete.

Ecology's NPDES permit review should not begin until there has been thorough consultation with local, state, federal and tribal governments.

Again, no permits should be granted until a SEPA review of this NPDES application chooses instead to order a new draft EIS after making a Determination of Significance (DIS).

¹⁶ 2020. Our Sound, Our Salmon Coalition comment letter submitted to the Washington Department of Ecology, June 8, 2020. Page 2-3.

¹⁷ 2000. Baird, R. W. The Killer Whale: foraging specializations and group hunting. Pages 127-153 in J. Mann, R.C. Connor, P.L. Tyack, and H. Whitehead, editors. Cetacean societies: field studies of dolphins and whales

¹⁸ 1998. Ford, J.K.B., G.M. Ellis, L.G. Barrett-Lennard, A.B. Morton, R.S. Palm, and K.C. Balcomb III. Dietary specialization in two sympatric populations of killer whales (*Orcinus orca*) in coastal British Columbia and adjacent waters. Canadian Journal of Zoology 76:1456-1471

¹⁹ 2013. Krkosek, M., Revie, C.W., Gargan, P.G., Skilbrei, O.T., Finstad, B. and Todd, C.D. Impact of parasites on salmon recruitment in the Northeast Atlantic Ocean. Proceedings of the Royal Society of London B: Biological Sciences, 280 (1750). P. 20122359

Finally, many counties and municipalities have established new rules since the net pens were initially installed which will prohibit construction of new net pens in their waters. While the existing pens in Washington State are 'grandfathered' in, communities and nations should have a full and open opportunity to voice their opinions regarding if the continued operation of open water net pens in Puget Sound actually honors the concerns and needs of their neighbors, including the overall recovery of endangered wild salmon and SRKWs.

Cooke has not demonstrated good faith, nor has this corporation shown a willingness to utilize an actual documented action to put a remedy into place for its serious, previous management lapses (see comment letter to WDFW for additional information, attached) -- but instead, is relying on the status quo and handouts given to corporations due to the lack of political will.

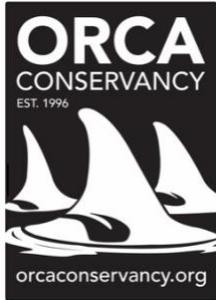
Our environment is on the brink of no return.

Ecology needs to make the bold decisions necessary to reclaim the rivers, estuaries and marine waters for thriving populations of healthy wild fish, and not succumb to crowded, diseased, captive artificial ones.

Sincerely,



Shari L. Tarantino
Executive Director



November 3, 2019

Sent via electronic email to: SEPAdesk2@dfw.wa.gov

Lisa Wood
SEPA/NEPA Coordinator
WDFW Habitat Program, Protection Division
P.O. Box 43200
Olympia, WA 98504

RE: MDNS 19-056: RAISING STERILE ALL-FEMALE TRIPLOID RAINBOW TROUT/STEELHEAD AT EXISTING MARINE NET PEN SITES IN PUGET SOUND

Dear Lisa Wood,

Thank you for the opportunity to comment on decisions regarding Washington's Department of Fish and Wildlife (WDFW) *MDNS 19-056: RAISING STERILE ALL-FEMALE TRIPLOID RAINBOW TROUT/STEELHEAD AT EXISTING MARINE NET PEN SITES IN PUGET SOUND*.

Orca Conservancy is a volunteer 501c3 Washington State nonprofit working on behalf of *Orcinus orca* the killer whale, and protecting the wild places on which it depends. Our urgent attention is on the 73 remaining critically endangered Southern Resident killer whales (SRKWs) that inhabit the waters of Washington State and who rely on healthy, wild Chinook salmon populations for their survival. Orca Conservancy also works towards increasing prey resources, reducing the accumulation of marine toxins, including the destruction of salmon spawning and nearshore habitats; nurseries of the Salish Sea.

Orca Conservancy and its 30,000+ members and supporters stand in opposition of MDNS 19-056 and request the state to withdraw the mitigated Determination of Non-Significance and instead issue a Determination of Significance, and draft an Environmental Impact Statement (EIS) to not only assess the full impacts of this transition; but to update the outdated EIS from 1990.

Southern Resident killer whales (SRKW) are dietary fish-specialists and depend on abundant populations of healthy, wild salmon for their survival, social cohesion and reproductive success. After over a decade of federal protection, the population has yet to show signs of significant recovery, with 73 members total as of October 2019 – *still **FOURTEEN** members fewer than when they were initially listed*. SRKW survival remains in question and is far from guaranteed and the population growth needs to exceed 200 members to reach historical levels.²⁰

Joint NMFS/FWS regulations for listing Endangered and Threatened species and designating Critical Habitat at Section 50 CFR 424.12(b) state that the agencies shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Pursuant to the regulations, such requirements include, but are not limited to, the following:

- (1) space for individual and population growth, and for normal behavior;
- (2) food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) cover or shelter;
- (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;
- (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.²¹

Killer whales frequent a variety of marine habitats that do not appear to be constrained by water depth, temperature, or salinity.²² Observations of killer whales suggest that the resident pods (J, K, and L) can be spread over hundreds of kilometers at any given point, require open waterways that are free from obstruction to move between important habitat areas, find prey and fulfill other life history requirements. Individual knowledge of productive feeding areas and other special habitats is probably an important determinant in the selection of locations visited and is likely a learned tradition passed from one generation to the next.²³

Critical Habitat is defined in Section 3 of the ESA (16 U.S.C. 1532(3)) as:

1. The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to

²⁰ Palo (1972) put forth a tentative estimate of 225- 300 whales for Puget Sound and the Georgia Basin in 1970 (Palo, G. J. 1972. Notes on the natural history of the killer whale *Orcinus orca* in Washington State. Murrelet 53:22-24)

²¹ NMFS (National Marine Fisheries Service). 2006. Designation of Critical Habitat for Southern Resident Killer Whales. Biological Report. Available from: http://www.nwr.noaa.gov/publications/protected_species/marine_mammals/cetaceans/killer_whales/esa_status/srkw- ch-bio-rpt.pdf

²² Baird, R. W. 2000. The Killer Whale: foraging specializations and group hunting. Pages 127-153 in J. Mann, R.C. Connor, P.L. Tyack, and H.

Whitehead, editors. Cetacean societies: field studies of dolphins and whales. ⁴ Ford, J.K.B., G.M. Ellis, L.G. Barrett-Lennard, A.B. Morton, R.S. Palm, and K.C. Balcomb III. 1998. Dietary specialization in two sympatric populations of killer whales (*Orcinus orca*) in coastal British Columbia and adjacent waters. Canadian Journal of Zoology 76:1456-1471.

²³ Ford, J.K.B., G.M. Ellis, L.G. Barrett-Lennard, A.B. Morton, R.S. Palm, and K.C. Balcomb III. 1998. Dietary specialization in two sympatric populations of killer whales (*Orcinus orca*) in coastal British Columbia and adjacent waters. Canadian Journal of Zoology 76:1456-1471.

the conservation of the species and (b) which may require special management considerations or protection; and

2. Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. The ESA defines “conservation” as the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Additionally, once Critical Habitat is designated, Section 7 of the ESA requires federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the Section 7 requirement that federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

Congress passed the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U. S. C. §1251(a); see also PUD No. 1, 511 U. S., 700, 714, the “national goal” being to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” 33 U. S. C. §1251(a)(2). Section 401 is a critical piece of the Clean Water Act which is specifically written to block or reduce environmental impacts from fossil fuel pipelines, hydroelectric and other dams, cooling water intakes, large commercial and housing developments, mining, dredging, and other destructive projects that require a federal license or permit.

Under the State Environmental Protection Act (SEPA), this review requires a threshold determination of whether an action is likely to have a “significant adverse environmental impact.” The State’s current threshold determination of Mitigated Determination of Non-Significance (mDNS) is inadequate as an environmental review and fails to address many well-documented risks associated with farming salmonids in these exact pens. Industrial-scale, open-water finfish aquaculture poses significant environmental risks, and the transition from Atlantic salmon aquaculture to rainbow/steelhead trout aquaculture adds significant risks that cannot be mitigated.

The proposed all-female and sterile fish reduces the risks of genetic interference to native populations. However, the “Final Programmatic Environmental Impact Statement: Fish Culture in Floating Net-Pens,” dated January 1990 (incorporated by reference in the mDNS), and the “Threatened and Endangered Species: 1990 Programmatic EIS Update” do NOT address the fact that if the fish do escape, they could compete with the federally-listed as endangered Puget Sound steelhead for spawning habitat and therefore displace necessary spawning behavior.

The fact that aquaculture is a rapidly developing industry, little scientific work has been done to establish and promote practices which will ensure a sustainable environment. Marine aquaculture operations presently include finfish, shellfish, algae and seaweed as well as their associated hatcheries, operational support, and pen and cage deployment requirements. Aquaculture has many problems, many of which have detrimental effects on ecosystems desperately trying to sustain the many species which rely on it for survival. Uses may conflict between public and private activities, and native aquatic species inhabit areas that may be impacted by the aquaculture infrastructure deployment. Furthermore, nuisance species and populations based on non-point sources are problematic for both sides. Further, it's likely to make the disease problem worse, because these fish would be more closely related to our wild fish than Atlantic salmon.-

The August 2017 collapse of one of Cooke’s farm sites near Cypress Island which allowed more than 250,000 Atlantic salmon to escape into Puget Sound was a motivating factor for legislators to pass -- due in large part, to the hard work of the Our Sound, Our Salmon coalition -- a farming ban in 2018 to phase out Atlantic salmon net pens by 2020. Additionally, Cooke paid in USD a meager \$332,000 penalty to the Washington Department of Ecology to resolve claims arising from the accident.

Cooke’s Vice President of Public Relations, Joel Richardson, said in a recent announcement, "We understand that our relationship with the environment is vital to producing top quality seafood. Cooke Aquaculture Pacific will continue to work with local communities, tribes, and regulators, and we are investing in upgrading operations and equipment. We view this as a significant component of our corporate social responsibility and we are committed to farming sustainably in Washington state as we do in other locations globally."

However, COOKE AQUACULTURE; COOKE AQUACULTURE US; COOKE AQUACULTURE USA; OMEGA PROTEIN; OMEGA PROTEIN has shown time and time again that they are NOT a good neighbor nor are they a corporation that practices what they preach and has no right to continue business here in Washington state. Individual penalty records show they are a violator of pollution within our waterways (see below and attached):

| Company | Primary Offense Type | Year | Agency | Penalty Amount |
|---|--------------------------------------|------|-----------|----------------|
| Omega Protein . Inc. | environmental violation | 2013 | EPA | \$7,500,000 |
| Omega Protein Inc. | environmental violation | 2017 | EPA | \$1,200,000 |
| Omega Protein Corp. | False Claims Act and related | 2019 | DOJ_CIVIL | \$1,000,000 |
| Omega Protein Corporation | investor protection violation | 2019 | SEC | \$400,000 |
| OMEGA PROTEIN .INC. | workplace safety or health violation | 2014 | OSHA | \$83,900 |
| OMEGA PROTEIN .INC. | workplace safety or health violation | 2012 | OSHA | \$50,000 |
| OMEGA PROTEIN - REEDVILLE | environmental violation | 2007 | EPA | \$27,900 |
| OMEGA PROTEIN INC | environmental violation | 2010 | EPA | \$22,045 |
| OMEGA PROTEIN INC | environmental violation | 2013 | EPA | \$20,000 |
| OMEGA PROTEIN - REEDVILLE | environmental violation | 2001 | EPA | \$18,600 |
| OMEGA PROTEIN - REEDVILLE | environmental violation | 2006 | EPA | \$16,500 |
| COOKE AQUACULTURE USA, INC. | workplace safety or health violation | 2016 | OSHA | \$15,713 |
| OMEGA PROTEIN - REEDVILLE | environmental violation | 2003 | EPA | \$11,000 |
| OMEGA PROTEIN INC | environmental violation | 2005 | EPA | \$9,633 |
| OMEGA PROTEIN INC (Permit MS0002950) Administrative Order | environmental violation | 2000 | EPA | \$9,375 |
| COOKE AQUACULTURE USA, INC. | workplace safety or health violation | 2016 | OSHA | \$7,856 |
| OMEGA PROTEIN | workplace safety or health violation | 2009 | OSHA | \$6,660 |
| COOKE AQUACULTURE, INC. U.S. | workplace safety or health violation | 2012 | OSHA | \$6,266 |
| OMEGA PROTEIN - REEDVILLE | environmental violation | 2005 | EPA | \$5,500 |
| COOKE AQUACULTURE, INC. | workplace safety or health violation | 2014 | OSHA | \$5,400 |
| OMEGA PROTEIN | workplace safety or health violation | 2005 | OSHA | \$5,340 |

The partnership that ‘Cooke’ has claimed to have established with the Jamestown S’Klallam Tribe is disappointing, but is not surprising. It is just one more instance of the lack of political will due to corporate greed to to achieve and/or continue a reckless status quo that will adversely affect the precious ecosystem of Washington state and beyond.

Additionally, with the acquisitive owners of Cooke Seafood announcing the purchase of Icicle Seafoods; creating a seafood giant expected to produce more than 275,000 metric tons of seafood and generate an

estimated USD 1.8 billion (EUR 1.58 billion) in sales annually - the agreement looked to give New Brunswick, Canada based Cooke Seafood 100 percent ownership of Icicle, including its three business units overseeing production of wild salmon and ground fish in Alaska and farmed Atlantic salmon in Washington State.

However, the environmental and workplace safety violations continue (see below and attached):

| Company | Primary Offense Type | Year | Agency | Penalty Amount |
|---|--------------------------------------|------|--------|----------------|
| ICICLE SEAFOODS INC - M/V NORTHERN VICTOR (USCG NO. 248959) | environmental violation | 2007 | EPA | \$900,000 |
| Icicle Seafoods Inc | environmental violation | 2012 | EPA | \$430,000 |
| Icicle Seafoods Inc. | environmental violation | 2012 | EPA | (*) \$430,000 |
| Icicle Seafoods Inc | environmental violation | 2003 | EPA | \$85,000 |
| ICICLE SEAFOODS, INC. | workplace safety or health violation | 2012 | OSHA | \$24,000 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2009 | OSHA | \$17,064 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2013 | OSHA | \$15,000 |
| ICICLE SEAFOODS, INC. | workplace safety or health violation | 2018 | OSHA | \$15,000 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2013 | OSHA | \$14,500 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2010 | OSHA | \$12,500 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2013 | OSHA | \$11,500 |
| ICICLE SEAFOODS, INC. | workplace safety or health violation | 2018 | OSHA | \$7,600 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2014 | OSHA | \$6,600 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2017 | OSHA | \$6,157 |
| Icicle Seafoods Inc | environmental violation | 2010 | EPA | \$5,920 |
| ICICLE SEAFOODS INC | workplace safety or health violation | 2009 | OSHA | \$5,059 |

It is well known that open net cage fish farms discharge significant amounts of wastewater containing nutrients, chemicals, and pharmaceuticals that impact on the surrounding environment. These aqua-farm wastewater contaminants include fish excrement, uneaten chemical-laden food, and swarms of parasites, which spread pollution and disease to ocean fish in the area and surrounding ocean.²⁴ The water flowing out of an aquaculture facility can carry with it, excessive particulates, bacteria, diseased organisms and polluting chemicals harming surrounding habitats, causing algal blooms, poisoning ocean wildlife and other severe disturbances.²⁵ Furthermore, feed and fecal matter from these facilities can deplete the dissolved oxygen concentrations around and certainly within the facilities. Even the anti-fouling agents to keep the cages and pens clean are highly toxic.²⁶ Open net-cage farming, the use of mesh nets means there is no way to prevent waste feed, which can be laced with antibiotics or pesticides, and fish feces from passing directly into the ocean. The contaminants have also been linked to elevated levels of mercury in rockfish and parasites, tumors and lesions on ground fish harvested near salmon farms, impacting a traditional food source still used by coastal communities.

In 2019, the overwhelming majority of hatchery steelhead come from “segregated” steelhead hatchery programs (those where the hatchery brood stock is genetically distinct from the wild steelhead of the system). For the most part, the fish are produced to subsidize harvest and the fish are caught in the

²⁴ Krkošek, M., Revie, C.W., Gargan, P.G., Skilbrei, O.T., Finstad, B. and Todd, C.D., 2013. Impact of parasites on salmon recruitment in the Northeast Atlantic Ocean. *Proceedings of the Royal Society of London B: Biological Sciences*, 280(1750), p.20122359

²⁵ The rising tide of fish farming, 2003. http://wwf.panda.org/wwf_news/?8281/the-rising-tide-of-fish-farming

²⁶ Fish Farm Harms More Than It Helps, 2015. <http://www.thedailyaztec.com/70101/opinion/fish-farm-harms-more-than-it-helps/>

recreational fisheries. Fisheries managers and scientists acknowledge that these highly domesticated hatchery steelhead harm wild steelhead through both genetic and ecological interactions. There are a few “conservation hatcheries” or “integrated” programs that use local wild fish as their brood stock (see the brief discussion on the Elwha River page). The fish returning as adults are not as productive as the naturally reproducing wild steelhead. These programs also require continual “mining” of the local population for brood stock. For the most part, these programs have been unsuccessful, and a 2013 WDFW assessment recommends they be discontinued in the Lower Columbia.

This proposed permit poses a number of significant concerns for Washington’s waterways, coastal communities, wild fish stocks, and the endangered Southern Resident killer whale population. Additionally, antibiotics, diseases, parasites, excess nutrients, and other water quality concerns have been paramount with Cooke’s Atlantic salmon operations. These issues are not mitigated by simply raising a native finfish species – even if the stock is sterile/all-female – nor are they discussed exclusively by WDFW in this instance.

We only need to look to our neighbors up north in Canada²⁷ to realize that the outcome will be worse for wild salmon recovery and for those that depend on it. The science is clear. In 2012, by Fisheries and Oceans Canada (DFO) own estimates, a diseased salmon farm containing one million fish can shed as many as 650 billion viral particles an hour. And these deadly pathogens become biological booby traps for wild salmon.²⁸

With the amount of investment and time that has been spent in restoring the Salish Sea, including the extremely high value of the endangered SRKWs -- our totem species -- and including the fish resources and ecosystem services along this waterway and shorelines, we cannot allow such unnecessary and large-scale harm to occur by moving forward with this proposed open net pen project.

Again, we request Washington State’s Department of Fish and Wildlife (WDFW) to withdraw their mitigated Determination of Non-Significance; and move to further issue a Determination of Significance, and require a full environmental assessment and environmental impact statement (EIS) under the State Environmental Policy Act (SEPA) to thoroughly address the risks of diseases, pollution, net pen collapses and further escapes, and the potential harm to the federally-listed endangered Puget Sound steelhead and Southern Resident killer whales, and the surrounding environment.

Sincerely,



Shari L. Tarantino
President

²⁷ Davis, M. 2016. http://www.huffingtonpost.ca/marc-davis-/fish-farming-wild-salmon_b_9361814.html

²⁸ Viral Outbreak In Cermaq Farm In Clayoquot, 2012. Morton, A. http://alexandramorton.typepad.com/alexandra_morton/2012/05/viral-outbreak-in-cermaq-farm-in-clayoquot.html ¹⁰ HSMI evidence detected in farmed salmon 5/2016 http://www.fis.com/fis/worldnews/worldnews.asp?monthyear=5-2016&day=24&id=84501&l=e&country=0&special&ndb=1&df=0#st_refDomain=www.facebook.com&st_refQuery=/

Aquatic Life Institute

Public Comment on Revised Water Quality Permits from Washington State Department of Ecology

General Introduction

The following comment is submitted on behalf of a coalition of animal welfare advocates, animal welfare lawyers, and nonprofit organizations. Our signatories are members of the Aquatic Animal Alliance and the Global Aquatic Animal Law & Policy Coalition.

The below comment raises concerns regarding the revised water quality permits in question. Our main concern is aquatic animal welfare (for animals both within and outside such net pens), as we believe animal welfare is both an issue of importance in and of itself and that, in many cases such as this, improved animal welfare (e.g. appropriate stocking density, responsible feeding practices, good fish health) can lead to improved water quality impacts (and vice versa).

We would like to thank the Washington State Department of Ecology for the opportunity to comment on Cooke Aquaculture's NPDES permit application to raise partially sterile, triploid steelhead trout in lieu of Atlantic salmon. This coalition hopes that the Washington State Department of Ecology will adequately consider the existing scientific evidence that these floating feedlots may impact wild, endangered steelhead trout, salmon, and Southern Resident Killer Whales, and may impact surrounding water quality and the overall health of Puget Sound.

The Issue at Hand

We are concerned that rather than conducting a robust, current, and accurate impacts analysis for the issues outlined below, WDFW largely relied on stale information from a decades-old programmatic environmental impact statement for fish culture in net pens from January 1990, which did not provide mitigation measures that adequately minimize significant environmental impacts. Furthermore, the 5th Circuit's recent ruling that aquaculture isn't fishing and can't be regulated as such further supports the idea that a serious SEPA analysis is required for NPDES reviews in this setting.

Washington Department of Fish and Wildlife's (WDFW) decision not to issue an Environmental Impact Statement (EIS) for Cooke Aquaculture (and the "analysis" upon which that decision was based) has deprived the public of information and the opportunity to meaningfully participate, as required by statute. Were WDFW to act in accordance with law, the process could further efforts to protect fish populations, their habitat, and the surrounding water quality. The State Environmental Policy Act (SEPA) is a procedural statute designed to ensure that decision makers in the State of Washington properly consider the environmental impacts of their decisions, to ensure humankind and the environment continue in harmony. SEPA requires an agency to conduct a "threshold determination" that analyzes whether the project has a probable, significant adverse environmental impact. If the agency makes a determination of significance, it must prepare a thorough EIS that includes analysis of reasonable alternatives that achieve similar goals with less environmental impact. Environmental impacts include factors such as impacts to fish and wildlife, plants and animals, surface water quality and runoff, aesthetics, recreation, scenic resources, and historical and cultural preservation.

The threshold determination is the initial SEPA assessment and "must indicate that the agency has

taken a searching, realistic look at the potential hazards and, with reasoned thought and analysis, candidly and methodically addressed those concerns."

Important environmental repercussions include, but are not limited to: the unforeseeable impacts of climate change, warming waters, and their chemical interactions; the impacts from net pen pollution to the benthic community, plants, and animals in nearby waters; the impacts from poor escape prevention and net hygiene practices, including impacts from pen sinking; the impacts from escapements of farm-raised steelhead on wild steelhead genetics, wild salmonids' prey and habitat, and wild salmonids' predators (including the impacts of any recovery efforts or decisions); the impacts of farmed steelhead diseases, pathogens, and parasites on native species; the impacts on native species and the environment of chemicals and pharmaceuticals used to rear farmed steelhead; the impacts on native species of farmed steelhead that are not successfully sterilized; the impacts of harvest efforts, including water withdrawals, discharges and bycatch, on native species and the environment; and the air and noise pollution impacts on adjacent lands and landowners.

Specific Issues of Concern

In the present case, we have identified several concerns that directly relate to water quality degradation and fish welfare including disease, waste, feed, and escapes. Diligent monitoring and reporting is of utmost importance in the following areas:

Disease:

We are concerned about disease outbreaks, both because of welfare concerns impacting animals within and outside the pen(s), and other environmental impacts.

Best welfare management practices (lower stocking density, responsible feed composition, etc.) while fish are cultured in marine waters can reduce stress, thereby reducing risk of infection, disease amplification, and transmission. Traditional vaccinations prepare the individual organisms' immune systems to combat pathogens, and to reduce the risks of infection, pathogen amplification and transmission, and disease. Cooke anticipates using a subset of the suite of vaccines used for Atlantic salmon for their production of all-female triploid steelhead trout.

A May 2020 report from the Fish Welfare Initiative surveying welfare issues in Atlantic salmon aquaculture found that pesticide-resistant sea lice present an existential threat to the salmon farming industry and represent an extinction-level threat to wild salmon populations. We support the careful use of preventative measures to maintain fish health where possible, and careful antibiotic usage only where absolutely necessary, as prescribed by and used under the guidance of an experienced and licensed fish veterinarian.

Cooke Aquaculture claims that they preserve fish health through a warm water sea lice removal system and stock cleaner fish with salmon to minimize impact of sea lice. We are very concerned about the welfare implications of cleaner fish usage. The use of anti-sea lice pesticides must be closely regulated under a NPDES Aquatic Pesticide/Fisheries Resource Management Permit. State and federal law requires coverage under an aquatic pesticide permit for all activities that involve the use of pesticides or nutrient-inactivation products for managing aquatic organisms in waters of the state. All aquatic pesticide permits regulate the amounts and types of pesticide products, as well as when, where, and how these products can be applied. These permits also provide critical details on the specific monitoring, reporting, and public notification requirements for products used.

Therefore, an updated EIS should be required in order to determine if Cooke's pest management activities can continue without causing irreparable harm.

Waste:

As in terrestrial animal agriculture, waste management is a crucial environmental consideration.

Ammonia is the most important waste product from the metabolism of proteins in fish. It is determined as Total Ammonia Nitrogen and expresses the sum of ionised NH_4 and unionized (gas) NH_3 . It is important to stress that unionised ammonia never exists alone but will act in synergy with other contaminants. The distribution of the two forms is highly dependent on pH, temperature, and salinity. NH_3 is one of the most toxic forms due to its high membrane permeability. Concentrations of 25 μg to 300 μg NH_3/L have been reported to cause mortality in salmonid fishes, and 10 μg NH_3/L is known to cause negative gill interaction. Negative effects on plasma cortisone, plasma catecholamine, respiration, osmoregulation, circulation, haematology, and histology of gills, kidney, and liver as a result of higher levels have been observed (Smart 1978; U.S. EPA 1989; Alabaster and Lloyd 1982).

The United States Environmental Protection Agency (EPA) has set a maximum 1 Hr exposure per every third year of wild fish to 5000 μg Total Ammonia Nitrogen/L at a pH of 8.0, and 2500 μg Total Ammonia Nitrogen/L at a pH of 8.5. Toxicity of ammonia increases in hypoxic conditions (Alabaster and Lloyd 1982). Additionally, high pH and increased transformation of NH_4 to NH_3 result in the increased toxicity of NH_3 in seawater (Girard & Payan, 1980).

While it is difficult to give exact upper safe limits for water chemistry parameters since many of the parameters interact in a complicated manner, ammonia poisoning can be avoided by keeping the pH to a safe level, suggested to be in lower limit range (6.2 μ 6.5) and avoid rapid pH rise due to intake of new water volumes with higher pH, in addition to keeping dissolved oxygen close to 100%. However, such exact measurements are very difficult to keep track of in open net pens, and therefore are virtually impossible to regulate and subsequently provide accurate reports in these facilities. It is imperative to understand and adjust the quality of water according to the species-specific needs of the fish in order to protect their welfare, ensure optimal health, and preserve water quality as a result.

Discharges of excess nutrients, particularly nitrogen, into Puget Sound from domestic wastewater treatment plants (WWTPs) are contributing to low oxygen levels in Puget Sound. As these WWTPs are contributing human sources of excess nutrients to Puget Sound, the state must take action to control this pollution. On Jan. 30, 2020, The Dept. of Ecology announced their decision to move forward with developing a draft Nutrients General Permit for Puget Sound. The proposed Nutrients General Permit would apply to all facilities discharging to marine and estuarine waters of Puget Sound. The overall nutrient discharge from such open net aquaculture facilities should also be considered under this new initiative.

Chum:

We are also concerned about the impacts of uneaten feed which could act as "chum".

The information provided by Cooke about fish feed consumption rates and the amount of excess feed spilling out of the net pen facility is unsatisfactory.

Cooke provided an estimate of the monthly fish feed at maximum production (Cooke 2020).

However, a more useful fish feed report should aim to provide an estimate of the amount of feed that goes uneaten. This uneaten fish food that falls through the net pen into surrounding waters is a recurring discharge that attracts native fish as well as predatory birds and pinnipeds. This excess chum is an open invitation to wildlife with deadly consequences, as increased entrapments are bound to occur. Effects of predator control is an ongoing global conservation concern, with potentially significant impacts for several key species and populations. Until the Dept. of Ecology establishes with reasonable certainty the amount of fish feed released from the net pen facility, it

cannot perform an adequate assessment of the adverse impacts to water quality and animal welfare. Cooke has implemented a new feeding system designed to ensure the fish are fed steadily at certain amounts, while also eliminating any feed waste. However, there is no mention about the differing feed conversion rates between Atlantic salmon and steelhead trout. Atlantic salmon are generally more efficient at converting feed to biomass than trout are, with trout being more variable in feed conversion rates and more susceptible to environmental controls (temperature and salinity) on growth (Fry 2018).

The Department of Ecology issues Concentrated Animal Feeding Operation (CAFO) General Permits to operations that confine livestock for long periods of time in pens or barns and discharge pollution to surface or groundwater. This same nature and degree of consideration should extend to net pens due to the fact that their excess feed directly contributes to pollution discharge.

Furthermore, from an aquatic animal welfare perspective and sustainability perspective, we support research efforts to try to reduce the amount of wild-caught fish being used for fish farm feed. ALI has recently estimated that approximately 1.2 trillion fish are reduced to fishmeal/fish oil each year, contributing to ocean degradation, abandoned fishing gear, and death of endangered species .

Escape:

Unfortunately, net pen escapes are well documented worldwide.

After the Cypress net pen collapsed in 2017, research discovered that nearly every fish that escaped was infected with a pathogenic exotic salmon virus that had been undetected and unreported.

There was a structural failure of a net pen facility located in Cypress Island, resulting in the discharge of a quarter-million farmed Atlantic salmon, dead fish carcasses, and massive amounts of debris, among other pollutants. These discharges represent violations of the NPDES permits under which Cooke Aquaculture's Atlantic salmon net pens currently operate, and will continue to operate regardless of the species being reared.

Escapes could increase stress levels among captive fish, pose significant health risks to wild fish, and degrade water quality, which would have a negative effect on all fish welfare.

The fact that the steelhead in question will be partially sterile only mitigates some of the various concerns which have been raised by all too frequent escapes in Washington, the U.S and around the world in recent years. From a welfare perspective, and potentially a health, disease and water quality perspective, we have some concerns about triploid fish. This is an area in which considerable knowledge gaps exist. While more research is needed, Norwegian studies show that these fish appear "more susceptible to temperature stress and have a higher incidence of deformities"

Cooke stated they are going to "update the comprehensive Operational Procedures for Fish Escape Prevention, Reporting and Recapture and Regulated Fish Pathogen Reporting and Biosecurity Plans" on their SEPA environmental checklist. While we commend these efforts, relying on such future promises is inadequate given the high risks at stake when trying to preserve and protect the region and all parties involved.

Conclusions

NPDES permits protect water quality by restricting pollution and requiring monitoring, reporting, and utilization of best management practices. Improved protections and requirements to reduce environmental impacts from net pen operations could include: increasing underwater video monitoring; conducting regular inspections to assess structural integrity of the net pens and submitting inspection reports certified by an objective third party; requiring improved maintenance and cleaning of the net pens, water quality monitoring, and maintenance procedures; requiring transparent reporting if fish mortality rate exceeds 0.5 - 1% (rather than the proposed 5%); refraining from self-reporting and instead relying on a third party to assess and disclose pertinent information; developing site-specific response plans for implementation in the event that fish

escape; conducting and participating in emergency preparedness training; and maintaining contact information to promptly notify area tribes and state agencies in the event of an escape.

In order for the Department of Ecology to perform its duty to ensure that discharges will not endanger water quality, human health, or the environment, the Department should conduct a thorough analysis of Cooke's application and engage in its own SEPA analysis to determine if the NPDES permit should be granted without a new threshold determination.

References:

Alabaster, J.S. and Lloyd. R. 1982. Water quality criteria for freshwater fish. 2nd edition. Butterworth Scientific, London. 361 sider.

Cooke January 2020 NPDES permit application, p. 9.

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Girard J.P and P. Payan (1980) Ion exchange through respiratory and chloride cells in freshwater and seawater adapted teleosts. Am. J. Physiol. 238, R260-R268.

Smart, G. 1978. Investigations of the toxic mechanisms of ammonia to fish-gas exchange in rainbow trout (*Salmo gairdneri*) exposed to acutely lethal concentrations. J. Fish. Biol. 12, 93-104.

U.S. EPA 1990. Ambient water quality criteria for ammonia (saltwater)-1989 EPA 440/5-88-004, Office of Water Regulations and Standards Division, Washington D.C.

Signatories:

Aquatic Life Institute

Fish Welfare Initiative

Animal Equality

Center for Chilean Animal Law Studies

Professor. Kathy Hessler (Director of The Aquatic Animal Law Initiative)

Public Comment on Revised Water Quality Permits from Washington State Department of Ecology

General Introduction

The following comment is submitted on behalf of a coalition of animal welfare advocates, animal welfare lawyers, and nonprofit organizations. Our signatories are members of the [Aquatic Animal Alliance](#) and the [Global Aquatic Animal Law & Policy Coalition](#).

The below comment raises concerns regarding the revised water quality permits in question. Our main concern is aquatic animal welfare (for animals both within and outside such net pens), as we believe animal welfare is both an issue of importance in and of itself and that, in many cases such as this, improved animal welfare (e.g. appropriate stocking density, responsible feeding practices, good fish health) can lead to improved water quality impacts (and vice versa).

We would like to thank the Washington State Department of Ecology for the opportunity to comment on Cooke Aquaculture's NPDES permit application to raise partially sterile, triploid steelhead trout in lieu of Atlantic salmon. This coalition hopes that the Washington State Department of Ecology will adequately consider the existing scientific evidence that these floating feedlots may impact wild, endangered steelhead trout, salmon, and Southern Resident Killer Whales, and may impact surrounding water quality and the overall health of Puget Sound.

The Issue at Hand

We are concerned that rather than conducting a robust, current, and accurate impacts analysis for the issues outlined below, WDFW largely relied on stale information from a decades-old programmatic environmental impact statement for fish culture in net pens from January 1990, which did not provide mitigation measures that adequately minimize significant environmental impacts. Furthermore, the 5th Circuit's recent ruling that aquaculture isn't fishing and can't be regulated as such further supports the idea that a serious SEPA analysis is required for NPDES reviews in this setting.

Washington Department of Fish and Wildlife's (WDFW) decision not to issue an Environmental Impact Statement (EIS) for Cooke Aquaculture (and the "analysis" upon which that decision was based) has deprived the public of information and the opportunity to meaningfully participate, as required by statute. Were WDFW to act in accordance with law, the process could further efforts to protect fish populations, their habitat, and the surrounding water quality. The State Environmental Policy Act (SEPA) is a procedural statute designed to ensure that decision makers

in the State of Washington properly consider the environmental impacts of their decisions, to ensure humankind and the environment continue in harmony. SEPA requires an agency to conduct a “threshold determination” that analyzes whether the project has a probable, significant adverse environmental impact. If the agency makes a determination of significance, it must prepare a thorough EIS that includes analysis of reasonable alternatives that achieve similar goals with less environmental impact. Environmental impacts include factors such as impacts to fish and wildlife, plants and animals, surface water quality and runoff, aesthetics, recreation, scenic resources, and historical and cultural preservation.

The threshold determination is the initial SEPA assessment and “must indicate that the agency has taken a searching, realistic look at the potential hazards and, with reasoned thought and analysis, candidly and methodically addressed those concerns.”

Important environmental repercussions include, but are not limited to: the unforeseeable impacts of climate change, warming waters, and their chemical interactions; the impacts from net pen pollution to the benthic community, plants, and animals in nearby waters; the impacts from poor escape prevention and net hygiene practices, including impacts from pen sinking; the impacts from escapements of farm-raised steelhead on wild steelhead genetics, wild salmonids’ prey and habitat, and wild salmonids’ predators (including the impacts of any recovery efforts or decisions); the impacts of farmed steelhead diseases, pathogens, and parasites on native species; the impacts on native species and the environment of chemicals and pharmaceuticals used to rear farmed steelhead; the impacts on native species of farmed steelhead that are not successfully sterilized; the impacts of harvest efforts, including water withdrawals, discharges and bycatch, on native species and the environment; and the air and noise pollution impacts on adjacent lands and landowners.

Specific Issues of Concern

In the present case, we have identified several concerns that directly relate to water quality degradation and fish welfare including disease, waste, feed, and escapes. Diligent monitoring and reporting is of utmost importance in the following areas:

Disease:

We are concerned about disease outbreaks, both because of welfare concerns impacting animals within and outside the pen(s), and other environmental impacts.

- Best welfare management practices (lower stocking density, responsible feed composition, etc.) while fish are cultured in marine waters can reduce stress, thereby reducing risk of infection, disease amplification, and transmission. Traditional

vaccinations prepare the individual organisms' immune systems to combat pathogens, and to reduce the risks of infection, pathogen amplification and transmission, and disease. Cooke anticipates using a subset of the suite of vaccines used for Atlantic salmon for their production of all-female triploid steelhead trout.

- [A May 2020 report](#) from the Fish Welfare Initiative surveying welfare issues in Atlantic salmon aquaculture found that pesticide-resistant sea lice present an existential threat to the salmon farming industry and represent an extinction-level threat to wild salmon populations. We support the careful use of preventative measures to maintain fish health where possible, and careful antibiotic usage only where absolutely necessary, as prescribed by and used under the guidance of an experienced and licensed fish veterinarian.
- [Cooke Aquaculture claims](#) that they preserve fish health through a warm water sea lice removal system and stock cleaner fish with salmon to minimize impact of sea lice. We are very concerned about the welfare implications of cleaner fish usage. The use of anti-sea lice pesticides must be closely regulated under a NPDES Aquatic Pesticide/Fisheries Resource Management Permit. State and federal law requires coverage under an aquatic pesticide permit for all activities that involve the use of pesticides or nutrient-inactivation products for managing aquatic organisms in waters of the state. All aquatic pesticide permits regulate the amounts and types of pesticide products, as well as when, where, and how these products can be applied. These permits also provide critical details on the specific monitoring, reporting, and public notification requirements for products used. Therefore, an updated EIS should be required in order to determine if Cooke's pest management activities can continue without causing irreparable harm.

Waste:

As in terrestrial animal agriculture, waste management is a crucial environmental consideration.

- Ammonia is the most important waste product from the metabolism of proteins in fish. It is determined as Total Ammonia Nitrogen and expresses the sum of ionised NH_4^+ and unionized (gas) NH_3 . It is important to stress that unionised ammonia never exists alone but will act in synergy with other contaminants. The distribution of the two forms is highly dependent on pH, temperature, and salinity. NH_3 is one of the most toxic forms due to its high membrane permeability. Concentrations of 25 μg to 300 μg NH_3/L have been reported to cause mortality in salmonid fishes, and 10 μg NH_3/L is known to cause negative gill interaction. Negative effects on plasma cortisone, plasma catecholamine, respiration, osmoregulation, circulation, haematology, and histology of gills, kidney, and liver as a result of higher levels have been observed (Smart 1978; U.S. EPA 1989; Alabaster and Lloyd 1982).

- The United States Environmental Protection Agency (EPA) has set a maximum 1 Hr exposure per every third year of wild fish to 5000 µg Total Ammonia Nitrogen/L at a pH of 8.0, and 2500 µg Total Ammonia Nitrogen/L at a pH of 8.5. Toxicity of ammonia increases in hypoxic conditions (Alabaster and Lloyd 1982). Additionally, high pH and increased transformation of NH_4^+ to NH_3 result in the increased toxicity of NH_3 in seawater (Girard & Payan, 1980).
- While it is difficult to give exact upper safe limits for water chemistry parameters since many of the parameters interact in a complicated manner, ammonia poisoning can be avoided by keeping the pH to a safe level, suggested to be in lower limit range (6.2 – 6.5) and avoid rapid pH rise due to intake of new water volumes with higher pH, in addition to keeping dissolved oxygen close to 100%. However, such exact measurements are very difficult to keep track of in open net pens, and therefore are virtually impossible to regulate and subsequently provide accurate reports in these facilities. It is imperative to understand and adjust the quality of water according to the species-specific needs of the fish in order to protect their welfare, ensure optimal health, and preserve water quality as a result.
- Discharges of excess nutrients, particularly nitrogen, into Puget Sound from domestic wastewater treatment plants (WWTPs) are contributing to low oxygen levels in Puget Sound. As these WWTPs are contributing human sources of excess nutrients to Puget Sound, the state must take action to control this pollution. On Jan. 30, 2020, The Dept. of Ecology announced their decision to move forward with developing a draft Nutrients General Permit for Puget Sound. The proposed Nutrients General Permit would apply to all facilities discharging to marine and estuarine waters of Puget Sound. The overall nutrient discharge from such open net aquaculture facilities should also be considered under this new initiative.

Chum:

We are also concerned about the impacts of uneaten feed which could act as “chum”.

- The information provided by Cooke about fish feed consumption rates and the amount of excess feed spilling out of the net pen facility is unsatisfactory.
- Cooke provided an estimate of the monthly fish feed at maximum production (Cooke 2020). However, a more useful fish feed report should aim to provide an estimate of the amount of feed that goes uneaten. This uneaten fish food that falls through the net pen into surrounding waters is a recurring discharge that attracts native fish as well as predatory birds and pinnipeds. This excess chum is an open invitation to wildlife with deadly consequences, as increased entrapments are bound to occur. Effects of predator control is an ongoing global conservation concern, with potentially significant impacts for several key species and populations. Until the Dept. of Ecology establishes with reasonable certainty the amount of fish feed released from the net pen facility, it cannot

perform an adequate assessment of the adverse impacts to water quality and animal welfare.

- Cooke has implemented a new feeding system designed to ensure the fish are fed steadily at certain amounts, while also eliminating any feed waste. However, there is no mention about the differing feed conversion rates between Atlantic salmon and steelhead trout. **Atlantic salmon are generally more efficient at converting feed to biomass than trout are, with trout being more variable in feed conversion rates and more susceptible to environmental controls (temperature and salinity) on growth** (Fry 2018).
- **The Department of Ecology issues Concentrated Animal Feeding Operation (CAFO) General Permits to operations that confine livestock for long periods of time in pens or barns and discharge pollution to surface or groundwater. This same nature and degree of consideration should extend to net pens due to the fact that their excess feed directly contributes to pollution discharge.**
- Furthermore, from an aquatic animal welfare perspective and sustainability perspective, we support research efforts to try to reduce the amount of wild-caught fish being used for fish farm feed. ALI has recently estimated that approximately [1.2 trillion fish](#) are reduced to fishmeal/fish oil each year, contributing to ocean degradation, abandoned fishing gear, and death of endangered species .

Escape:

Unfortunately, net pen escapes are well documented worldwide.¹

- After the Cypress net pen collapsed in 2017, research discovered that nearly every fish that escaped was infected with a pathogenic exotic salmon virus that had been undetected and unreported.
- There was a structural failure of a net pen facility located in Cypress Island, resulting in the [discharge of a quarter-million farmed Atlantic salmon](#), dead fish carcasses, and massive amounts of debris, among other pollutants. These discharges represent violations of the NPDES permits under which Cooke Aquaculture's Atlantic salmon net pens currently operate, and will continue to operate regardless of the species being reared.
- Escapes could increase stress levels among captive fish, pose significant health risks to wild fish, and degrade water quality, which would have a negative effect on all fish welfare.
- The fact that the steelhead in question will be partially **sterile** only mitigates some of the various concerns which have been raised by all too frequent escapes in Washington, the

¹ See for example, this case in the UK in the month of writing (October 2020) <https://www.bbc.com/news/uk-scotland-glasgow-west-54468027>, this case in Norway in 2020: <https://www.intrafish.com/aquaculture/salmon-that-escaped-from-salmars-offshore-aquaculture-operation-had-contagious-disease/2-1-885991>, this case in British Columbia in 2019 <https://globalnews.ca/news/6328416/bc-fish-farm-fire-salmon/>, this case in 2018 in Chile, <https://en.mercopress.com/2020/08/24/chile-slaps-record-fine-of-us-6-million-on-norwegian-salmon-farming-company-for-the-escape-of-700-000-fish> etc.

U.S and around the world in recent years. From a welfare perspective, and potentially a health, disease and water quality perspective, we have some concerns about **triploid** fish. This is an area in which considerable knowledge gaps exist. While more research is needed, Norwegian studies show that these fish appear “more susceptible to temperature stress and have a higher incidence of deformities”²

- Cooke stated they are going to “update the comprehensive Operational Procedures for Fish Escape Prevention, Reporting and Recapture and Regulated Fish Pathogen Reporting and Biosecurity Plans” on their SEPA environmental checklist. While we commend these efforts, relying on such future promises is inadequate given the high risks at stake when trying to preserve and protect the region and all parties involved.

Conclusions

NPDES permits protect water quality by restricting pollution and requiring monitoring, reporting, and utilization of best management practices. Improved protections and requirements to reduce environmental impacts from net pen operations could include: increasing underwater video monitoring; conducting regular inspections to assess structural integrity of the net pens and submitting inspection reports certified by an objective third party; requiring improved maintenance and cleaning of the net pens, water quality monitoring, and maintenance procedures; requiring transparent reporting if fish mortality rate exceeds 0.5 - 1% (rather than the proposed 5%)³; refraining from self-reporting and instead relying on a third party to assess and disclose pertinent information; developing site-specific response plans for implementation in the event that fish escape; conducting and participating in emergency preparedness training; and maintaining contact information to promptly notify area tribes and state agencies in the event of an escape.

In order for the Department of Ecology to perform its duty to ensure that discharges will not endanger water quality, human health, or the environment, the Department should conduct a thorough analysis of Cooke’s application and engage in its own SEPA analysis to determine if the NPDES permit should be granted without a new threshold determination.

References:

- *Alabaster, J.S. and Lloyd. R. 1982. Water quality criteria for freshwater fish. 2nd edition. Butterworth Scientific, London. 361 sider.*
- *Cooke January 2020 NPDES permit application, p. 9.*
- *Fry, J., et al 2018 Environ. Res. Lett. 13 024017*

² Thomas W. K. Fraser, Per Gunnar Fjellidal, Tom Hansen & Ian Mayer (2012) Welfare Considerations of Triploid Fish, Reviews in Fisheries Science, 20:4, 192-211, DOI: [10.1080/10641262.2012.704598](https://doi.org/10.1080/10641262.2012.704598)

³ As was raised by the Attorney from the Swinomish Indian Tribal community at the hearing regarding this permit, we would appreciate more information about where this 5% figure came from.

- *Girard J.P and P. Payan (1980) Ion exchange through respiratory and chloride cells in freshwater and seawater adapted teleosts. Am. J. Physiol. 238, R260-R268.*
- *Smart, G. 1978. Investigations of the toxic mechanisms of ammonia to fish-gas exchange in rainbow trout (Salmo gairdneri) exposed to acutely lethal concentrations. J. Fish. Biol. 12, 93-104.*
- *U.S. EPA 1990. Ambient water quality criteria for ammonia (saltwater)-1989 EPA 440/5-88-004, Office of Water Regulations and Standards Division, Washington D.C.*

Signatories:

Aquatic Life Institute

Fish Welfare Initiative

Animal Equality

Center for Chilean Animal Law Studies

Professor. Kathy Hessler (Director of The Aquatic Animal Law Initiative)

OUR SOUND, OUR SALMON

RE: Comments on Draft Cooke Aquaculture permit modifications to raise steelhead

Our Sound, Our Salmon

October 26, 2020

Drafted and Submitted by:
Wild Fish Conservancy

Our Sound, Our Salmon is a campaign coordinated and overseen by the Wild Fish Conservancy
www.oursound-oursalmon.org

These comments are joined by the following organizations:

Hallie Templeton, Senior Oceans Campaigner
Friends of the Earth

R. Bent Lyles, Executive Director
Friends of the San Juans

Shari Tarantino, Executive Director
Orca Conservancy

Michael Kundu, Director
Project SeaWolf Coastal Protection

Steve Koehler, President
Protect the Peninsula's Future

Gus Gates, Washington Policy Manager
Surfrider Foundation

Brad Throssell, Chair
Washington Council of Trout Unlimited

Elaine Packard, Chair of the WA State Water and Salmon Committee
Washington State Chapter Sierra Club

Colleen Weiler, Jessica Rekos Fellow for Orca Conservation
Whale and Dolphin Conservation

Kurt Beardslee, Executive Director
Wild Fish Conservancy

OUR SOUND, OUR SALMON

Ms. Laurie Niewolny,

Wild Fish Conservancy (WFC) and a coalition of groups operating under the banner of Our Sound, Our Salmon (OSOS) have long raised serious concerns about the environmental impacts commercial open water net pen aquaculture poses to water quality, species listed under the Endangered Species Act (ESA), and the greater ecosystem of Puget Sound.

These concerns are based firmly in the ever-growing scientific and evidentiary record in the Pacific Northwest and around the world that continues to document and demonstrate the environmental risks and consequences of rearing high-densities of highly-domesticated fish in marine open water net pens. In Puget Sound, we have seen these well-documented risks inherent to open water net pens can and do materialize, endangering the health of Washington's waters which support our culture, economy, wild salmon, and killer whales.

In February 2019 and June 2020, Our Sound, Our Salmon submitted comments during the National Pollutant Discharge Elimination System (NPDES) permit review process of Cooke Aquaculture's (Cooke) Puget Sound net pens (Attachment 1). After reviewing the Department of Ecology's (Ecology) modifications to the existing NPDES permits, several major risk factors continue to be absent or inadequately addressed in these permits. The modified permits fail to account for changes in risk assessment imposed by HB2957 and fail to "eliminate commercial marine net pen escapement" and "eliminate negative impacts to water quality and native fish, shellfish, and wildlife" as intended by the Washington state legislature in passing this law. As such, Ecology is incorrect to treat this new project as an extension of an existing practice.

Furthermore, Ecology relies on a failed, faith-based and retroactive approach to enforce the NPDES permits. Relying on any industry to self-monitor and self-report violations that are likely to result in economic penalties or loss is irresponsible and further increases the likelihood environmental harm and catastrophic events will occur. Under this regulatory framework, Cooke has demonstrated a history and pattern of NPDES permit and Clean Water Act violations in Puget Sound; have failed to correct violations when instructed by Ecology and other agencies; and habitually appeal punitive fines and enforcement actions by regulatory agencies. This pattern of violating environmental statutes and reluctance to comply with agency enforcement is consistent with Cooke's record around the world. Ecology has not provided sufficient evidence that the permits can be effectively enforced to prevent catastrophic events before they occur, let alone "eliminate" risks as the legislature intended.

Ecology's decision to conduct the NPDES permitting process and move toward finalizing the modified permits while foundational review processes that provide the legal and scientific basis for the NPDES permits are under review and subject to change is overtly premature with the potential to violate the State Environmental Policy Act (SEPA). We strongly recommend that Ecology delay the permitting process and not issue final permits while the underlying SEPA review of Cooke's new project is being legally challenged, and while federal ESA consultation of the impacts of Puget Sound net pens pose to ESA-listed species is ongoing. Both of these procedures are likely to conclude in the coming months and the results are likely to identify new water quality risks and environmental impacts to ESA-listed species that need to be analyzed and considered by Ecology in the NPDES permitting process. It would be reckless to issue

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permits that could allow the planting of steelhead in Puget Sound net pens when Ecology is well-aware of the ongoing legal and scientific reviews and their potential to unveil new environmental impacts to water quality and the marine ecosystem.

Lastly, we reiterate from our previous comments, that the modified NPDES permit review should not occur without thorough consultation with local, state, federal, and tribal governments.

The NPDES Permitting Process Should be Delayed

The Underlying SEPA Review is Being Legally Challenged

Ecology is violating SEPA by relying on the Department of Fish and Wildlife's (WDFW) legally deficient SEPA analysis. WDFW decided to issue a Mitigated Determination of Nonsignificance (MDNS) in its SEPA review and issue a 5-Year Marine Aquaculture Permit to Cooke without complying with SEPA procedural requirements, without considering alternatives, and without fully analyzing and considering the potential significant environmental consequences of this new net pen aquaculture project, particularly when compared to baseline conditions in Puget Sound. WDFW's decision is currently being legally challenged in Washington Superior Court with a dispositive ruling pending from the judge hearing the case. See *Wild Fish Conservancy, et al. v. Washington Department of Fish & Wildlife, et al.*; King Cty. Superior Ct., No. 20-2-03704-4 SEA. That ruling is expected at any time. Given the magnitude of new scientific evidence and potential environmental impacts to ESA-listed species WDFW failed to consider during the review, it is possible that the Court will find WDFW violated SEPA, invalidating the MDNS and the permit granted to Cooke. In doing so, the Court may require WDFW and/or agencies with jurisdiction (which includes Ecology) to reinstate the SEPA environmental review process and conduct additional environmental review (environmental impact statement or EIS) before determining if the scientific record supports this new project moving forward.

As Ecology is a jurisdictional agency in that SEPA review, the Court's decision will directly impact whether or not the NPDES permits can move forward. As such, Ecology will violate SEPA if it authorizes the NPDES permits or finalizes the permitting process by relying on WDFW's flawed SEPA analysis and determination. Comprehensive review of the environmental impacts posed by Puget Sound net pens, as required by SEPA, has not occurred since the 1990 EIS which never fully considered the environmental impacts of rearing native species or partially-sterile (triploid) fish in open water marine net pens. An EIS based on the current scientific record is likely to unveil significant pollution and water quality risks and harms posed by net pen aquaculture that Ecology will need to address and thoroughly review.

We expect this will require Ecology to initiate either an entirely new NPDES permitting process or to expand the scope of the current review, as the EIS or additional SEPA analysis will investigate environmental impacts associated with rearing steelhead as well as impacts associated with the practice of net pen aquaculture in general.

It would violate SEPA to move forward with the authorization of Cooke's modified NPDES permits by relying on WDFW's deficient SEPA analysis and determination. Our Sound, Our Salmon therefore fully incorporates herein the attached Our Sound, Our Salmon and Wild Fish

OUR SOUND, OUR SALMON

Conservancy comments that explain why WDFW's SEPA analysis is deficient—these comments apply equally to Ecology (Attachment 2).

Federal ESA Consultation on Puget Sound Net Pens is Ongoing

Ecology is violating Section 7(d) of the Endangered Species Act (ESA) by issuing Cooke's NPDES permits before the U.S. Environmental Protection Agency (EPA) and the National Marine Fisheries Service (NMFS) conclude their reinitiation of consultation under Section 7 of the ESA on EPA's approval of Ecology's sediment management standards for marine finfish rearing facilities. On May 29, 2020, EPA released a new analysis of the impacts Puget Sound marine finfish net pens pose to ESA-listed species and critical habitats (Attachment 3). This new analysis came after the EPA considered new information that had not previously been considered in the 2008 and 2010 Biological Evaluations, including:

- Disease transfer from Atlantic salmon net pen fish to Pacific salmon, primarily relying on a letter from NMFS dated January 12, 2016, and accompanying memo.
- An escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture's Site 2 net pen off Cypress Island and the follow up and the associated response actions.
- Updated National Pollutant Discharge Elimination System permitting actions by the Department of Ecology to minimize escapement risk and covers the planned transition at existing commercial net pens facilities to raise steelhead instead of Atlantic salmon, which must be phased out by 2022 per Washington state law.
- The EPA NPDES general permit which currently covers tribal enhancement net pen facilities and the reissuance of the general permit in late 2020. The EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.).

After reviewing this new information, the EPA made an initial species effects determination that Puget Sound's marine finfish net pens "*are likely to adversely affect*" the following ESA-listed fish populations:

- Chinook salmon (Puget Sound ESU)
- Chum Salmon (Hood Canal summer-run ESU)
- Steelhead (Puget Sound DPS)
- Boccaccio (Puget Sound/ Georgia Basin DPS)
- Yelloweye Rockfish (Puget sound/ Georgia Basin DPS)

As a result, NMFS reinitiated formal consultation and is currently preparing a Biological Opinion to analyze and expand upon this initial determination.

OUR SOUND, OUR SALMON

Because EPA and NMFS are currently in consultation, Section 7(d) of the ESA applies and prevents Ecology from issuing Cooke's NPDES permits. Section 7(d) provides:

After initiation of consultation under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

16 U.S.C. § 1536(d). Ecology, as the applicant, is subject to Section 7(d) and cannot irreversibly or irretrievably commit resources until EPA and NMFS complete formal consultation. Issuing Cooke's updated NPDES permits or otherwise entering into contracts during consultation constitutes an irreversible or irretrievable commitment of resources in violation of Section 7(d). *Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1056 (9th Cir. 1994); *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1127–28 (9th Cir. 1998). This is true even if the permits are subject to revision. WAC 173-220-190; WAC 173-220-150(1)(d); see *Nat. Res. Def. Council*, 146 F.3d at 1128 (finding violation of Section 7(d) even though water contract had a savings clause to allow for modifications to comply with federal law). Accordingly, we request that Ecology defer issuing Cooke's NPDES permits until formal consultation is complete so that Ecology can incorporate any reasonable and prudent alternative measures that result from the consultation.

The Modified NPDES Permits Fail to Account for Changes in Risk Assessment Imposed by New Law

As stated in the June 8, 2020 Our Sound, Our Salmon NPDES permit comments, we continue to urge Ecology to acknowledge and address that the passage of HB 2957 created a new and stricter regulatory regime for marine net pen aquaculture and that the law would have ended net pen aquaculture and all the risks they pose in Puget Sound by December 2022. While the law does not prohibit native fish from being reared in open water net pens, the law does impose a series of other requirements, and establishes the legislature's clear intent that future marine net pen aquaculture be subjected to greater scrutiny. That intent is clear in Section 5 of the engrossed bill, which requires agencies to "continue the existing effort to update guidance and informational resources to industry and governments for planning and permitting commercial marine net pen aquaculture," and mandating: "The guidance must be designed to eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife."

In finding that "marine finfish aquaculture in general may pose unacceptable risks" and mandating guidance to "eliminate" those risks, the legislature overturned the 1990 EIS's determination that Atlantic salmon aquaculture posed acceptable risks, and in doing so, imposed a stricter standard than existed previously. It is clear that the legislature intended to alter the risk assessment framework used for marine finfish aquaculture in general from the status quo.

OUR SOUND, OUR SALMON

The decision for the underlying 2020 SEPA review and associated net pen aquaculture permits to rely on the outdated 1990 EIS and risk assessment (based on best available science thirty years ago) without acknowledging the significant shift in risk assessment mandated by the 2018 law (based on best available science today) is scientifically indefensible.

We continue to urge that the NPDES permits conform with this current law and share the policy's objective to *eliminate*— not mitigate— commercial marine net pen escapement and negative impacts to water quality, native fish, shellfish, and wildlife.

The EPA's acknowledgment that Puget Sound net pens are likely to adversely affect ESA-listed species is based largely on risks associated with escapes events and is just one of the clear indicators that open water net pens are incompatible with the state's objective of eliminating the risks associated with escapes.

In light of these new legal mandates, and the different risk profile presented by rearing a domesticated and partially-sterile (triploid) form of a native species, this permit application should not be considered an extension of past practices, but should rather be addressed as if the proposed replacement of Atlantic salmon with domesticated, partially-sterile steelhead is a new project. HB 2957's new standards require re-examining past decisions, and holding Cooke to that higher standard of eliminating risks.

Many local governments and even state agencies have enacted stricter laws and statutes over the past thirty years since these net pens were grandfathered in that would not allow for new commercial net pen aquaculture projects in 2020. By considering Cooke's new project as an extension of past practices, Ecology is not only failing to meet the new standard set by HB2957, but is directly enabling Cooke to continue benefiting from environmental exemptions that for three decades have protected the commercial net pen industry from complying with local statutes, state conservation plans, and other environmental laws put in place to protect Puget Sound's most sensitive species, habitats, and ecosystems since the early 1990's.

When Cooke's leases expire for these sites in 2022, the Department of Natural Resources (DNR) will not consider the applications as renewals of their previous leases, but brand-new lease agreements that will need to adhere to today's environmental standards.

We encourage Ecology to take a similar approach as DNR to the NPDES permits that correctly assess Cooke's applications as a new project and adhere to the risk assessment imposed by the new law to eliminate escapes, water quality risks, and other environmental harm.

The draft NPDES permits must be enforceable.

Ecology lacks the regulatory authority sufficient to enforce the proposed modified NPDES permits. The regulatory environment described in the modified NPDES permits (and previous NPDES permits) relies almost entirely on the permittee to self-report and self-monitor their own NPDES permit violations. As violations are likely to result in economic loss or penalties, industries have little incentive to report violations, increasing the likelihood environmental harm and catastrophic events will occur.

While operating in Washington's public waters, Cooke has demonstrated a pattern of unscrupulous behavior, violating their NPDES permits, the Clean Water Act, the terms of their

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leases, and other local statutes. Given this history in Puget Sound, Ecology has not provided sufficient evidence that the modified NPDES permits are enforceable to a level necessary to prevent significant environmental impacts to water quality, ecosystem health, and threatened and endangered species before they occur.

The failure of past NPDES permits to address this fundamental regulatory flaw has not only resulted in catastrophic events, but shifts the burden of monitoring and reporting violations onto local landowners, environmental organizations, Tribal Nations, and other members of the public. On two occasions Cooke issued cease and desist letters to members of the public in an attempt to silence environmental advocates.

Examples that this regulatory environment is insufficient include:

- The Cypress Island collapse in August 2017 that resulted in the release of over 250,000 non-native Atlantic salmon into Puget Sound. The collapse was first reported to state officials by a citizen, not Cooke, and the emergency response plan fell largely on the shoulders of Tribal Nations, commercial fishers, recreational fishers, and other members of the public. A multi-agency investigation determined Cooke's failure to adequately maintain and clean their nets and insufficient attention to engineering were responsible. Cooke knowingly underreported the cause of the collapse and the number of fish that escaped in an attempt to mislead the public and agency officials, and to minimize potential fines or penalties.
- Viral testing of escaped fish conducted by nonprofit organization Wild Fish Conservancy and published in *Virology Journal* (Kibenge et al. 2019; <https://doi.org/10.1186/s12985-019-1148-2>) demonstrated nearly 100% of the Atlantic salmon that escaped from Cypress Island were infected with an exotic virus (Piscine Reovirus or PRV) originating from Iceland where Cooke sourced their Atlantic salmon eggs. Prior to the collapse, this virus was never reported by Cooke or discovered by state agencies. As all other Puget Sound net pens were planted with fish from the same egg supplier in Iceland where the virus originated there is a high likelihood other net pens were also infected. However, due to existing monitoring and regulatory rules, state agencies were prohibited from testing fish within the pens without Cooke Aquaculture's permission or without the company first self-reporting the presence of the virus. As a result, agency officials could not intervene even when the reasonable likelihood of a large-scale threat existed, therefore leaving hundreds of thousands of potentially contaminated fish in Puget Sound for months before they were harvested.
- Wild Fish Conservancy sued Cooke for violations of the CWA following the Cypress Island collapse. The lawsuit settled for \$2.75 million, exposed CWA violations never investigated or discovered by Washington state agencies. This included federal rulings that 2012, 2015, April 2017, and October 2017 Pollution Prevention Plans required under the NPDES permits and approved by agencies were deficient and that Cooke's Fish Release Prevention Plan did not include required procedures for tracking the number of fish in the salmon farms and those lost to predation and escapement.

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- From 2018-2020 local landowners have submitted to Ecology video footage of Cooke employees disposing of wild bycatch into Puget Sound during harvest operations. In one video, Cooke employees can be seen using a snow shovel to dispose of bycatch from the harvest vessel into Puget Sound. Cooke reports they have never experienced bycatch during harvest. Disposing of bycatch or any biological material into Puget Sound is a violation of their NPDES permits and has never been enforced by Ecology.
- Citizen complaints in April 2017 reported Cooke was committing water quality violations at a dock near its Bainbridge Island net pens. Over the next 8 months, violations continued to occur despite Cooke receiving two letters from Ecology, a notice of violation, and requests on several occasions from the agency that the violations be fixed. The violations included:
 - Unlawfully discharging polluting matter into state waters
 - Pressure washing equipment, nets, and vehicles over the water and allowing wastewater to enter Puget Sound
 - Changing boat engine oil over the water
 - Failing to put safeguards in place to protect water quality
 - **Failing to correct water quality violations when directed**
- On October 19, 2019, local landowners and off-duty WDFW employees visiting Bainbridge Island were the first to report the partial sinking of the Orchards Rocks net pen in Rich Passage. Records from the incident show Cooke's emergency response was inadequate despite new regulations in place after the Cypress Island collapse and occurred during the SEPA review of Cooke's new project to rear steelhead. If the net pen was stocked at the time this event likely would have resulted in the escape of fish, reconfirming the NPDES permits are not sufficient to eliminate the risk of escapes.

It is worth nothing, this record is not unique to Puget Sound. For example, in 2012, Cooke pleaded guilty to illegally dumping the pesticide cypermethrin at their Bay of Fundy net pen facilities in Canada, endangering nearby lobsters and resulting in one of the largest fines ever levied under Canada's Fisheries Act. In 2019, the U.S. federal government considered a moratorium on the Chesapeake Bay's menhaden fishery after Omega Protein/ Cooke failed to comply with catch limits.

In addition to a pattern of behavior that suggests a disregard for environmental laws, Cooke frequently uses litigation to avoid regulatory enforcement and to influence decision-making. While operating in Puget Sound, Cooke threatened during legislative testimony to sue Washington state under NAFTA if a bill passed banning nonnative commercial marine net pen finfish aquaculture; appealed the State's decision to terminate their Cypress Island lease; appealed the State's decision to terminate their Port Angeles lease and appealed again after a State Court upheld the termination; appealed Ecology's fine holding the company accountable for the Cypress Island collapse until the agency agreed in settlement they could select how a portion of the funds would be used; and used cease and desist letters on multiple occasions in an attempt to silence local environmental advocates, including during the SEPA review public comment period that determined the future of their new project to commercially-propagate steelhead. This habitual use of litigation to avoid accountability for violating environmental laws

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and to influence the decision-making process of legislators, government officials, and members of the public is further evidence self-monitoring and self-reporting is not an appropriate regulatory environment for this company.

Ecology has modified the NPDES permits to avoid catastrophic escape events in the future including clarifying that any fish reared in Cooke's net pens are prohibited from release; adding requirements and details about actions Cooke must take to notify state agencies of events that could potentially lead to fish escape; and adding requirements about how nets must be maintained. Given Cooke's history of failing to self-report and self-monitor violations, failure to correct violations when instructed, and reluctance to comply with enforcement actions are strong indicators that these faith-based standards are insufficient to prevent other large-scale escape or viral outbreaks from occurring; again, inconsistent with HB 2957 and the legislature's intent to eliminate the risk of escapes from marine net pens.

In order to prevent potential adverse impacts to public resources from pollutant and water quality impacts at the operations of each net pen, Ecology must have the authority and capacity to conduct regular and unannounced site visits and to conduct any biological sampling and testing deemed advisable to assure the public that no adverse impacts are occurring. This should include requiring the presence of independent observers on-site during each harvest operation to quantify and describe the species and life stages of all by-caught species.

A history of NPDES permit and CWA violations must be considered in this process so permits are drafted to ensure violations are detected before catastrophic events occur. As long as the permits continue to largely depend on industry self-monitoring and self-reporting, both known and unknown violations are likely to occur with retroactive, punitive fines as the only regulatory control— an ineffective method of protecting water quality and ESA-listed species from harm.

We strongly believe that operating and profiting in public waters is a privilege. If the permits are not enforceable and Ecology cannot provide the public with sufficient evidence that catastrophic events are likely to be prevented before they occur, the permits should not be granted.

NPDES Permits Need to Consider Toxic Pollutants

The modified NPDES permits must consider and address the risk of toxic pollutants including viruses and diseases. Ecology continues to exclude this significant environmental risk factor from the NPDES permits despite Wild Fish Conservancy raising this issue since 2013. Ecology has argued that pathogens like viruses and bacteria do not fall into Ecology's regulatory oversight, however disease-causing agents are defined by the EPA as toxic pollutants and WDFW does not have the authority to issue CWA fines or violations related to the unlawful discharge of toxic pollutants. Monitoring and reporting of sea lice are already included in the NPDES permits and it is far past time that the NPDES permit review consider toxic pollutants as well. The permits must ensure that Cooke's final Pollution Prevention Plan and Fish Escape Plans will eliminate the risk disease-causing agents pose to the Puget Sound ecosystem and the biological integrity of its wildlife, especially ESA-listed species.

Like any high-density confined animal feeding operations, commercial net pens are known to amplify and spread endemic and exotic viruses, bacteria, diseases, and parasites into the marine environment in large numbers. In 2017, a British Columbia study documented a strong

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correlational connection between disease prevalence in net pens and disease transfer to wild fish populations (Morton et al., 2017; <https://doi.org/10.1371/journal.pone.0188793>). Recent research in British Columbia found novel viruses in endangered salmon, and found evidence that these novel viral infections may originate from farmed salmonids (Mordecai et al., 2019; <https://doi.org/10.7554/eLife.47615>).

A study published in Virology Journal in 2019 (Kibenge et al. 2019; <https://doi.org/10.1186/s12985-019-1148-2>) revealed that nearly 100% of the 250,000 Atlantic salmon that escaped the Cypress Island collapse were infected with an exotic virus originating in Iceland where Cooke purchases their Atlantic salmon eggs. Further, a new paper forthcoming in the peer-reviewed journal Virus Evolution, confirms that the Piscine Reovirus (PRV) found in the fish that escaped during the 2017 Cypress Island collapse and elsewhere in the eastern Pacific is not a native virus, but rather is one whose origin is in the north Atlantic basin. (Siah et al. 2020 Genomes Reveal Genetic Diversity of Piscine Orthoreovirus in Farmed and Free-ranging Salmonids from Canada and USA. Accepted manuscript, Virus Evolution).

At present state agencies do not stipulate minimum distances between the pens and do not take factors like tidal flow (affecting pathogen plumes emitted from the pens) and proximity to salmon bearing streams into consideration, despite decades of work (and catastrophic disease outbreaks costing billions of dollars in the Norwegian and Chilean Atlantic salmon farming industries) that led to the development of guidelines to reduce disease transmission. While international (OIE) guidelines suggest a minimum of 5km between pens, a study in Chile (Mardones et al. 2011; <https://doi.org/10.1016/j.prevetmed.2011.07.005>) suggested that 10km between pens might be a safer guideline (note that there are no native salmon in Chile; this guideline was meant only to protect one salmon farm from infection by an adjacent farm). In those countries, the guidelines were put in place to limit the spread of disease between farms or between farms and wild fish, and were developed to assist the salmon farming industry in protecting their investments.

Under the existing regulatory system in place, the only time WDFW has access to monitor net pen fish for viruses, diseases, or parasites is prior to their release into the net pen environment. During the grow out period (roughly 18 months), state agency officials do not have authority to randomly monitor or conduct agency sampling or testing for disease-causing agents in farmed fish within net pens and must rely on the net pen operator's self-monitoring and reporting to notify state officials if an outbreak or infection has occurred. Even in these instances, state officials must receive permission from the net pen operator before having access to the facilities. As a result of this fundamental breakdown in the regulatory oversight of this industry, known outbreaks or suspected risks of viral infections have been allowed to amplify and spread in Puget Sound net pens with agency officials unable to intervene despite being aware of the threat.

Examples include:

- In 2012, an outbreak of Infectious Hematopoietic Necrosis virus (IHNV) occurred in one of the net pens located in Rich Passage near Bainbridge Island. Despite the net pen operator declaring "quarantine" of the infected pens (which does nothing to prevent the virus being shed from infected Atlantic salmon into the water flushing through the pens), the virus quickly spread to open water facilities at two other locations in Rich Passage, including one within the Orchard Parks Aquatic Reserve. This outbreak occurred in

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April and May when outmigration of juvenile salmon was at its peak. WDFW's Fish Health Supervisor at the time requested access to the net pens to conduct testing and place sentinel cages to monitor viral exposures but was refused access throughout the duration of the outbreak by American Gold, the owner at the time. Under public disclosure, there is no agency record of this event nor was it disclosed in American Gold's annual report to the state, leaving no evidence for the public that an outbreak occurred, let alone what the impacts of the outbreak may have been. This lack of transparency highlights another key issue related to the monitoring and recordkeeping of agencies and the industry around viruses and diseases that needs to be corrected and accounted for.

- Following the Cypress Island collapse viral-testing and genetic sequencing of escaped fish conducted by Wild Fish Conservancy demonstrated that nearly 100% of the over 250,000 fish that escaped were infected with an exotic virus originating from Iceland where Cooke purchased their Atlantic salmon eggs. Cooke never reported an outbreak of PRV. As all other Puget Sound net pens were planted with fish from the same egg supplier in Iceland where the virus originated, there is a high likelihood other net pens were also infected. However, state agencies were prohibited from testing fish within the pens and hundreds of thousands of potentially contaminated fish remained in Puget Sound for months before they were harvested.

It is both reckless and unacceptable for WDFW and Ecology to issue permits that allow for steelhead to be planted in Puget Sound while this fundamental regulatory inadequacy exists. Ecology must rectify this gap in regulatory oversight in the modified ND PES permits. If Ecology does not feel they have the regulatory authority to test for and monitor disease-causing agents, Ecology and WDFW must work together to incorporate monitoring and reporting requirements for disease-causing agents in net pen aquaculture regulatory permits. Agency staff must be authorized to randomly inspect net pens for disease-causing pathogens or any other potential violation. This monitoring should be funded by the industry.

Measures to reduce the amplification and spread of viruses are particularly important as Cooke's new project will rear native steelhead which increases the likelihood that pathogens can be transferred between farmed steelhead and conspecifics in the wild. With Puget Sound's native steelhead ESA-listed and on the brink of extinction, this should be a major concern to Ecology.

Given the frequent presence of marine mammals, birds, and other wildlife falsely attracted to the pens during harvest operations and recent video of orcas swimming nearby as well, it is all the more important to identify pollutants, including antibiotic resistant bacteria, pharmaceuticals, and other emissions, that might do harm to these protected species.

Bycatch During Harvest Operations and in Puget Sound Net Pens Needs to be Monitored

Native fishes—including but not limited to forage fishes such as Pacific herring and potentially migrating or rearing juvenile salmon may be attracted to the net pens due to the presence of feed and the presence of lower trophic taxa drawn to the feed and waste emanating from the

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pens. Native fish that have entered the pens attracted by the large volumes of feed may then be entrained in the suction harvest machinery during the harvest of adult farmed steelhead.

Ecology's modified NPDES permits currently do not address bycatch of native fish despite Wild Fish Conservancy and local landowners submitting video and photographic evidence of bycatch as early as 2018 and through 2020. These photos and videos document bycatch of non-target fish during Cooke harvesting operations in Puget Sound after being entrained (sucked up) by the harvest operations. In these videos staff can be seen discarding bycatch from the harvest back into the water on the outside of the nets. In one case, the volume of native fish was so extensive an employee uses a snow shovel to scoop bycatch from the landing area on board the harvest vessel and back into Puget Sound. Pinnipeds and birds are routinely observed adjacent to the net pens during the harvest, feeding on the wild fish as they are being discarded, a violation of state and federal laws prohibiting the feeding of pinnipeds and marine mammals.

In response to this evidence, Ecology has continually taken a dismissive approach claiming it cannot be known for sure that the material being discharged by Cooke employees are in fact wild fish and that even if they were, the degree to which bycatch is occurring is "de minimis" (too trivial or minor to merit consideration). Instead Ecology assumes that the materials being discharged are other biological materials resulting from the harvest process, which is a violation of Cooke's NPDES permits and has never been enforced while continuing to be documented. This is another prime example that the NPDES permits are not enforceable. Ecology has never monitored or regulated bycatch and Cooke has never reported bycatch occurs during harvest. For Ecology to consider harvest of native fish that may be ESA-listed as "de minimis" with no data to support that claim is reckless. The NPDES permits must be updated to require comprehensive accounting of the species composition, number of fish, condition of the fish (alive or dead), origin (hatchery or wild), and the age structure of nontarget fishes entrained during each net pen harvest period in which adult farmed steelhead harvest occurs. This data should be collected by independent observers on-site during each harvest operation and should be funded by the net pen industry.

This is required, among other reasons, to account for the potential take of ESA-listed salmon and steelhead. All harassment injuries and mortalities of individuals entrained in the vacuum pump harvesting equipment—including but not limited to direct mortalities of ESA-listed individuals—must be accurately determined and reported to state agencies and NMFS and available for public review.

It is not surprising that there would be such bycatch, and it is likely that it includes endangered and threatened species. British Columbia requires reporting of bycatch (or what they term "incidental catch") at aquaculture facilities. A complete record of the species captured since 2011 is available from the Canadian Department of Fisheries and Oceans (<https://open.canada.ca/data/en/dataset/0bf04c4e-d2b0-4188-9053-08dc4a7a2b03>). In that dataset, salmon species are recorded for every year on file. In some cases, hundreds of thousands of fish are recorded as incidental catch as part of a rapid depopulation of the pens to control a disease outbreak. Even excluding those incidents, an average of over 35,000 incidental catches in net pens per year are recorded in British Columbia. It is likely that a proportionate amount of bycatch occurs in Puget Sound, and could have serious effects on the Sound's sensitive ecology. Because Cooke has not reported bycatch, the state does not monitor

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their efforts, and because independent observers are not able to view the harvest process in detail, we cannot fully measure the harm this bycatch causes.

Surveys of aquatic diversity at sites near these net pens indicate substantial numbers of threatened and endangered juvenile salmonids, and forage fish. State-funded surveys including “West Sound Nearshore Fish Utilization & Assessment (SRFB Grant: 07-1898)” (2010), “Cypress Island Aquatic Reserve Pilot Nearshore Fish Use Assessment” (2011), “West Whidbey Nearshore Fish Use Assessment” (2007), and the ongoing “Hood Canal Nearshore Juvenile Fish Use Assessment” find substantial populations of threatened coho, Chinook, pink, and chum salmon in near-shore waters at sites near and similar to those where net pens operate.

Those surveys also demonstrate substantial variation in total species diversity and population sizes from site to site (e.g. Figure 3), and between surveys at the same site over time. Salmonid populations could vary by orders of magnitude from month to month, and between years. This highlights the difficulty of monitoring and predicting the potential bycatch that might occur in these pens without active, independent monitoring.

In addition to harvest operations, additional issues related to bycatch that need to be addressed include:

- Indirect predation by net pen steelhead on ESA-listed juvenile salmonids
- Net pens which rear high-densities of farmed fish act as an unnatural false attraction for both wild fish and marine mammals. Disposing of bycatch during harvest further exacerbates this dynamic that may result in unnatural levels of predation of ESA-listed fish populations by marine mammals attracted to the pens and bycatch. This false attraction also increases the likelihood that marine mammals and fish will be exposed to harmful pathogens amplified and spread by net pens; that wild fish and marine mammals will ingest feed or farmed fish treated with chemicals, medicines, or pharmaceuticals; and that marine mammals (especially ESA-listed species) may experience boat strikes, harassment, or entanglement.
- The harvester crew and/or net pen operator must obtain a fishing license or permit that would allow them to harvest native fish as described above.

Change in Species

Without an EIS, Ecology’s analysis that transitioning from Atlantic salmon to steelhead “is not likely to change the effect to water quality” is only an assumption. This was a major concern raised by DNR (another jurisdictional agency to the SEPA review) in their comments to WDFW which concluded the SEPA materials “did not adequately address how the proposal from Cooke might impact the already declining population of Puget Sound steelhead.” This is a major argument in the pending lawsuit over the underlying SEPA review.

The escape of partially-sterile (triploid) steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, constitute pollutants

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under the CWA and may pose significant environmental impacts to native salmonids rearing in nearshore marine habitats and rivers due to competition for food and foraging space, spread of disease-causing pathogens, and genetic introgression.

Competition for resources will be particularly true in the case of triploid individuals because, as noted in Cooke's materials, they will have appetites that are likely to be considerably greater than wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish. This means escapees may outcompete wild steelhead, or indeed predate upon them.

Our attached SEPA comments provide a detailed analysis of the risks to the genetic integrity of threatened Puget Sound steelhead stocks in the event of an escape. While the limited data from Troutlodge indicates an average triploidy failure rate of 0.17%, the true rate may be substantially different, and higher. Furthermore, a random sample of several hundred thousand fish may contain a larger proportion of fertile females by random chance. In the event of an escape on the scale of Cypress Island, that could mean thousands of fertile females entering Puget Sound, potentially diluting the genetics of threatened wild populations, and competing with wild females for redds.

Our attached SEPA comments detail methods of assessing those risks that allows an assessment of not only median-case scenarios, but the worst-case scenarios demanded by WAC 197-11-080.

An additional related concern is the absence of specific details regarding how the replacement steelhead stock is to be marked so as to distinguish an aquaculture-raised steelhead from conventional hatchery-raised steelhead and from wild, natural-origin, steelhead. It is critical that aquaculture-raised steelhead be provided with an externally visible mark that is distinct from the adipose clip used to identify conventional hatchery-reared steelhead. This is necessary in order that recovered escaped aquaculture-raised fish can be distinguished from hatchery and wild steelhead, in order to assure that such fish are removed from public waters and that native steelhead (with an intact adipose fin) not be killed due to suspicion that such a fish captured following an escape is one of the escapees.

The prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with partially-sterile (triploid), domesticated *O. mykiss* and Puget Sound's federally-listed steelhead population, different risks apply, and standards laid out in the 1990 EIS have not been met for these purposes.

In particular, "a minimum distance of separation between farms and river mouths" has never been considered and adopted in state policy, as section 5.7.2.2 of the 1990 EIS would require for aquaculture involving native fish (and as is required in other nations). Since escapes, and their risks to threatened conspecifics, constitute pollution and are within the scope of Ecology's review, this guidance and an analysis of the proximity of pens to steelhead spawning rivers should be included in Ecology's review of these modified NPDES permits. In addition, the assessment of risks from pollution (including toxic pollutants, i.e. viruses) should account for the migration corridors in areas like Rich Passage, which may concentrate wild salmon near the pens.

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Furthermore, the behavioral response of wild steelhead to a large aggregation of conspecifics may be different than it was to Atlantic salmon. If wild schools are attracted to the captive domesticated steelhead in pens as are other native fish, the pollution from the pens may do greater harm to recreationally- and commercially-important hatchery-reared steelhead and to threatened wild Puget Sound steelhead.

Eliminate negative impacts to water quality

Several significant environmental impacts previously raised in the attached 2019 and June 2020 NPDES permit comments by Our Sound, Our Salmon are not addressed by the modified NPDES permits. Decades of experience show real effects on water, which the modified NPDES permits do not eliminate. We encourage Ecology to reconsider the following concerns:

- Daily untreated Phosphorous (P) and Nitrogen (N) emissions discharged into Puget Sound by open water net pens far exceed what is legal for any other industry in Washington. In 2017, WFC estimated the total discharge of N and P waste from Atlantic salmon net pen aquaculture farms when each was at estimated maximum production based on Cooke's NPDES reports to Ecology. These numbers were updated in 2020 based on the most recent reports as P and N pollution is likely to be similar for steelhead (Attachment 4). For the Bainbridge Island and Hope Island net pens currently under consideration in these modified NPDES permits, these permits allow an estimated 2,334 lbs of untreated N and 492 lbs of untreated P to be discharged into Puget Sound every day. If Cooke Aquaculture is successful in obtaining valid leases for Port Angeles and Cypress Island as well, the NPDES permits will allow an estimated 4,326 lbs of untreated N to be discharged daily, roughly equivalent to the N treated by the cities of Bellingham, Everett, Port Angeles, and Tacoma combined. For P, the pens will discharge 924 lbs daily roughly equivalent to the P discharged and treated by the city of Tacoma every day.
- Open-air salmonid net pens chronically discharge particles of decaying fish flesh that are often consumed by native fish, birds, and other wildlife. These particles may be contaminated with pathogens, parasites, pharmaceuticals or chemicals that may be ingested by native fishes, including conspecific steelhead and other salmonids. Studies have shown that these particles are potential vectors for pathogens. While Cooke now is required to recover dead fish and transport them upland for disposal, there is currently no mandate that those mortalities be submitted to the state for testing before disposal.
- There is no mechanism to prevent antibiotics, pharmaceuticals, and other medicines applied in feed from being consumed by native fish in the immediate vicinity of the treated pens (including fish that may enter the pens attracted by the presence of feed and fish odors). In addition to the potential adverse impacts of medicines on wild fish, the public may unknowingly consume chemicals that are not safe for consumption if native fish that have consumed treated feed are caught in recreational or commercial fisheries. For example, the U.S. Food and Drug Administration requires a 28-day waiting period before farmed fish treated for "yellow mouth" are approved and considered safe for

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human consumption. This risk to the public, wild fish, and other wildlife has not been addressed in the modified NPDES permits.

- In the SEPA checklist submitted by Cooke, they refer to the use of unspecified probiotic supplements. These unspecified introduced microbes are likely to colonize the microbiome of native fish and the environment near net pens. Given the growing scientific appreciation of the role of the microbiome in health and development of fish and other animals and plants, these supplements should be detailed, and a plan for monitoring surrounding areas and fish populations for colonization or excess growth of these bacteria should be required. This monitoring should also test for growth of antibiotic resistance in nearby areas, and in wildlife found in and near the pens.
- Ecology should not limit the scope of monitoring impacts of discharged pollutants to the area directly below and surrounding the net pens as this is not consistent with tidal physics. These net pens are all located in high-energy areas and therefore to adequately determine the scale and scope of the ecosystem impacted by pollutants, Ecology must consider how pollutants of varying size and buoyancy travel under different tidal energies. The Salish Sea Model (<https://www.pnnl.gov/projects/salish-sea-model>) was developed by the Pacific Northwest National Laboratory in collaboration with scientists within Ecology to simulate hydrodynamic and water quality processes. This model can be used to effectively assess how discharged pollutants flow and are distributed through Puget Sound. This is critical to effectively assessing how pollutants discharged from net pens affect sensitive habitats and areas designated as critical habitat for Southern Resident killer whales, salmon, and other threatened and endangered species. These assessments need to also include disease-causing agents/ toxic pollutants when known outbreaks occur.

Conclusion

It is obvious that the current NPES permit process must be delayed until the Court issues a ruling in the lawsuit challenging the underlying SEPA review as an EIS may be required and would need to be considered in order to comply with SEPA. Similarly, Ecology should delay the permitting process until federal ESA consultation of the impacts Puget Sound net pens pose to ESA-listed species is complete and Ecology can incorporate any reasonable and prudent alternative measures that result from the consultation.

The modified permits fail to account for changes in risk assessment imposed by HB2957 and to “eliminate commercial marine net pen escapement” and “eliminate negative impacts to water quality and native fish, shellfish, and wildlife” as intended by the Washington legislature in passing this law. In adhering to this standard, we continue to encourage Ecology to treat Cooke’s applications as a new project, not an extension of an existing practice.

Lastly, the faith-based and retroactive regulatory framework currently used to enforce the NPDES permits cannot be effectively enforced to prevent catastrophic events before they occur and must be addressed before the permits are granted. Ecology must have the authority and

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capacity to conduct regular and unannounced site visits and to conduct any biological sampling and testing deemed advisable to assure the public that no adverse impacts are occurring.

Attachments

Submitted as separate files with this document via Ecology online comment portal (<http://wq.ecology.commentinput.com/?id=HEdBM>)

- Attachment 1:** Comments on Cooke Aquaculture's NPDES Application to rear *Oncorhynchus mykiss* in Puget Sound open water net pens, Submitted by Our Sound, Our Salmon June 8, 2020 with original attachments.
- Attachment 2:** Comments on Washington Department of Fish and Wildlife State Environmental Protection Act Review of Cooke Aquaculture Proposal to Commercially Propagate and Harvest *Oncorhynchus mykiss* in Puget Sound net pens: SEPA #19056, submitted by Wild Fish Conservancy November 11, 2019
- Attachment 3:** May 29, 2020 Letter from the U.S. Environmental Protection Agency to the National Marine Fisheries Service which includes the Addendum to the Updated Biological Evaluation (December 13, 2010), A Clean Water Act Action on Washington's Marine Finfish Rearing Facility Provisions Contained in Sediment Management Standards at Washington Administrative Code 173-204-412
- Attachment 4:** Estimated municipal equivalent daily Nitrogen and Phosphorus discharge from all 7 Puget Sound salmon farms at maximum production, Wild Fish Conservancy, 2020

Our Sound, Our Salmon

The attached comments and documents were joined by 35 organizations and businesses, raising important material that must be addressed in the NPDES permit review.

OUR SOUND, OUR SALMON

Comments on Cooke Aquaculture's NPDES Application to rear *Oncorhynchus mykiss* in Puget Sound open water net pens

Our Sound, Our Salmon
June 8, 2020

Drafted and Submitted by:
Wild Fish Conservancy

Our Sound, Our Salmon is a campaign coordinated and overseen by the Wild Fish Conservancy

www.oursound-oursalmon.org

These comments are joined by the following 35 organizations and businesses, and 10 individuals:

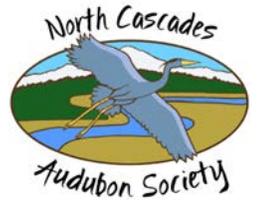
Organizations and Businesses

Bainbridge Beach Naturalists, Bainbridge Island Watershed Council, Coastal Watershed Institute, The Conservation Angler, Duke's Seafood, EGM Real Estate, Environment Washington, Exploration Charters, Fly Fishers International, Friends of the Earth, Friends of the San Juans, Global Alliance Against Industrial Aquaculture, Legal Rights for the Salish Sea, Living Oceans Society, Lummi Island Wild, Native Fish Society, North Cascades Audubon Society, North Sound Trout Unlimited, Northwest Watershed Institute, Olympic Environmental Council, Olympic Forest Coalition, Orca Conservancy, Paul J Allen MD PLLC, Project SeaWolf Coastal Protection, Protect the Peninsula's Future, Salish Center for Sustainable Fishing Methods, San Juan Excursions, Sea Shepherd, Sea Shepherd Seattle, Spirit of Orca, Trust Olympus Pest Control and Prevention, Watershed Watch Salmon Society, Whale and Dolphin Conservation, Wild Fish Conservancy, Whidbey Environmental Action Network

Independent

Justin Boucher, Kristine Collins, Rick Doden, Michelle Meyer, Amy Nesler, Mary Rawlins, Thierry Rautureau (The Chef in the Hat), Denny Redman (Writer), Kerrie Tuck, William Williams

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Salmon Farming and Shrimp Farming Kills



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Ms Niewolny:

Wild Fish Conservancy (WFC) and the coalition of groups operating under the banner of Our Sound, Our Salmon (OSOS) have long raised serious concerns about the risks posed by open water net pen aquaculture in Puget Sound. The catastrophic collapse of Cooke Aquaculture's Cypress Island pen in 2017 bore out many of those fears. In response, the state legislature passed legislation which phases out Atlantic salmon aquaculture by 2020. That legislation also charges the Department of Ecology and other agencies regulating these pens: "to eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife" and to implement new rules and standards for achieving that goal. The legislature passed the legislation with language emphasizing that "evidence [has] emerged that marine finfish aquaculture in general may pose unacceptable risks not only to Washington's native salmonid populations but also to the broader health of Washington's marine environment." While that section of the law was vetoed by the Governor, it is clear that the people's representatives have grave concerns about the safety of marine finfish aquaculture, and set a clear expectation that ongoing operation of these pens should be subject to heightened scrutiny.

The passage of HB 2957 created a new and stricter regulatory regime for marine net pen aquaculture. In reviewing Cooke's submissions and other materials submitted through this public process, we urge that the standard of review be specifically on whether the policies in place achieve the state's goal to "eliminate...escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife."

In light of those new legal mandates, and the different risk profile presented by rearing a domesticated and biologically-altered form of a native species as opposed to a non-native species, this permit application should be considered not as an extension of past practices, but as if these pens were starting anew. HB 2957's new standards require re-examining past decisions, and holding Cooke Aquaculture to that higher standard of eliminating risks.

Ensuring compliance is crucial

In the wake of the Cypress Island collapse, Wild Fish Conservancy sued under the Clean Water Act (CWA). That suit resulted in rulings that Cooke Aquaculture had violated the terms of its permits, including by failing to conduct required inspections of net pen moorings and anchors, to accurately monitor and report the number of fish escaping from pens, to develop operational plans that include necessary procedures for inspecting cages, storing chemicals, disposing of harvest blood, and to track the number of fish in its cages and lost to predation. Cooke's history of CWA violations is important to consider in this process, if nothing else to ensure that the permits are drafted to ensure that violations are detected before catastrophe ensues.

Incidents like the partial sinking of the Orchard Rocks pen in October, 2019 demonstrate that the risks of additional escapes are very real, given the state of the existing pen structures. The response to that incident was conducted by the Department of Ecology, Department of Natural

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Resources (DNR), and Department of Fish and Wildlife (WDFW), and the records from that incident and state agencies' documentation of Cooke's inadequate emergency response should be included in this record to ensure that emergency plans incorporate lessons learned, and acknowledge the degraded state of the surviving pens as identified by state inspectors and Cooke's own contractors.

New concerns from the change in species

The change in species poses new and different risks, in addition to the harms open water net pen aquaculture has caused for decades. Some policies which may have been permitted for Atlantic salmon under the pre-2018 status quo, pose additional risks with the proposal to introduce domesticated, biologically-altered, steelhead/rainbow trout. The differences in this circumstance were considered as far back as 1990, when the last comprehensive Environmental Impact Statement (EIS) was drafted. The prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with biologically-altered, domesticated *O. mykiss* and Puget Sound's federally-listed steelhead population, different risks apply, and standards laid out in the 1990 EIS have not been met for these purposes.

In particular, "a minimum distance of separation between farms and river mouths" has never been considered and adopted in state policy, as section 5.7.2.2 of the 1990 EIS would require for aquaculture involving native fish (and as is required in other nations). Since escapes, and their risks to threatened conspecifics, constitute pollution and are within the scope of Ecology's review, this guidance and an analysis of the proximity of pens to steelhead spawning rivers should be included in Ecology's review of these NPDES permits. In addition, the assessment of risks from pollution (including diseases) should account for the migration corridors in areas like Rich Passage, which may concentrate wild salmon near the pens.

Furthermore, the behavioral response of wild steelhead to a large aggregation of conspecifics may be different than it was to Atlantic salmon. If wild schools are attracted to the captive domesticated steelhead in pens, the pollution from the pens may do greater harm to recreationally- and commercially-important hatchery-reared steelhead and to threatened wild Puget Sound steelhead.

New material to review

During the emergency response to the Orchard Rocks partial sinking, Cooke told DNR that they planned to replace some existing net pens in Puget Sound. If indeed that plan is under way, the NPDES review should include engineering data on the new pen structures in order to assess the adequacy of those pens for Puget Sound's dynamic conditions, and the escape risk and other risks the new pens might pose to Puget Sound.

The Mitigated Determination of Nonsignificance (MDNS) issued by WDFW in January 2020, requires Cooke to prepare and submit a plan for marking steelhead in ways that will distinguish

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fish from their pens from hatchery-raised fish swimming freely in Puget Sound. That plan is not part of this record, and review of the NPDES permit application should await that filing.

The MDNS also requires Cooke to submit a plan for a “no-recovery response” to escapes. That plan is not part of the escape plan submitted in Cooke’s application, and it is impossible to assess the adequacy of Cooke’s pollution prevention plan until that plan is included in the application.

The State Environmental Policy Act (SEPA) review led by WDFW which produced the MDNS is currently being appealed. That challenge is likely to generate new information pertinent to the NPDES review, and it would be appropriate to delay drafting any NPDES permit until the evidentiary record and ruling can be incorporated into this review.

Eliminate negative impacts to water quality

Decades of experience shows real effects on water quality in a plume around the net pens, which the terms of Cooke’s current permit application does not eliminate. This NPDES review should re-examine existing data on effluents from industrial products, medicines, feed, fish waste, and dead and rotting fish to assess whether the current plans eliminate all of those risks. It should also examine new data on antibiotic resistance in protected marine mammals (research discussed in [this recent report from High Country News](#)). These risks were discussed in the SEPA comments submitted by WFC and the Our Sound, Our Salmon coalition in 2019, and comments to the previous Atlantic salmon NPDES review. We have attached both documents for reference, and summarize the major concerns below. The review should also draw on the Pacific Northwest National Laboratory’s Salish Sea Model (<https://salish-sea.pnnl.gov/>) to assess how effluents will flow through Puget Sound and affect sensitive habitats and areas designated as critical habitat for Southern Resident killer whales, salmon, and other threatened and endangered species.

Food effluent

Open water finfish net pens routinely disperse large volumes of feed into public waters within the boundaries of the net pens. Some portion of the feed may not be consumed by penned fish, and thus makes its way into, and has an impact upon, the surrounding marine environment. The high-energy tidal zones in which net pens are located may drive broad dispersal of unconsumed feed and other dietary supplements, including medicines. This dispersal of feed into public waters represents a continuous and constant act of chumming, which attracts native fish species and other wildlife. Divers near net pens have observed large schools of fish swimming in and out of the pens, and reports from British Columbia on bycatch and incidental take of wild species during harvest operations indicate that many native species enter the pens, likely because of the food attraction.

Physically small fish species, such as baitfish and out-migrating and rearing salmonids (including ESA-listed Chinook and steelhead), may be attracted by net pen feed to the point

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where they physically enter a net pen facility and are vulnerable to predation from farmed Atlantic salmon in the pens. The constant dispersal of feed may also cause disruptions in the natural migratory patterns of native salmonids, as the pens provide a constant and unnatural food source that may cause salmonids to occupy a single location for a longer period of time than is typical, and deter rearing or migrating salmonids from developing key feeding strategies which are critical to their early growth and development. This constant source food is also likely to draw native species (including ESA-listed Chinook and steelhead) from their protective shallow nearshore habitats to net pens.

Surveys of aquatic diversity at sites near these net pens indicate substantial numbers of threatened and endangered juvenile salmonids, and forage fish. State-funded surveys including “West Sound Nearshore Fish Utilization & Assessment (SRFB Grant: 07-1898)” (2010), “Cypress Island Aquatic Reserve Pilot Nearshore Fish Use Assessment” (2011), “West Whidbey Nearshore Fish Use Assessment” (2007), and the ongoing “Hood Canal Nearshore Juvenile Fish Use Assessment” find substantial populations of threatened coho, Chinook, pink, and chum salmon in near-shore waters at sites near and similar to those where net pens operate. Those surveys also demonstrate substantial variation in total species diversity and population sizes from site to site, and between surveys at the same site over time. Salmonid populations could vary by orders of magnitude from month to month, and between years. This highlights the difficulty of monitoring and predicting what species will be attracted to the pens as a food source, and how pollutants in and near the pens will affect Puget Sound’s ecology.

Fish waste

Fish waste, excess food, dead fish, and tissue sloughed off of live fish, all flow from net pens into surrounding waters. This nutrient imbalance in the vicinity of pens can be harmful to some wild species, and can cause unhealthy growth of other species, including algal blooms.

On November 15, marine aquaculture net pens in Clayoquot Bay began seeing die-offs due to a bloom of diatomaceous algae (<https://thetyee.ca/News/2019/11/20/Algal-Blooms-Tofino/>). The concentration of fecal material, excess food, and fish flesh near pens may exacerbate these blooms, and the resulting fish deaths then produce additional pollution as they cannot be extracted from the nets quickly enough. Observers near the recent die-offs report that the waters near the pens turned “a dark brown muddy river-like colour,” due to the rotting flesh.

These die-offs are likely to be more frequent in the future, since these algal blooms “have expanded their range and frequency as climate change has warmed, acidified and robbed coastal waters of normal oxygen levels.” The inability to quickly empty the pens in the event of massive deaths or a disease outbreak poses significant risks to Puget Sound at large. One such risk is that the weight of the dead fish itself can add stresses to the pens’ structure, making a collapse more likely during those emergency operations, and when the contents of the pens pose the greatest risk to the environment.

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WFC modeled the additional phosphorus and nitrogen emissions resulting from net pens (<https://wildfishconservancy.org/estimation-of-total-phosphorus-and-nitrogen-waste-during-a-20-month-grow-out-period-for-puget-sound-atlantic-salmon-net-pen-aquaculture-facilities-1>). The additional pollution is more than the permitted emissions from large communities, and without any of the waste treatment requirements placed on human populations or land-based feedlots.

Open-air salmonid net pens chronically discharge particles of decaying fish flesh that are often consumed by native fish and birds. These particles may be contaminated with pathogens, parasites, pharmaceuticals or chemicals that may be ingested by native fishes, including conspecific steelhead and other salmonids. Studies have shown that these particles are potential vectors for pathogens. While Cooke now is required to recover dead fish and transport them upland for disposal, there is currently no mandate that those mortalities be submitted to the state for testing before disposal.

Antibiotic/medical effluent

In order to treat specific diseases of fungal occurrences or to prevent infection, chemicals and pharmaceuticals are often applied by the industry to the fish, water, or feed in the net pens. Among the potential and likely harmful impacts to designated uses of surrounding water is the use of these chemical or pharmaceuticals for treating infections, parasites or diseases such as “yellow mouth” where the U.S. Food and Drug Administration (FDA) requires a 30 day waiting period before treated fish may be approved for human consumption. Native fishes in the immediate vicinity of the treated pens may also be exposed to or consume the very same chemicals and pharmaceutical treatments (including fish that may enter the pens attracted by the presence of feed and fish odors). These fish may then be caught in recreational or commercial fisheries and unknowingly be consumed by the public within FDA’s required 30 day waiting period. This risk to the public and to wild fish must be addressed in the NPDES review.

The SEPA checklist submitted by Cooke Aquaculture and included in this record refers to the use of unspecified probiotic supplements. These unspecified introduced microbes are likely to colonize the microbiome of native fish and the environment near net pens. Given the growing scientific appreciation of the role of the microbiome in health and development of fish and other animals and plants, these supplements should be detailed, and a plan for monitoring surrounding areas and fish populations for colonization or excess growth of these bacteria should be required. This monitoring should also test for growth of antibiotic resistance in nearby areas, and in wildlife found in and near the pens.

Eliminate negative impacts to native fish, shellfish, and wildlife

Concentrated populations raised in what are effectively aquatic animal feedlots face greater risk of disease, parasitic, and viral amplification than free-ranging, especially wild, populations. When viral, bacterial, fungal, or parasitic diseases break out in net pens, the disease-causing

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organisms are rapidly amplified in number and leaked to the surrounding aquatic environment in large numbers. Because their conspecifics (and other salmonids of concern, including coho salmon, ESA-listed Chinook salmon and bull trout and as required by WAC 197-11-080) will be swimming in close proximity to the pens, there is likely to be a spread of disease to endangered wild steelhead and other salmonids. In 2017, a British Columbia study documented a strong correlational connection between disease prevalence in net pens and disease transfer to wild fish populations ([Morton et al., 2017 DOI:10.1371/journal.pone.0188793](https://doi.org/10.1371/journal.pone.0188793)). Recent research in British Columbia found novel viruses in endangered salmon, and found evidence that these novel viral infections may originate from farmed salmonids ([Mordecai et al., 2019 eLife 2019;8:e47615](https://doi.org/10.1371/journal.pone.0214615)).

Such pathogens fall within the definition of pollutants, and the NPDES permit review should ensure that Cooke's plans will eliminate the risk of these pollutants harming the integrity of the Sound ecosystem and the biological integrity of its wild species. Given the frequent presence of marine mammals near the pens, including seals and sea lions aggregating near the pens during harvest operations, and recent video of orcas swimming nearby as well, it is all the more important to identify pollutants, including antibiotic resistant bacteria, pharmaceuticals, and other emissions, that might do harm to these protected species.

Eliminate commercial marine net pen escapement

Our SEPA comments (attached) provide a detailed analysis of the risks to the genetic integrity of threatened Puget Sound steelhead stocks in the event of an escape. While the limited data from Troutlodge indicates an average triploidy failure rate of 0.17%, the true rate may be substantially different. Furthermore, a random sample of several hundred thousand fish may contain a larger proportion of fertile females by random chance. In the event of an escape on the scale of Cypress Island, that could mean thousands of fertile females entering Puget Sound, potentially diluting the genetics of threatened wild populations, and competing with wild females for redds. Our attached SEPA comments detail method of assessing those risks that allows an assessment of not only median-case scenarios, but the worst-case scenarios demanded by WAC 197-11-080.

The escape of rainbow/steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, will pose risks to native salmonids rearing in nearshore marine habitats and rivers due to competition for food and foraging space. This will be particularly true in the case of triploid individuals because, as noted in Cooke's materials, they will have appetites that are likely to be considerably greater than wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish. This means escapees may outcompete wild steelhead, or indeed predate upon them.

Since escapees would constitute pollutants under the Clean Water Act, escape prevention and the adequacy of Cooke's escape prevention and escape response plans must be carefully considered in this permit process. The SEPA MDNS requires Cooke to develop a "no-recovery" option to be added to their escape response plan, which is not included in these NPDES

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application materials. The NPDES review must be based on their full escape plan, not this incomplete record. The MDNS also required Cooke to develop a plan for marking their domesticated stock to distinguish them from free-swimming wild and hatchery steelhead. That marking plan is not included in these NPDES materials, but is an important aspect of escape recovery.

Conclusion

Given the new legal standard established by HB 2957, the pending legal challenge to the MDNS issued in January 2020, the large amount of new information that Cooke's application adds to the public record (including fish mortality data, a new fish escape prevention plan which may be further amended to add a "no recovery" option, and a new escape reporting and response plan which may be similarly amended), and the other new information described above that has come out recently, is expected in the near future, or that ought to be added to the record, and the substantial concerns that arise from when raising a native species as opposed to a non-native species, it would be appropriate to initiate SEPA review of this NPDES application, and potentially draft a new EIS after making a determination of significance.

Ecology's NPDES permit review should not begin until there has been thorough consultation with local, state, federal, and tribal governments. Many tribal nations submitted comments to the SEPA review requesting a full EIS, and initiated government-to-government consultations to express their grave concerns about the harm these pens do to the Sound. In addition, many counties and municipalities have established new rules since the net pens were installed, which would prohibit the construction of new net pens in their waters. While the existing pens are grandfathered in, these communities and nations should have a full and open opportunity to air their concerns and ensure that the continued operation of net pens in Puget Sound honors the concerns and needs of their neighbors.

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Attachments:

Our Sound, Our Salmon, 2/25/19. Comments on Washington Department of Ecology Draft National Pollution Discharge Elimination System Waste Discharge Elimination Permits for Cooke Aquaculture Atlantic Salmon Net Pen Facilities Fort Ward, Clam Bay, Orchard Rocks, and Hope Island.

*Our Sound, Our Salmon, 11/22/19. Comments on Washington Department of Fish and Wildlife State Environmental Protection Act Review of Cooke Aquaculture Proposal to Commercially Propagate and Harvest *Oncorhynchus mykiss* in Puget Sound net pens: SEPA #19056*

Order on Plaintiff's Motions for Summary Judgement, April 17, 2019. Wild Fish Conservancy v. Cooke Aquaculture. 2:17-cv-01708-JCC

Order on Plaintiff's and Defense's Motions for Summary Judgement, November 25, 2019. Wild Fish Conservancy v. Cooke Aquaculture. 2:17-cv-01708-JCC

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Comments on Washington Department of Fish and Wildlife State Environmental Protection Act Review of Cooke Aquaculture Proposal to Commercially Propagate and Harvest *Oncorhynchus mykiss* in Puget Sound net pens: SEPA #19056

Our Sound, Our Salmon
Submitted 11/22/19

Drafted and Submitted by:
Wild Fish Conservancy

Our Sound, Our Salmon is a campaign coordinated and overseen by the Wild Fish Conservancy

www.oursound-oursalmon.org

Signed by:

Wild Fish Conservancy, Center for Biological Diversity, Surfrider Foundation, Friends of the Earth, The Conservation Angler, Friends of the San Juans, Orca Conservancy, Environment Washington, Native Fish Society, Food & Water Watch, Watershed Watch Salmon Society, Wild Orca, North Cascades Audubon Society, Whale and Dolphin Conservation, Seawolf Coastal Portection, Whale Scout, Recirculating Farms Coalition, Olympic Environmental Council, Duke's Chowder and Seafood, Protect the Peninsula's Future, Moldy Chum, Reel Pure Radio, San Juan Excursions, Friends of Miller Peninsula State Park, Far Away Fly Fishing, Green Justice, Washington Sierra Club Chapter Water and Salmon Committee

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WILD ORCA



MoldyChum



Friends of Miller Peninsula State Park



Overarching Comments:

In addition to and as explained by the detailed technical comments below, the groups listed above—under the banner of the Our Sound, Our Salmon campaign—provides these overarching comments to highlight that the State’s mDNS and SEPA process is legally flawed in many respects, including but not limited the following:

- The State improperly relinquished its SEPA duties by delegating its primary responsibilities for evaluating the environmental impacts of Cooke’s proposed net pens farms to Cooke. Cooke is clearly biased in favor of allowing its proposal, and all analysis and documents that Cooke or its consultants prepared are therefore unreliable.
- The net pens will have significant adverse impacts on the environment, and the State failed to prepare an environmental impact statement to fully consider and evaluate reasonably foreseeable consequences from these impacts. For example, and as detailed in these technical comments, escaped steelhead from the net pens will adversely affect wild salmonids by competing for food and forage space with native salmonids and by amplifying and transmitting diseases and parasites. The State did not fully consider this, instead relying on an outdated EIS and a paragraph from Cooke that incorrectly minimizes impacts on wild salmonids without citing any support for its assertion.
- A new EIS is required because there are significant adverse effects that are not addressed in the prior EIS and because there is substantial new information and changed circumstances. For example, the outdated EIS relied upon by the State addressed rearing of a different species—Atlantic salmon—and not the steelhead currently proposed for Puget Sound net pens and was prepared before the listing of various species in Puget Sound under the Endangered Species Act, including Puget Sound steelhead, Puget Sound Chinook, and the Southern Resident Killer Whale. Further, there is an abundance of new science informing the risks net pens pose to

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the environment since the 1990 EIS. The cursory additional information and analysis is insufficient to update an entirely stale EIS. These comments detail some of the many ways the EIS and checklist fail to consider best available science that has come out in the last 30 years.

- The SEPA documents are neither complete nor accurate, failing to disclose many risks and harms associated with the net pens. Relatedly, the State failed to gather necessary additional information and failed to consider reasonably foreseeable consequences. For example, the State has not supplemented the decision documents with information from the recent Orchard Rocks incident. Regardless of whether the State considers the incident, the State has not provided the public with an evaluation of this incident and an opportunity to comment on the reasonably foreseeable risks posed by pen sinking.
- The State failed to disclose and consider all direct, indirect, and cumulative impacts of the net pens, and accordingly failed to provide an accurate and complete analysis.
- The State narrowed the project scope, improperly limiting its effects analysis and failing to consider many impacts posed by net pen farming in the State of Washington.
- The State failed to articulate and analyze updated objectives or purposes, making it impossible to consider and evaluate reasonable alternatives. The 1990 EIS articulates an objection/purpose of assisting in resolution of conflict by evaluating the environmental impacts of fish farms on the biological and build (human) impacts. This objective/purpose is clearly outdated and based on the political climate at the time. The update in Attachment D does not provide any updated objectives/purposes, but simply states a “proposed action” of permitting steelhead/rainbow farming. This failure to articulate objectives or a purpose makes it impossible for the public to understand what reasonable alternatives are available that the State failed to consider.

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- The State failed to consider and evaluate reasonable, safer alternatives to raising the rainbow trout/steelhead at existing marine net pen sites in Puget Sound. For example, the State should have considered an alternative requiring all salmon farms to be self-contained land-based facilities. As another example, the State should have considered an alternative regulation that restricts the number of steelhead/rainbow that may be farmed in the pens. These alternatives would significantly lessen the risks and impacts of salmon farming on the environment while still allowing Cooke to run a profitable salmon farming business.
- The no action alternative in the 1990 EIS is outdated and does not make sense because the “existing regulations and guidelines,” as well as the laws of the State of Washington related to net pens, that would form the basis for a no action alternative have changed in the last 30 years.
- The State must prepare an EIS because of the significant negative environmental and health impacts from the net pens, examples of which are detailed in these comments.
- The mitigation measures included in the decision documents are unenforceable; fail to address all significant adverse impacts on the environment; will not reduce impacts to a nonsignificant level; and otherwise do not comply with SEPA.
- The regulatory agencies lack sufficient regulatory controls to allow the proposed action to go forward. As demonstrated by disease outbreaks—like the 2012 outbreak of IHNv and the PRV outbreaks—as well as equipment failure—like the 2019 Orchard Rocks incident and the collapse of Cypress Site 2 and its aftermath—the regulatory agencies are ill-equipped to mitigate any adverse impacts.

Under the State Environmental Protection Act (SEPA), this review requires a threshold determination of whether an action is likely to have a “significant adverse environmental impact.” The State’s current threshold determination of Mitigated Determination of Non-Significance (mDNS) is inadequate as an environmental review and fails to address many well-documented risks associated with farming salmonids in these exact pens. Industrial-scale,

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open-water finfish aquaculture poses significant environmental risks, and the transition from Atlantic salmon aquaculture to rainbow/steelhead trout aquaculture adds significant risks that cannot be adequately mitigated. The State has violated SEPA by not preparing a new Environmental Impact Statement (EIS). Below, we detail some but not all of the significant environmental impacts that compel a determination that this proposal poses significant adverse environmental impacts, and reasons why the mitigations proposed are not reasonably certain to address those risks. In evaluating the proposed actions, the State failed to properly consider all available alternatives, or the cumulative impacts of the many risks posed by this proposed action.

The State should withdraw the Mitigated Determination of Non-Significance (mDNS), issue a Determination of Significance, and draft an EIS to assess the full impacts of this transition. Furthermore, that EIS should incorporate into its no-action alternative the cessation of operation of the pens (and cessation of any environmental risk) after the legislative non-native aquaculture phaseout takes effect in 2022.

The public comment period was flawed

The initial 21-day comment period was too short to allow adequate public comment. That period was first extended by 10 days, and again by 21 days. These extensions were announced near the end of each comment period, meaning that commenters could not budget their time to conduct the depth of analysis and consideration that might have been possible had the comment period been announced at full length to begin with.

When first announced, the comment period ended before the deadline for a legislatively-mandated report from state agencies to the legislature regarding best practices on aquaculture licensing and practices. That report was mandated by HB 2957, the law which also phased out Atlantic salmon aquaculture and mandated stricter regulations of marine net pen aquaculture in general, and was supposed to be filed on November 1. The first extension of this comment period ended on that same day. Unfortunately, that report has still not been filed as we

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complete these comments, meaning the public has not been able to draw on the guidance of State agencies on how “to eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife.” Proceeding with review of this proposal before completing the mandated report to the legislature puts the cart before the horse, and makes it likely that the clear will of the legislature and voters will not be reflected in the State’s response to Cooke’s request.

Even with the extensions the State has granted, there is a great deal for the public to evaluate. The filing covers over 400 pages, including a lengthy bibliography that requires review and in some cases rebuttal, as well as hundreds of references within the text to review. In addition, it references and discusses material developed by two sources who are expert witnesses for Cooke Aquaculture currently preparing to testify in ongoing litigation regarding these net pens. Understanding their statements here requires consideration of expert testimony rebutting their claims from that ongoing litigation. Furthermore, the 1990 EIS (Environmental Impact Statement) on which the State is relying is woefully outdated, and addressing the environmental effects of this policy requires the public to integrate decades of new information regarding Puget Sound, wild salmonids and other native fish in the Sound, its endangered marine mammals, the physics of tides and currents and tsunamis in the Sound, and the effects of net pens and industrial finfish aquaculture on the Sound.

The submission includes a 76-page document authored by Cooke Aquaculture staff and contractors, which purports to serve as a supplement to the 1990 Programmatic EIS. This self-interested document cannot stand on its own as a supplement to the state’s EIS, and the document largely omits discussion of the specific environmental impacts of the net pens on the threatened and endangered species under discussion, including effects on the conspecific Puget Sound steelhead which are listed as threatened under the Endangered Species Act.

That there is so much additional information accumulated in those intervening decades— including multiple new federal and state listings of endangered and threatened species, newly-

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designated critical habitat, and substantial new evidence of the effects and risks posed by open-water salmonid aquaculture in Puget Sound—is a strong argument of the need for the appropriate state agencies to conduct a full EIS. Washington Department of Fish and Wildlife (WDFW) is the appropriate agency that should write such a supplement, and in view of Cooke’s active defense in litigation over its ESA and CWA violations and the considerable controversy surrounding Cooke Aquaculture in general, the proposal at issue in particular, and the widespread public consensus supporting the complete elimination of open net pen finfish aquaculture in Puget Sound, WDFW should provide a period for public comment on that EIS once it is issued. Allowing the petitioner to write its own supplement to the 1990 Programmatic EIS rather than having the state to perform its own due diligence and impartial analysis, and offer the public the statutory amount of time for comment, represents a dangerous end run around key environmental protections.

During the comment period, new information became available that the public deserves an opportunity to understand and comment on. This includes the partial sinking of a net pen at the Orchard Rocks site, and Cooke Aquaculture’s efforts to intimidate Wild Fish Conservancy and prevent us, our members, and our partners in the Our Sound, Our Salmon coalition from exercising First Amendment rights to comment on this matter of public interest.

Orchard Rocks, 2019

In the 2019 Orchard Rocks incident, neighbors on shore observed the pen sinking as early as October 15, and reported their concerns to Cooke. Initially, Cooke staff told these neighbors that the apparent sinking was simply a result of normal tidal movement, and neighbors observed no repairs and it appeared that the pen was operating as if nothing was wrong. On October 18, the corner of the pen was fully under water, and emails obtained through public records requests indicate that the initial emergency alert came not from Cooke’s personnel, but from state employees visiting family near the pens during their off-hours. In response to these calls from WDFW staff, coordinating with staff at the Department of Natural Resources, the US Coast Guard mounted an emergency response and created a security cordon, while

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Cooke and DNR divers surveyed the damage and began repairs. According to a DNR spokesperson, fish could have escaped had the sinking pen been stocked at the time.

Emails obtained through public records requests show that state regulators did not feel Cooke followed the emergency protocols that they had agreed to through previous permits. It is unclear why it took several days to begin repairs, or whether Cooke staff intentionally misled concerned members of the public during that delay. It appears that the public and agency staff initiated the emergency response, not Cooke or its staff. The public and state agencies cannot adequately evaluate Cooke's emergency response—a central component of the risk mitigation proposed in the mDNS—without clarity on those matters, and a clearer understanding of Cooke's monitoring and preventative maintenance. In emails obtained through public records requests, state agencies appear to be planning an internal investigation of this incident, and our records request remains open. Estimated times to complete the records search extend beyond the end of this comment period. As we complete these comments, no results have been announced from the agencies' investigation of this incident.

Silencing public comment

On October 3, 2019, less than two full days after the public comment period began and the day after Wild Fish Conservancy issued a press release informing the press and public about this comment period, Cooke Aquaculture issued a "cease and desist" notice to WFC. This letter instructed WFC (a group that convened and coordinates the Our Sound, Our Salmon coalition) to "cease and desist" from expressing opinions about the risks posed by Cooke's net pens in Puget Sound, opinions derived in part from and citing an engineering report prepared and submitted as part of ongoing litigation. Cooke's letter warned "If these statements result in delay in issuance of those permits...Cooke will seek recovery of damages against WFC and [WFC executive director] Mr. Beardslee personally, in addition to injunctive relief."

Describing evidence and opinions derived from that evidence, especially as part of a petition to a government agency for redress of grievances, is the epitome of First Amendment-

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protected free speech. The First Amendment protects the rights of citizens to make such fair comment on matters of public interest and public controversy. Washington State is one of the first states to legislatively shield reports like this from threats like Cooke's, declaring in 1989: "The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies" (RCW 4.24.500).

Cooke's letter to WFC, and any similar letters sent to members of Our Sound, Our Salmon and other individuals or advocacy groups, may have chilled or otherwise limited the public's participation in this important process. To correct any such chilling effect, the State should take measures to ensure that the public should feel no barrier to making their opinions heard. This might include asking the Attorney General to review existing laws and regulations to ensure that the State's anti-SLAPP laws are sufficient to protect the integrity of the public comment process, and to investigate this incident and its harm to the integrity of the State's public comment process.

Effects of escaped steelhead on wild steelhead genetics

The mitigated Determination of Non-Significance (mDNS) rightly treats the possibility of escape, both small- and large-scale, as a real and serious threat that must be addressed before planting fish in the net pens. Escaped fish pose a range of risks to endangered wild salmonids, and to the ecology of Puget Sound and its watersheds. The recovery efforts following the 2017 collapse demonstrated inadequacies of the existing escape plan even for non-native species (see comments below regarding inadequacies of the escape plan in the mDNS).

As DFW notes in the mDNS and their exchanges with Cooke in Attachment B, under this proposal, an escape on the scale of 2017 would have released a number of fertile female steelhead that "would have exceeded the number of wild steelhead returning to spawn in

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many rivers in Puget Sound.” DFW’s exchange with Cooke states that the use of eggs treated to induce triploid sterility “would reduce, but not eliminate the risk.”

We note in the section on failure of triploidy-induction below that monitoring of escapes of farmed Atlantic salmon in Norway (where the salmon are farmed in regions with wild conspecifics) demonstrates that escaped farmed salmonids do survive and feed and grow in marine feeding areas at rates similar to wild Atlantic salmon, and survive to mature and return to Norwegian rivers to interbreed in significant numbers with wild Atlantic salmon, with known adverse population level impacts to the affected wild populations (Disreud et al. 2019, Glover et al. 2019, Karlsson et al. 2016, Skilbrei et al. 2015). Importantly, Cooke’s existing net pen sites are less than 20 kilometers (12.5 miles) by water from important wild steelhead rivers, including: the Elwha, Dungeness, Samish, Skagit, Stillaguamish, Cedar, and Green rivers (Map).

Table 1 shows the average wild steelhead population abundances in rivers nearest to the existing net pen facilities. State guidelines generally regard the risk of genetic harm as too high when wild fish are less than 95% of the spawners in a stream (5% hatchery-origin). Science would argue for a much lower threshold than 5% when the hatchery fish are as significantly domesticated as those proposed to be used by Cooke. Simulations of escape and survival scenarios (Appendix) indicate high likelihood that an escape on the scale of Cypress 2017 could cause the proportion of fertile farmed rainbow/steelhead trout spawning in streams to exceed 5%, or in some scenarios could exceed the entire wild population in streams.

A full understanding of the genetic risks posed would require more detailed information on the genotypes of the broodstock for the farmed salmon, and reportedly the egg supplier will not supply those data. While WDFW officials have offered assurances that they would require such information before authorizing a finfish transfer permit, the mDNS does not specify what standards would be applied in such a review. WAC 197-11-080 requires a worst case analysis and a discussion of the likelihood of that worst case. Rather a worst case scenario, the mDNS discussion adds a scenario that is less of a worst case than the proposal offered by Cooke.

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In 2018, WDFW's fish health specialist—Dr. Ken Warheit—testified before the state legislature that raising native fish in these pens would actually represent “a greater risk to the state's native wild and hatchery salmonid populations, than is Atlantic salmon marine aquaculture.”

That risk should be considered through a full EIS.

Effects of escaped steelhead on wild salmonids' prey and habitat

The escape of rainbow/steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, will pose risks to native salmonids rearing in nearshore marine habitats and rivers due to competition for food and foraging space.

This will be particularly true in the case of triploid individuals because, as noted in the SEPA checklist, they will have appetites that are likely to be considerably greater than rearing wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish.

Diploid individuals that result from the failure of triploid induction will pose a significant risk of becoming sexually mature and interbreeding and/or competing with native rainbow and steelhead on the spawning grounds of native fish. The effects of recurrent, annual low level escapes on wild Atlantic salmon Norway is well documented, and similar impacts on native rainbow and steelhead in Puget Sound are to be expected (Diserud et al. 2019, Glover et al. 2019). Research in escapes of farmed Norwegian Atlantic salmon has also shown that escaped salmon survive to rear in the ocean for one or two years and return as mature fish to spawn in rivers of wild salmon (Olsen et al 2013, Karlson et al. 2016). Further, analysis of monitoring of escapes of farmed Atlantic salmon in Norway has shown that the actual number of escaped farmed salmon is two to four times greater than the officially reported annual number of escapes (Diserud et al. 2019, Skilbei et al. 2015). Of course, these potential risks will be greater the greater the magnitude of an escape and the greater the frequency of small-scale leakage

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events. But, as is the case for wild Atlantic salmon in Norway and the north Atlantic in general, the risks posed by low level escapes can not be discounted.

A full EIS would allow for updated analyses that incorporate this and other new research on the effects of salmonid aquaculture, rather than relying on the prospective analysis conducted nearly 30 years ago, in 1990.

Effects of escaped steelhead on wild salmonids' predators

Various operations at the net pens can attract threatened, endangered, and otherwise protected predator species to the vicinity, creating risks that those birds and mammals would be harassed, experience ship strikes, or become dangerously accustomed to human proximity. The process of feeding farmed rainbow/steelhead trout attracts juvenile and adult wild fish (including ESA-listed salmonids), which in turn aggregates predator species. Predators will also be attracted by the outflow of shed skin and other parts from the penned rainbow/steelhead, and could be exposed to diseases and parasites through that proximity. The harvest process results in the release of bycatch fish, blood, and other fish parts from harvested fish, which has been shown to attract marine mammals to close proximity to the pens and boats (as in this video: <https://drive.google.com/file/d/1TWXLMTcdG4s4QEvd3BM65-GpD1IEdaRJ/view?usp=sharing>). A comprehensive EIS should examine the risks to these protected species from raising steelhead/rainbow trout in these net pens, and develop appropriate mitigation measures in consultation with federal, tribal, and international co-managers.

Farmed steelhead diseases could harm wild salmonids

Raising native salmonid species, and rainbow/steelhead trout in particular, in open Puget Sound net pens likely increases the risk of disease transmission from farmed to wild native salmonids and other fish species. Rainbow/steelhead trout are susceptible to native, endemic, Pacific salmon viruses, bacteria and parasites as well as non-native, introduced pathogens including piscine orthoreovirus (PRV). Rainbow/steelhead trout are vulnerable to a deadly form of infectious hematopoietic necrosis virus that can spread to and kill wild steelhead. While vaccination and state monitoring can limit this risk, it remains a greater risk than existed with Atlantic salmon.

The experience from a 2012 outbreak of the Atlantic salmon-specific strain of IHN indicates the danger of an outbreak in farmed rainbow/steelhead trout. While response plans call for rapid culling of infected fish to prevent the spread of disease, in 2012 the culling dragged on for months, with the Northwest Indian Fisheries Commission's fish health specialist noting the pen owner "reported increased mortalities starting in April. We now are at end of May and infected fish are still in those pens shedding virus." (<https://nwifc.org/ihn-virus-detected-in-atlantic-salmon-farm-near-bainbridge-island/>) The effect of such a delay if farmed rainbow/steelhead trout were infected with the strain shared with wild steelhead would be catastrophic.

Concentrated populations raised in what are effectively aquatic animal feedlots, face greater risk of disease, parasitic, and viral amplification than free-ranging, especially wild, populations. When viral, bacterial, fungal, or parasitic diseases break out in net pens, the disease-causing organisms are rapidly amplified in number and leaked to the surrounding aquatic environment in large numbers. Because their conspecifics (and other salmonids of concern, including coho salmon, ESA-listed Chinook salmon and bull trout and as required by WAC 197-11-080) will be swimming in close proximity to the pens, there is likely to be a spread of disease to endangered wild steelhead and other salmonids. In 2017, a B.C. study documented a strong

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correlational connection between disease prevalence in net pens and disease transfer to wild fish populations (Morton et al., 2017). Recent research in British Columbia found novel viruses in endangered salmon, and found evidence that these novel viral infections may originate from farmed salmonids (Mordecai et al., 2019).

As with terrestrial feedlots, the diseases that spread in and from net pens are likely to include the spread of antibiotic- and fungicide-resistant pathogens to wild steelhead and hatchery steelhead, which poses additional risk to hatcheries and the humans and wild species that feed on steelhead and other Puget Sound salmonids (discussed further below, along with other risks of pollution from net pens). As the *Seattle Times* reported in October: “The risk is low, but consequences could be severe.” (<https://www.seattletimes.com/seattle-news/environment/cooke-aquaculture-seeks-to-farm-native-steelhead-in-puget-sound-after-2017-atlantic-salmon-escape/>)

A comprehensive EIS should examine the risks to these protected species from raising biologically-engineered steelhead/rainbow trout in these net pens, and develop appropriate mitigation measures in consultation with federal, tribal, and international co-managers. That analysis should include an assessment of disease transmission to predator species, as well as the effects of these diseases on wild fish, and the potential for transmission of resistant strains to hatcheries.

Fertility of steelhead eggs treated for triploid sterility

The mDNS Summary (and Attachment A to Cooke’s SEPA checklist) notes that the induction of triploidy in fertilized eggs at Cooke’s hatcheries is imperfect. The likely adverse effects on native rainbow and steelhead from the escape of fertile aquaculture rainbow highlights the importance of providing firm risk-averse quantitative criteria and associated procedures regarding the estimation of the rate of triploid failure in each lot of eggs intended for

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production of smolts for outplanting to Cooke's marine net pen facilities. WDFW's Summary notes some concerns with the procedure Cooke employs to estimate the triploidy failure rate ("failure rate", Cf. Attachment B, Cooke's response to WDFW question C2, pp. B-25,26). We believe WDFW's concerns are valid but that their recommendations do not go far enough to adequately reduce the risk posed by the presence of diploid (fertile) rainbow/steelhead in net pens in Puget Sound.

First, we note that the assertion by Cooke on page B-25 that the results of sampling to test triploid induction presented in Attachment A "are additive" is erroneous. The data in Appendix A show results from samples of 60 to 100 fertilized eggs from 36 separate lots sampled between 2013 and 2018. These samples can legitimately be pooled only if all 36 samples were obtained from a single lot (cohort) of eggs. This is clearly not the case. Further, Attachment A contains no data on the total number of eggs in each lot from which each sample was obtained. This missing information is critical to determining the adequacy of the sample sizes for estimating the triploid failure rate of each lot.

A Bayesian assessment of the data in Attachment A (modeling 36 separate draws of the same sizes observed, drawn from a hypergeometric distribution with unknown rate of diploidy) provides a 95% Highest Posterior Density Interval for the rate of diploidy of 0.06%-0.35%, and an 80% HPDI of 0.09%-0.28%. A worst case assessment as required by WAC 197-11-080 should consider not just the average triploidy rate in these samples, but the likely range of scenarios, and should attempt to cap the risk.

We recommend an alternative approach described in the following. The details in the approach we suggest also illustrate a robust general approach to risk assessment, particular in contexts of endangered species.

There are two basic issues in regard to the risk posed by the failure of triploid induction:

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1. the failure rate itself (i.e., how many diploids will be reared and released into each net pen per batch of fertilized eggs in the hatchery that have been subjected to the triploid-induction treatment)?
2. The total number of diploids in a pen that would escape either via low level leakage or catastrophic failure.

The first (failure rate) in conjunction with the size (number) of fertile eggs subjected to the triploidy-induction procedure is relevant to determining the minimum sample size of eggs from each lot that should be tested for triploid failure in order to assure an appropriate low risk of diploids being released into the pens. The second determines the probability or likelihood that escapes – especially under conditions of a catastrophic failure – would survive in sufficient numbers to pose a significant threat to wild rainbow or steelhead. Here, we assume that ‘significant threat’ is one that would amount to a take of a threatened or endangered salmon, steelhead, and bull trout under the ESA. Determination of this number, therefore, requires an appropriate determination by National Marine Fisheries Service (NMFS) and issuance from NMFS of an appropriate Endangered Species Act (ESA) Incidental Take Statement (ITS).

Determining a risk-averse failure rate (issue 1) is dependent on determining the risk-averse probability that escapes under a catastrophic failure of a net pen would pose a ‘significant threat’ to ESA-listed salmonids from surviving escaped diploid rainbow/steelhead. This, in turn, requires, a determination of the maximum allowable number of diploids per total number of individuals out-planted to each farm facility. We follow WDFW in expressing this number per-million eggs tested.

On page 6 of the Summary, WDFW conducts a rough illustrative exercise estimating the numbers of diploids surviving to potentially interact with wild rainbow or steelhead on the spawning grounds. WDFW provides a lower estimate of 63 mature diploid fertile fish from a catastrophic escape from a pen initially planted with 1,000,000 smolts, given a variety of assumptions about intermediate rates leading from the initial escape to the presence of

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surviving diploids on the spawning grounds. WDFW calculates that there would be a total of 63 such fertile escaped rainbow/steelhead, under a presumed “low survival” scenario and 316 under a “high survival” scenario.

In order to be very risk-averse (in keeping with the high priority placed on protecting ESA-listed salmon, steelhead, and bull trout), suppose we adopt a maximum of 50 fertile diploid escapees from a total net pen failure of 1,000,000 rainbow/steelhead. Under the assumptions of the WDFW “low survival” scenario 1,000,000 rainbow/steelhead net pen rearing primarily sterile triploid fish would have to consist of a maximum of 1560 fish in which triploid-induction had failed (Table 2). 1560 escaped diploids would result in no more than 50 surviving with the potential to reach the spawning grounds of wild steelhead or rainbow, given the assumptions used in WDFW’s low-estimate scenario, which we adopt here for the sake of illustration.

In a total population of 1,000,000, 1560 diploids yields a point estimate of the triploid-induction failure rate of 0.00156. To be risk-averse with respect to ESA-listed fish, we argue that the number of fertilized eggs post-triploidy induction sampled and tested for triploid failure should be large enough to assure a probability of 0.95 (95%) or greater that the total number of diploids in the lot of 1,000,000 eggs is no greater than 1560. This requires a sample of approximately 3000 randomly selected eggs (per million eggs). The standard would require a random sample of at least 3000 be tested from each lot of one million fertilized eggs (or hatched fry) and result in no more than 1 triploid failure (figures 1 & 2). A lower-cost alternative protocol with the same effect would be to test consecutive lots of 100 eggs from each batch of 1,000,000 fertilized eggs, and to continue testing lots until either one or more diploids is detected from the current lot or until a total of 3500 eggs has been tested and no more than one diploid has been found. The occurrence of one (or more) diploid eggs in a total number of eggs fewer than 3500 would result in a distribution of the total number of diploids in the one million egg lot being tested in which the 95th percentile of the cumulative probability distribution exceeds the critical value of 1560.

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It is also of interest that if the total of 2950 samples tested for failure of triploid induction (diploidy) listed in Attachment A of Cooke's SEPA Checklist, of which 5 diploids were found, were obtained from a single lot of 1,000,000 fertile eggs, the mean number of diploid in the entire lot of 1,000,000 eggs would be more than 2000, the median number would be 1900, and there would be a probability of just over 5% that the true number was greater than 3500 (Figure 2). Each of these quantities is clearly greater than the hypothetical maximum of 1560 described above.

In summary, the risk standard should be stated as a high probability that the outcome of a specified quantitative sampling protocol not exceed a specified quantitative upper bound judged sufficient to assure that an adverse outcome of management concern will not occur. Here, the quantitative upper bound is the number of triploid failures per 3000 random samples tested (here 1), which corresponds to a corresponding high probability that no more than some total number of triploid failures (here 1560) occur per batch of million fertile eggs or fry sampled. The latter maximum number (1560) is in turn derived from an appropriate estimation of the distributions of the quantities (parameters) required to estimate (with appropriately high probability) the total number of fertile escaped diploid farmed rainbow/steelhead that would survive following a catastrophic net pen failure, where the total number of surviving fertile escaped diploids is itself determined on the basis a similar assessment of the risk posed to ESA-listed steelhead by the presence of escaped diploid farmed rainbow/steelhead on the spawning grounds of wild steelhead. The determination of such a risk standard requires that full probability distributions of the relevant quantities of interest be calculated (estimated) so that risk-averse probabilities of attainment of a risk-averse standard can be specified as a probability from the relevant tails of the distributions. Picking a point estimate, such as the mean of a sample, as in the WDFW summary (picking the mean triploidy-failure rate of 0.0017 (0.17%) from Cooke's sampling data (Attachment A to Cooke's SEPA checklist) is inappropriate and very likely to be insufficiently risk averse.

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This analysis is necessarily limited given the short comment window. The State must develop and “document...its worst case analysis and the likelihood of occurrence” as required by WAC 197-11-080. A fuller analysis of the genetic risks posed by escaped non-triploid rainbow/steelhead, and measures that might mitigate those risks, would be possible with a longer comment period, and should properly be undertaken as part of a comprehensive EIS.

The proposed escape recovery plan is clearly insufficient

It appears that Cooke’s recovery plans are no different from the ones employed to address the catastrophic 2017 net pen failure and escape at Cypress Island. In Appendix B, they state:

Upon receiving authorization from WDFW, the company will commence recovery of escaped fish through one or more of the following actions: (1) use of company skiffs and seine nets; (2) contacting the Northwest Indians Fishery Commission and nearby tribal Natural Resource managers to help facilitate the recapture of escaped fish; (3) contacting and engaging the services of local commercial fishing boat operators to facilitate the recapture escaped fish.

This approach was inadequate in 2017, resulting in substantial unrecovered escapees. It is far less adequate for this proposal. Here, the escaped fish may school with threatened wild salmonids and conspecifics. While non-specialists might reasonably have been expected to make quick distinctions between a recovered Atlantic salmon and a wild salmonid, those distinctions will be much harder in this case. A captured steelhead might be a threatened wild steelhead that must be immediately released, or a hatchery-raised steelhead subject to catch limits, or a farm-raised steelhead that must be retained. This distinction may be difficult for non-specialists to make under emergency conditions. As a result, escapees are likely to be harder to recover than were Atlantic salmon.

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A recent comprehensive review of efforts to recapture escaped fish from marine aquaculture (including open net pen farmed Atlantic salmon and rainbow trout) demonstrates that such efforts are largely unsuccessful (Dempster et al. 2018). This review casts considerable doubt that escaped farmed salmon and steelhead that escape during either persistent low-level “leakage” or less frequent catastrophic failures such as the one that occurred at Cypress Island in August 2017 cannot be recaptured in ecologically significant numbers.

In passing HB 2957, the state legislature tasked state agencies “to eliminate commercial marine net pen escapement.” Using the same escape plan that failed dramatically in 2017 does not fulfill that statutory language, or the high standard that the legislature and the people of Washington demanded of the marine aquaculture industry. WAC 197-11-080 requires an analysis of the worst case scenario and its likelihood, which are not adequately discussed.

A full EIS would allow WDFW and other agencies and co-managers to consider a range of alternatives to better mitigate this risk.

The “no-recovery” option for escapes as an unmitigated environmental risk requiring SEPA review

SEPA review requires a threshold determination of whether an action is likely to have a “significant adverse environmental impact.” As the Department of Ecology SEPA FAQ notes, “An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe.” The FAQ explains further that an agency may issue a “mitigated DNS in lieu of preparing an EIS when there is assurance that specific enforceable mitigation will successfully reduce impacts to a nonsignificant level.”

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In this case, one of the forms of mitigation required by the DNS seems to acknowledge that there are risks that cannot reduce impacts to a nonsignificant level. Regarding escape recovery plans, including scenarios for recovery after a catastrophic failure of the pens, the mDNS states:

It is conceivable that an attempt to recover fish after an escape event may negatively affect native Pacific salmonids more than no attempt to recover fish. Cooke is required to work with WDFW, Ecology, and DNR to include a no-recovery option in the 2020 Fish Escape Prevention, Response, and Reporting Plan, to be finalized December 2019. This option should include when, where, and under what conditions a recovery effort should not be attempted. A no-recovery option would be triggered by the state, in consultation with co-managers and federal agencies for the purpose of protecting native Pacific salmonids. A no-recovery option can be triggered by Cooke if the attempted recovery would put the health and safety of its employees at risk.

This scenario exceeds the scope of an mDNS and demonstrates the need for a finding of significance and an environmental impact statement.

The mDNS rightly treats the possibility of escape as a real and serious threat that must be addressed before planting fish in the net pens. Escaped fish pose a range of risks to endangered wild salmonids, and to the ecology of Puget Sound and its watersheds. The recovery efforts following the 2017 collapse demonstrated inadequacies of the existing escape plan even for non-native species. As DFW notes in the mDNS and their exchanges with Cooke in Attachment B, an escape on the scale of 2017 would have released a number of fertile female steelhead that “would have exceeded the number of wild steelhead returning to spawn in many rivers in Puget Sound.” DFW’s exchange with Cooke states that the use of eggs treated to induce triploid sterility “would reduce, but not eliminate the risk.”

To mitigate that risk, DFW requires Cooke to prepare an escape recovery plan. That escape recover plan itself could pose environmental risks. DFW recognizes that significant risk and imposes a further mitigation, one in which no recovery is attempted. This option could be

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triggered by the state in consultation with federal and tribal partners, but also can be triggered by Cooke based on its assessment of risk to its crew.

This creates a risk that there would be no mitigating effort taken to address the adverse environmental impacts of an escape. DFW's own arguments in the mDNS lead to the conclusion that this impact cannot be mitigated, and that it is inappropriate to proceed with a mitigated Determination of Non-Significance. To assess the risks of this projects requires a full EIS.

The pens' structure is likely to be unsafe for prevailing conditions in Puget Sound

The joint DFW/DOE/DNR investigation of the Cypress Island net pen collapse of 2017 identified failures of maintenance and engineering which resulted in the collapse of that ten-cage net pen and the release of hundreds of thousands of farmed fish. In the course of ongoing litigation resulting from that collapse, Wild Fish Conservancy contracted an independent marine engineer to provide expert testimony evaluating the collapsed pen and assessing the risks posed by the surviving pens.

Like the state's own investigation, Dr. Tobias Dewhurst's assessment found evidence that the net pen had not been adequately cleaned, and that there had been a persistent failure to confirm the soundness of the pens and their anchoring systems, despite those cleanings and inspections being required by permits and industry best practices prevailing before 2017. In addition, Dr. Dewhurst compared manufacturers' ratings for the surviving pens with conditions at the sites where they are currently deployed, and found "conditions at each of its eight sites exceeded the maximum rated conditions specified by the net pen manufacturer. Based on Cooke's documentation that I have reviewed to date, these issues persist at many of the remaining net pen sites. Thus, the remaining net pen systems may be at risk of partial or

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catastrophic failure during instances of extreme environmental loading, which could result in fish escapement.”

He concluded: “As a result of excessive loads on the net pen system created by:

- currents and net sizes exceeding those specified by the net pen manufacturer,
- biofouling levels potentially exceeding design values, and
- mooring system installations that deviate from manufacturer recommendations and were not approved by a marine engineer, pens and cages operated by Cooke were at risk of complete failure. One pen, Cypress Site 2, did experience a catastrophic failure.”

DFW and its partner agencies should not regard it as sufficient mitigation of risk to permit these pens to transition to rainbow trout/steelhead without new engineering plans in place.

The current mitigation proposal would allow these pens to operate without “engineered mooring and anchoring plans and site-specific engineered drawings stamped by a structural engineer” until 2021, and would allow them to operate without a third-party inspection for periods as long as two years.

Given the history of these net pens, the consequences of the mismatch between their manufacturers’ ratings and conditions in Puget Sound, and the inadequate maintenance and inspection preceding the 2017 collapse, these pens should be required to have adequately-engineered structures before transitioning to rainbow trout/steelhead. The engineering plans should be incorporated into a full EIS, allowing independent engineers to review the plans and assess the risks posed by the re-engineered pens and anchoring systems. The analysis should incorporate worst case scenarios and their likelihood, as required by WAC 197-11-080. Without that information, how can DFW and its partner agencies, or the voting public and elected leaders who reacted with outrage to the 2017 collapse, assess the risk and sufficiency of this current proposal?

The pens' structure is unsafe for foreseeable conditions in Puget Sound

Puget Sound is a seismically active area, with structures facing threats of significant damage from shaking in an earthquake, and from tsunamis caused by local earthquakes and those traveling from more distant quakes up and down the coast. A substantial tsunami is likely to occur during the life of these pens, and much state policy has been directed in recent years to make high-risk structures safe from seismic risks. While the exact time of such a tsunami is not predictable, there is a substantial likelihood of such a tsunami in the foreseeable future, and much attention and policymaking effort has been dedicated to incorporating that risk into planning.

Unlikely as that risk might be, it is necessary to consider here because, as noted in the Department of Ecology SEPA FAQ: "An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe." Since there is evidence that the net pens are already operating at or past their engineered limits, and since the people of Washington State have seen the tremendous harm done when these pens fail, understanding low-probability/high-risk events that threaten further collapses is critical in addressing the pens' full environmental impact.

Modeling by Washington's Department of Natural Resources and NOAA recently examined consequences of tsunamis for Puget Sound. Tsunami waves in some ways simply amplify the existing concerns about the structural soundness of the net pens, and add to the likelihood of a partial or complete collapse of one or more pens already considered as part of Dr. Dewhurst's engineering study. The forces generated by tsunami waves may differ in more than just intensity from routine tidal flow, in part due to the intense oscillation and the rebound of waves off of nearby shores. This risk deserves additional concern and scrutiny as part of a comprehensive EIS. A full-blown analysis of these forces is impractical given the limited time available for public comment.

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To help understand the consequences of tsunamis, we requested simulated wave amplitudes and current velocities for the net pen sites. The DNR/NOAA simulations show significant added risk to all of the sites in the event of a tsunami within Puget Sound. The Fort Ward and Clam Bay sites see modeled wave heights nearly 20 feet high, as does the Port Angeles site, while the Cypress Island sites would face a wave over 10 feet high. The Skagit Bay site and Fort Ward site would face variable currents, with current speeds as high as 14 knots and rapid changes in direction and intensity. This oscillation in the course of a tsunami seems likely to generate forces outside those in normal engineering assumptions, and call for further consideration of anchoring systems and structural integrity.

There is no reason that a seismic catastrophe should be allowed to place Puget Sound's wildlife at needless risk due to inadequate planning and preparation. WAC 197-11-080 requires a consideration of worst case scenarios, and state law requires other facilities, such as hazardous waste storage sites, to be evaluated for seismic risks. These aquaculture net pens should be subjected to a full EIS that includes consideration of the seismic risks that they uniquely face as semi-permanent, in-water structures containing farmed fish whose escape would cause significant environmental risks.

Water withdrawal and discharge into Puget Sound

The SEPA checklist states "No surface water withdrawals or diversions are required to implement the species change proposal, or to continue operations at existing floating net pen facilities." This is incorrect, since routine operations—including harvest—entail drawing water out of the pens, extracting the fish on board the harvest ship, and then allowing the water to flow back into the Sound after sluicing across the ship. This process adds pollutants including fish blood, damaged fish parts, and injured bycatch fish to the water before it returns to the Sound. A full EIS would consider the environmental impacts of that removal and addition of water to the Sound.

Pollution from the pens would be harmful to the plants and animals in nearby waters, including to endangered and threatened species

Open water net pens raising salmonids routinely disperse large volumes of feed into public waters within the boundaries of the net pens as sustenance for their farmed fish. Some portion of the feed dispersed may not be consumed by fish in the pens, and thus makes its way into, and have an impact upon, the surrounding marine environment. The high-energy tidal zones in which these net pens are located may cause wide dispersal of unconsumed feed. This dispersal of feed into public waters represents a continuous and constant act of “chumming,” and attracts native fish species into or near the pens.

Physically small fish species, such as baitfish species and out-migrating and rearing salmonids (including ESA-listed Chinook and steelhead), may be attracted by net pen feed to the point where they physically enter a net pen facility and are vulnerable to predation from farmed rainbow trout/steelhead in the pens. The constant dispersal of feed may also cause disruptions in the natural migratory patterns of native salmonids, as the pens provide a constant and unnatural food source that may cause salmonids to occupy a single location for a longer period of time than is typical, and deter rearing or migrating salmonids from developing key feeding strategies which are critical to their early growth and development. This constant source of broadcast feeding, otherwise known as “chumming” is also likely to draw native species (including ESA-listed Chinook and steelhead) from their protective shallow nearshore habitats to net pen locations located in deep water, increasing their exposure to both avian and aquatic predators within and outside the pens.

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Additionally, feed dispersed by these rainbow trout/steelhead net pens may have detrimental nutritional impacts on native fish species, as fish competing for survival in the wild may have distinct nutritional requirements from those being grown in an isolated facility.

In order to treat specific diseases or fungal occurrences, or to prevent infection, chemicals and pharmaceuticals are often applied by the industry to the fish, water, or feed in the net pens. Among the potential and likely harmful impacts to designated uses of surrounding water is the use of these chemical or pharmaceuticals for treating infections, parasites or diseases where the U.S. Food and Drug Administration (FDA) requires a waiting period before treated fish may be approved for human consumption. Native fishes in the immediate vicinity of the treated pens may also be exposed to or consume the very same chemicals and pharmaceutical treatments (including fish that may enter the pens attracted by the presence of feed and fish odors). These fish may then be caught in recreational or commercial fisheries and unknowingly be consumed by the public within FDA's required waiting period. A full EIS would assess the risks posed to wild fish and their human and non-human consumers by outflows of food or medicine, and from exposures of native fish entering the pens.

An additional concern with antibiotic-treated feed and treatments to fish or water is the facilitation of the development of antibacterial resistant bacteria in the sediments (Heuer et al 2009, Cabello et al. 2013, Hu 2019). This issue needs to be explicitly addressed, including the provision of data pertaining to any monitoring of the sediments below each of the extant net pens in Puget Sound that may be available, if any.

In the SEPA checklist, Cooke refers in passing to the use of unspecified probiotics in net pens. These unspecified introduced microbes are likely to colonize the microbiome of native fish and the environment near net pens. Given the growing scientific appreciation of the role of the microbiome in health and development of fish and other animals and plants, this practice deserves greater scrutiny than is practical in the limited comment period available.

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The pens are also subject to, and possibly causes of, lethal algal blooms. On November 15, marine aquaculture net pens in Clayoquot Bay began seeing die-offs due to a bloom of diatomaceous algae (<https://thetyee.ca/News/2019/11/20/Algal-Blooms-Tofino/>). The concentration of fecal material, excess food, and fish flesh near pens may exacerbate these blooms, and the resulting fish deaths then produce additional pollution as they cannot be extracted from the nets quickly enough. Observers near the recent die-offs report that the waters near the pens turned “a dark brown muddy river-like colour,” due to the rotting flesh.

These die-offs are likely to be more frequent in the future, since reporters observe these algae and their large blooms “have expanded their range and frequency as climate change has warmed, acidified and robbed coastal waters of normal oxygen levels.” As discussed below, the inability to quickly empty the pens in the event of massive deaths or a disease outbreak poses significant risks to Puget Sound at large. One such risk is that the weight of the dead fish itself can add stresses to the pens’ structure, making a collapse more likely during those emergency operations, and when the contents of the pens pose the greatest risk to the environment.

In passing HB 2957, the state legislature tasked state agencies “to eliminate negative impacts to water quality and native fish, shellfish, and wildlife.” Allowing these pens to continue emitting this pollution fails to comply with that statutory language and the high standard that the legislature and the people of Washington demanded of the marine aquaculture industry.

A full EIS would assess all of these risks, including the risks posed by artificial probiotics to the microbial biodiversity of the Sound and its wild denizens, and benthic effects near pens.

Bycatch of fish entering pens or in harvesting and escape recovery efforts

Native fishes—including but not limited to forage fishes such as Pacific herring and potentially migrating or rearing juvenile salmon (including ESA-listed Chinook and chum salmon,

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steelhead, and bull trout)—may be attracted to the net pens due to the presence of feed and the presence of lower trophic taxa drawn to the feed and waste emanating from the pens.. Native fish that have entered the pens attracted by the large volumes of feed may then be entrained in the suction harvest machinery during the harvest of adult farmed rainbow trout/steelhead. There are (at least) two issues that DFW and its partner agencies must address with regard to this issue in the permits as part of a full EIS:

1. A comprehensive accounting of species composition as well as total numbers of non-target fishes entrained during each net pen harvest period in which adult farmed rainbow trout/steelhead harvest occurs. This is required, among other reasons, in order that any take of ESA-listed salmon and steelhead may be accounted. All harassment injuries and mortalities of all individuals entrained in the vacuum pump harvesting equipment—including but not limited to direct mortalities of ESA-listed individuals—must be accurately determined and reported to state agencies and NOAA and available for public review.
2. As documented during Cooke harvesting operations in Puget Sound, all non-target fish entrained (sucked up) by the harvest operations are commonly disposed of by being thrown from the upper deck of the harvester ship back into the water on the outside of the nets. The volume of native fish is often so extensive it requires the harvester staff to use snow shovels to scoop them up from the landing area on board the harvest vessel. Pinnipeds and gulls are routinely observed adjacent to the net pens during the harvest, feeding on the native fish as they are being discarded in violation of state and federal laws prohibiting the feeding of pinnipeds.

It is not surprising that there would be such bycatch, and it is likely that it includes endangered and threatened species. British Columbia requires reporting of bycatch (or what they term “incidental catch”) at aquaculture facilities. A complete record of the species captured since 2011 is available from the Canadian Department of Fisheries and Oceans (<https://open.canada.ca/data/en/dataset/0bf04c4e-d2b0-4188-9053-08dc4a7a2b03>). In that

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dataset, salmon species are recorded for every year on file. In some cases, hundreds of thousands of fish are recorded as incidental catch as part of a rapid depopulation of the pens to control a disease outbreak. Even excluding those incidents, an average of over 35,000 incidental catches in net pens per year are recorded in British Columbia. It is likely that a proportionate amount of bycatch occurs in Puget Sound, and could have serious effects on the Sound's sensitive ecology. Because Cooke does not report that bycatch, the state does not monitor their efforts, and independent observers are not able to view the harvest process in detail, we cannot fully measure the harm this bycatch causes.

Surveys of aquatic diversity at sites near these net pens indicate substantial numbers of threatened and endangered juvenile salmonids, and forage fish. State-funded surveys including "West Sound Nearshore Fish Utilization & Assessment (SRFB Grant: 07-1898)" (2010), "Cypress Island Aquatic Reserve Pilot Nearshore Fish Use Assessment" (2011), "West Whidbey Nearshore Fish Use Assessment" (2007), and the ongoing "Hood Canal Nearshore Juvenile Fish Use Assessment" find substantial populations of threatened coho, Chinook, pink, and chum salmon in near-shore waters at sites near and similar to those where net pens operate. Those surveys also demonstrate substantial variation in total species diversity and population sizes from site to site (e.g. Figure 3), and between surveys at the same site over time. Salmonid populations could vary by orders of magnitude from month to month, and between years. This highlights the difficulty of monitoring and predicting the potential bycatch that might occur in these pens without active, independent monitoring.

There are three additional issues here that DFW and partner agencies must address as part of a full EIS:

- Indirect predation by net pen steelhead on ESA-listed juvenile Chinook salmon, steelhead, and bull trout (take).

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- The illegal feeding of pinnipeds, which provides an additional attraction for the pinnipeds that increases the likelihood of their predating on ESA-listed Chinook salmon, steelhead, and bull trout in the vicinity of the pens.
- The harvester crew and/or net pen operator must obtain a fishing license or permit that would allow them to harvest native fish as described above.

Further, addressing this and other issues concerning potential adverse impacts to public resources from the operations of each net pen requires that WDFW as the primary regulatory agency have the authority to conduct regular and unannounced site visits and to conduct any biological sampling and testing deemed advisable to assure the public that no adverse impacts are occurring. At the very least, mitigation should require the presence of independent observers on-site during each harvest operation to quantify and describe the species and life stages of all by-caught species. A full EIS would allow analysis of the effects of bycatch on Puget Sound ecosystems and recovery plans for ESA-listed species, and the proper regulatory frameworks to apply for monitoring and limiting bycatch, and due consideration of various alternatives for mitigation.

Air and noise pollution impacts to adjacent lands

Net de-fouling and cleaning operations have been found to cause fouling of the air and significant noise. Residents on shoreline properties near the Fort Ward facility, for example, cannot conduct normal outdoor activities, particularly during warm months, during net cleaning operations due to the foul smell of the air that directly results from the operations and the loud noises associated with generators, pumps, and other industrial equipment. This air and noise pollution causes severe depression of local residential property values, apart from human respiratory impacts. A full EIS would allow DFW and partner agencies to determine appropriate maximum levels of airborne particulates, odor-causing chemicals, and noise levels, and require facility operations to monitor and maintain appropriate airborne pollutant and sound levels.

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As part of a full EIS, DFW and partner agencies should commission an appropriate sociological survey of resident households within one-half mile of the shorelines of the locations of each net pen facility. The survey should interview residents to assess the degree and frequency (times of day, times of year) that normal and desired residential activities (e.g., outdoor family activities and social events such as dinner parties) are disrupted and/or prevented by air and noise pollution.

Fish flesh discharge

Open-air salmonid net pens chronically discharge particles of decaying fish flesh that are often consumed by native fish and birds. These particles may be contaminated with pathogens, parasites, pharmaceuticals or chemicals that may be ingested by native fishes, including conspecific steelhead and other salmonids. Studies have shown that these particles are potential vectors for pathogens.

This fish flesh also serves as an attractant for protected marine mammals and birds, and a full EIS should be undertaken to assess the harm this may do to those protected species.

A NMFS-approved Hatchery Genetic Management Plan (HGMP) is required

In view of the several issues of potential concern to public waters and ESA-listed native salmonids posed by the proposed open water net pen operations, a NMFS-approved Hatchery Genetic Management Plan (HGMP) for each of Cooke's freshwater hatcheries hatching rainbow/steelhead eggs, rearing fry and smolts, and outplanting smolts to open water net pens is required. This is the required ESA Section 4 Incidental Take Permit required of any artificial production facility producing any species of finfish that may have an adverse impact on ESA-listed salmonids. It is clear that open water marine salmonid net pen operations, including

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those currently operated by Cooke and those proposed to be operated using “triploid” rainbow/steelhead pose risks to native ESA-listed steelhead, Chinook salmon, and bull trout.

Further, since evaluation and approval of an HGMP is clearly a federal action, NEPA likely applies and a NMFS evaluation of any such HGMP would therefore require a full NEPA analysis, including preparation of an EIS.

Need for a thorough economic cost-benefit analysis of the proposed action and alternatives

Regardless of the biological concerns posed by the proposed action, no credible evaluation of the possible benefits of the proposed action can be considered complete without a full cost-benefit analysis of the proposed action and reasonable alternative uses of the locations currently leased by Washington Department of Natural Resources (WDNR) to Cooke Aquaculture. The public and the public servants charged with making the decision on the proposed action cannot adequately evaluate the possible benefits of the proposed action in the absence of an understanding of what the presumed benefits to the public from the proposed action are and what benefits from reasonable alternative uses of the locations are or may be. It bears reminding that the locations at which the current net pens are located, including the bottom lands and the water in and surrounding each net pen belong to the public. The public needs to be presented with a complete and clear analysis of the economic costs and benefits of the proposed action and alternative uses of these resources. This can only be achieved by a thorough economic cost-benefit analysis embedded in a bona fide alternatives analysis through a full EIS.

The proposed mitigations are inadequate and not reasonably certain to address the risks

While a full EIS would be a more appropriate way to identify and evaluate methods for mitigating the risks of introducing steelhead into net pens, there are several important mitigations that are absent from the current proposal, or that must be strengthened before the proposal moves forward. As it stands, these mitigations are not reasonably certain to address the risks that the state acknowledges, and thus do not satisfy the requirements of SEPA.

While not comprehensive, these are some suggested changes to the proposed mitigations:

- As discussed above, the harvest process must be monitored by independent observers to assess bycatch and to ensure that blood, fish parts, or other waste is not discharged into public waters.
- WDFW and other regulators must have clear authority to conduct unannounced visits and inspections of facilities. They must have authority to review maintenance logs and to examine the structures, fish, feed, medicine, mort tanks, and other regulated components of the facility to ensure that Cooke is fulfilling all obligations under its permits and the required mitigations here.
- Independent inspections of the facilities should be required on an annual basis, not biennially.
- Reports from the independent engineer, and all other reports required from Cooke as part of this mitigation, must be clearly recognized as public records and made available to the public immediately through a publicly-accessible website.
- As discussed above, the mitigation should not merely establish a consistent means of estimating triploidy error rate, but should set a maximum acceptable error rate, and a sampling regime sufficient to assure that the error rate is estimated probabilistically and with high precision. A minimum number of total random samples for a specific, fixed

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number of fertile eggs from each egg cohort should be specified to assure that the total number of diploids in a specific total number of eggs from each cohort does not exceed a specified maximum threshold number T with high probability P (95% or greater) The attainment standard would be a probability of less than $(1-P)$ that the number of diploids is not greater than the threshold number T . This error rate cap should be derived based on maximum number of fertile females that might escape from a pen.

- All forms of PRV should be reportable. In addition to screening eggs and smolts, WDFW inspectors should inspect the tanks to assess the rate at which net pens are amplifying pathogens, and act to address pathogen levels that might pose significant risks to wild species attracted to the pens' vicinity.
- All farmed fish should be clearly identifiable in the event of an escape. There is no basis for allowing any of these biologically-altered domestic rainbow/steelhead trout to be introduced without a clear and approved plan in place for visually distinguishing them from any other fish in Puget Sound.

The proposal is deficient by the standards of the 1990 EIS

As stated above, we disagree with the choice to rely on the 1990 EIS for analysis of the current SEPA review. Substantial changes in the list of endangered and threatened species in Puget Sound, improved understanding of the risks posed by industrial net pens and industrial aquaculture, and changes in state law all make a compelling demand for a new EIS. But since the EIS relies on that dated document, any failure to implement its guidelines should be ground to refuse to allow the proposed action or to compel a full environmental review of the effects of that deviation.

The 1990 EIS recognizes that aquaculture with native fish (such as the rainbow/steelhead trout at issue here) pose different, and in some cases greater, risks than non-native fish like Atlantic

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salmon. As such there are some guidelines which were not applied in planning and approving the siting and construction of the existing net pens for use with Atlantic salmon which must now be applied in evaluating the pens' use for rainbow/steelhead trout.

On pages 69-70 of the 1990 EIS, section 5.7.2.2 reads in full:

It is recommended that the following guidelines be used by WDF when reviewing fish farm proposals:

- When Pacific salmon stocks are proposed for farms in areas where WDF determines there is a risk to indigenous species, WDF should only approve those stocks with the greatest similarity to local stocks near the farm site.
- In areas where WDF determines there is a risk of significant interbreeding or establishment of harmful self-sustaining populations, WDF should only approve the farming of sterile or monosexual individuals, or genetically incompatible species.
- In areas where WDF determines that wild populations could be vulnerable to genetic degradation, WDF should establish a minimum distance of separation between farms and river mouths.

In the following section, "Mitigation Measures and Unavoidable Significant Adverse Impacts," the EIS states: "WDF and other local experts agree that the potential for significant genetic impacts resulting from farm escapees interbreeding with wild stocks is low. Existing regulations and the use of the guidelines indicated in the Preferred Alternative are adequate to avoid any significant adverse impacts and additional mitigation measures are not necessary."

Unfortunately, there is no evidence that the guidelines indicated in the Preferred Alternative have been applied. We can locate no record of any policy regulating the distance of net pens to the mouths of rivers, and WDFW staff confirmed that they are also unaware of any policies addressing the distance of net pens to river mouths. This guideline only applied to proposals

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for native fish aquaculture, so would have been unnecessary under the 1990 EIS until now. WDFW staff queried about this guideline cited the use of monosexual and partially sterile stock in this proposal as adequate mitigation, but the plain language of the 1990 EIS requires both, not one or the other.

This issue is crucial in considering the risks of a farmed domestic fish in waters populated with a threatened wild conspecific, as with wild steelhead and rainbow/steelhead trout. Farmed fish that escape near a river mouth could rapidly migrate upriver and interbreed with wild fish. As noted above, the wild steelhead populations in many rivers could be swamped by the number of fertile females if an escape on the scale of 2017 occurred. But the threatened state of the wild species is so dire that population estimates for some rivers—according to the National Marine Fisheries Service steelhead recovery plan (NMFS 2018)—are as low as 5 individuals in some rivers. Even a single fertile female breeding in such a river could destroy the wild genetics.

As shown in the attached map, the existing seven net pen farm sites are less than 20 kilometers (12.5 miles) by water from important wild steelhead rivers, including the Elwha, Dungeness, Samish, Skagit, Stillaguamish, Cedar, and Green rivers. Other nations restrict net pen farm sites from being as near as 10 km from river mouths, and distances of under 1 km clearly pose serious risk that escapees could breed before recovery.

It should be noted that even the discussion of risks from escapees on breeding grounds rely on dubious assumptions, discussed in detail above. The analysis ignores the loss of breeding opportunities when wild males attempt to mate with escapees (even if those matings are not successful), and the loss of mating opportunities if escapees are able to outcompete wild females for redd sites. Even if the reproductive fitness for escaped females was exactly zero, those effects mean there would still be harm to fragile wild populations. Furthermore, the analysis of reproductive success considers only a point estimate of reproductive success rate, and doesn't address the full distribution of this or other rates, and thus systematically under-

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estimates the number of offspring that might result from escapes and the long-term harm to wild steelhead genetics. There is no worst case analysis or discussion of that worst case's likelihood, as required by WAC 197-11-080.

In the absence of established guidelines, and with no discussion in the SEPA checklist or associated documents assessing the risk of releasing these potentially-fertile fish in proximity to river mouths, the conditions set by the 1990 EIS have not been fulfilled, and the proposed actions must be deemed to carry too high a risk of environmental harm. The mDNS should be withdrawn and a full EIS should be conducted assessing the risks associated with each of the existing net pen sites and its neighboring rivers.

The SEPA analysis failed to account for changes in risk assessment imposed by new law

After the 2017 collapse, the Washington Legislature acted deliberately and overwhelmingly to limit open-water marine net pen aquaculture, and the Governor signed the new law enthusiastically. In addition to phasing out Atlantic salmon farming by 2022, the new law imposed a series of other requirements, and established its clear intent that future marine net pen aquaculture be subjected to greater scrutiny. Section 1 of the legislation passed by both houses states:

Recent developments have thrown into stark relief the threat that nonnative marine finfish aquaculture may pose to Washington's native salmon populations. But just as evidence has emerged that nonnative marine finfish aquaculture may endanger Washington's native salmon populations, so too has evidence emerged that marine finfish aquaculture in general may pose unacceptable risks not only to Washington's native salmon populations but also to the broader health of Washington's marine environment. Given this evidence, the legislature intends to phase out nonnative finfish

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aquaculture in Washington's marine waters. Because the state of the science and engineering with regard to marine finfish aquaculture may be evolving, the legislature further intends to study this issue in greater depth, and to revisit the issue of marine finfish aquaculture once additional research becomes available.

This language was vetoed as the Governor signed the law, but demonstrates the legislature's intent. That intent is also shown in Section 5 of the engrossed bill, which requires agencies to "continue the existing effort to update guidance and informational resources to industry and governments for planning and permitting commercial marine net pen aquaculture," and mandating: "The guidance must be designed to eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife."

In finding that "marine finfish aquaculture in general may pose unacceptable risks" and mandating guidance to "eliminate" those risks the legislature overturned the 1990 EIS's determination that Atlantic salmon aquaculture posed acceptable risks and imposed a stricter standard than existed previously. It is clear that the legislature intended to alter the risk assessment framework used for marine finfish aquaculture in general from the status quo. Relying on the 1990 EIS without acknowledging the significant shift in risk assessment mandated by this law is clearly unwarranted and contrary to the law passed in response to the 2017 catastrophe.

The legislature clearly understood that its actions would not only affect Atlantic salmon farming. In addition to the explicit statement to that effect in Section 1, they heard this testimony from Dr. Ken Warheit, supervisor of WDFW's fish health program:

We suggest that if the State is going to restrict marine fish aquaculture, it removes authorization also for other nonnative fish. More importantly, it should also remove authorization for native salmonid marine commercial aquaculture which WDFW

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considers to be a greater risk to the State's native wild and hatchery salmonid populations, than is Atlantic salmon marine aquaculture.

The legislation did not forbid the use of biologically-altered rainbow/steelhead trout, but it did establish that the risks of Atlantic salmon aquaculture are too great, and express concern that the same might be true of all marine finfish aquaculture. It urged further study of that risk and raised the bar for future risk assessment.

Unfortunately, the guidance mandated to eliminate these risks has not been issued, even though a report to the legislature regarding its progress was due during this comment period.

In light of that change in state law, it is inappropriate to apply the same risk assessment used in 1990 to a proposal today. In evaluating the risk of marine finfish aquaculture proposals not forbidden under HB 2957, state agencies should conduct an EIS on any proposal that is riskier than the best-case scenario for marine Atlantic salmon aquaculture. Since this proposal does not clear even the guidelines laid out in the 1990 EIS (since no assessment of proximity to river mouths was conducted), and since the farmed fish in this proposal could directly interbreed with a federally-listed steelhead species and degrade its genetics, a new EIS is clearly warranted.

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Tables

| River/River system | Population (five year geometric mean, 2010-2014) |
|--------------------|--|
| Cedar | 4 |
| Green | 552 |
| Puyallup | 277 |

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| | |
|-----------------------------------|------|
| White | 531 |
| Dungeness | 141 |
| East Hood Canal Tributaries | 60 |
| Sequim/Discovery Bay Tributaries | 19 |
| Samish/Bellingham Bay Tributaries | 846 |
| Skagit | 5123 |
| Stillaguamish | 392 |

Table 1. Estimated wild adult steelhead populations (five year geometric mean, 2010-2014) in rivers within a 12 mile radius of the existing net pens. The highly domesticated fertile net-pen-origin females that are predicted to escape during a net pen failure comparable to that of 2017 would comprise a significant proportion of the spawning population in many Puget Sound rivers.

| | |
|---------------------------|---------|
| Number of Fish | 1000000 |
| Proportion Diploid | 0.00156 |
| Number Diploid Outplanted | 1560 |
| Probability of Escape | 0.82 |
| Number of Diploid Escapes | 1279.2 |

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| | |
|--|------|
| Probability of Non-Recovery | 0.77 |
| Number Diploids Not Recovered | 985 |
| Proportion Sexually Mature_High Estimate | 0.5 |
| Number Mature Diploids_High Estimate | 493 |
| Proportion Sexually Mature_Low Estimate | 0.1 |
| Number Mature Diploids_LowEstimate | 99 |
| Proportion Fertile Surviving to Spawn | 0.5 |
| Number of Mature survivors_High Estimate | 247 |
| Number of Mature survivors_Low Estimate | 50 |

Table 2. Estimate of number of the maximum number diploid individuals per million farmed rainbow/steelhead outplanted to a net pen that would result in no more than the number of mature escapees surviving to sexual maturity (bottom row) given the assumptions in WDFW's mDNS Summary, page 6.

Figures

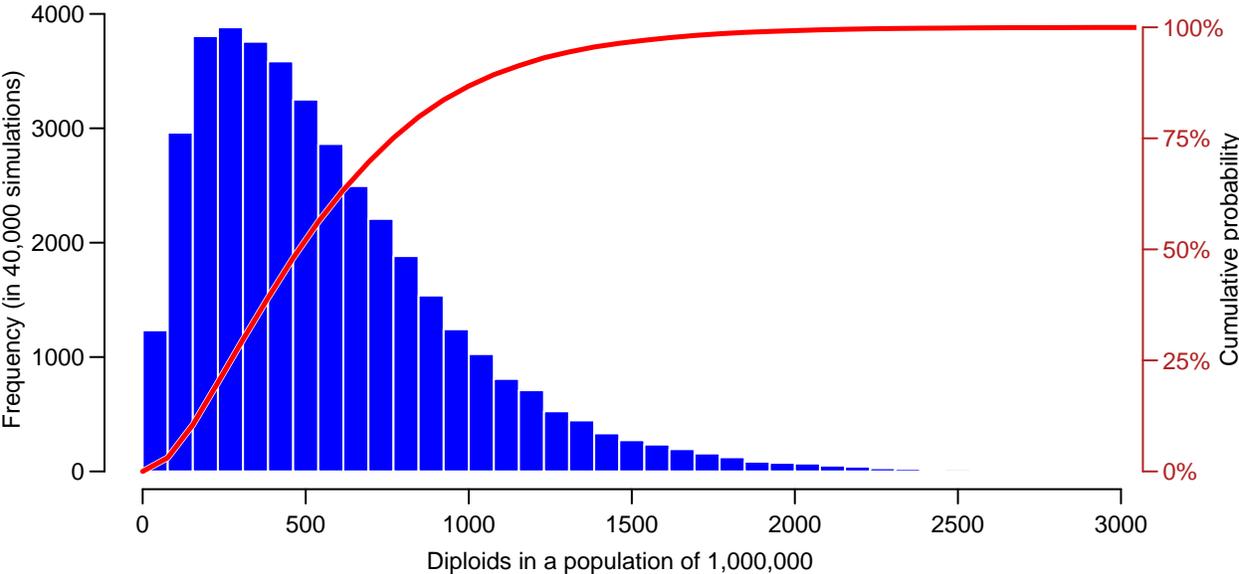


Figure 1. Distribution of the number of diploids (triploid-induction failures) in one million eggs when the number of diploids in a random sample without replacement of 3500 is one. The blue bars show the number of diploids in the interval on the horizontal x-axis (for example, 5000 in the interval between 3000 and 400 shown on the left y-axis). These numbers were computed through a Bayesian analysis that sampled 40,000 probable values (so the probability that the true number of diploids in the population of 1,000,000 is $5,000/40,000 = 0.125$ or 12.5%). The red curve is the cumulative probability distribution. The shows the probability that a given value on the x-axis is less than or equal to the corresponding value on the right y-axis. For example, 95% of the distribution is less than 1400 and 97.5% is less than 1600, satisfying a risk-averse criteria that 95% of the distribution of possible values be no greater than 1560 diploid per million eggs or fry. About half the distribution (50%) is less than 500.

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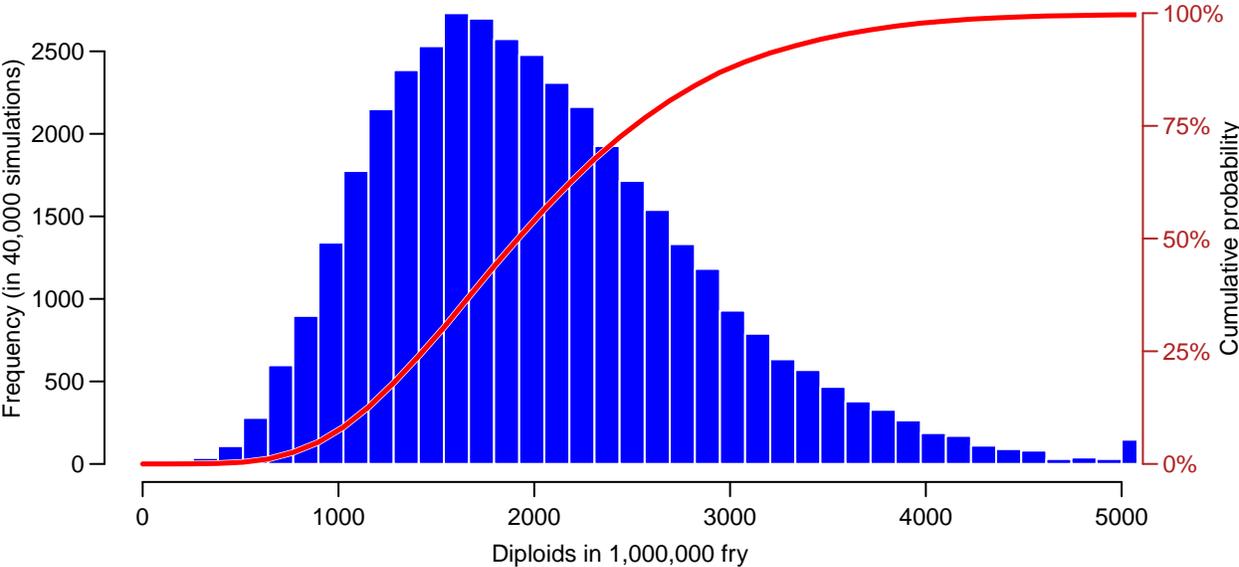


Figure 2. Distribution of the number of diploids (triploid-induction failures) in one million eggs when the number of diploids in a random sample without replacement of 2950 is five (per Attachment A of Cooke’s SEPA Checklist). The mean is 2029, the median is 1900. 95% of the distribution is less than 3600. There is a 5% chance that the true number of diploids is between 3500 and 5000.

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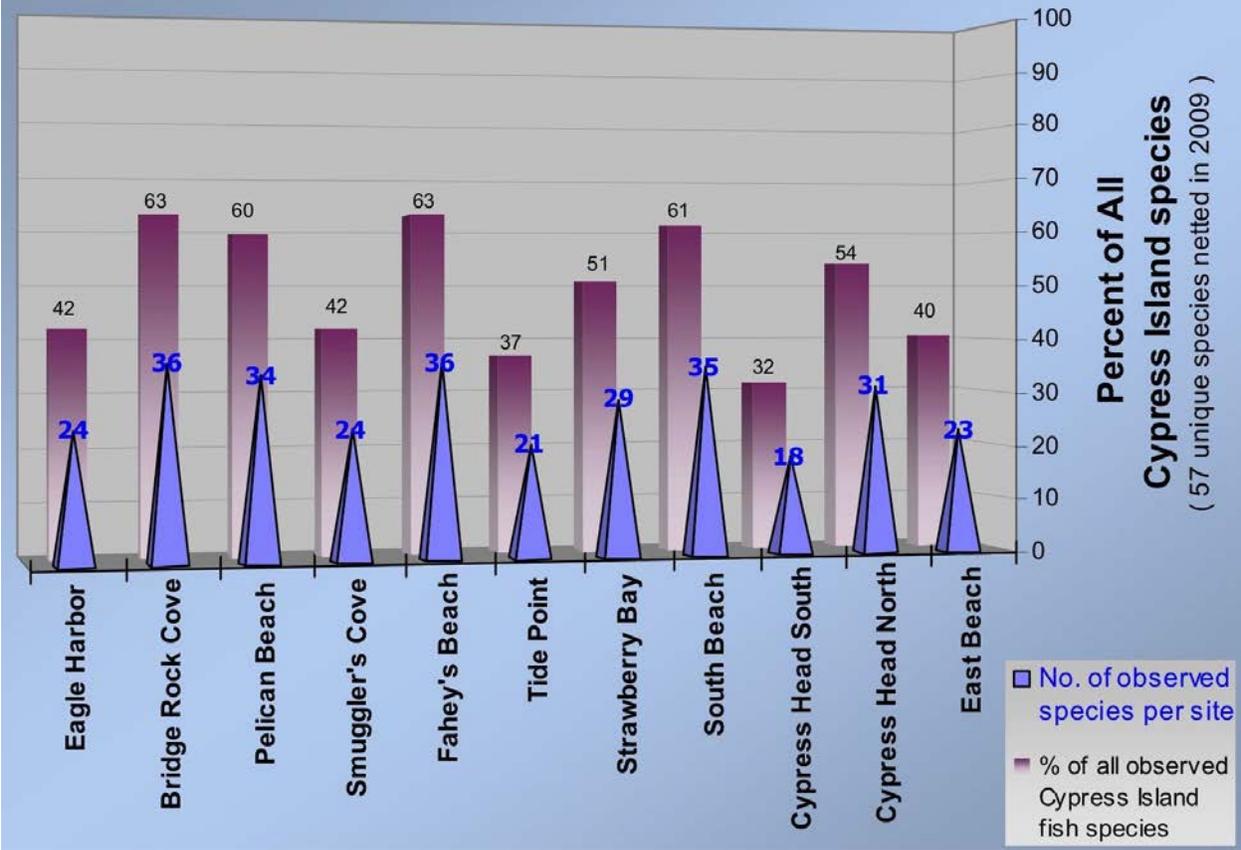
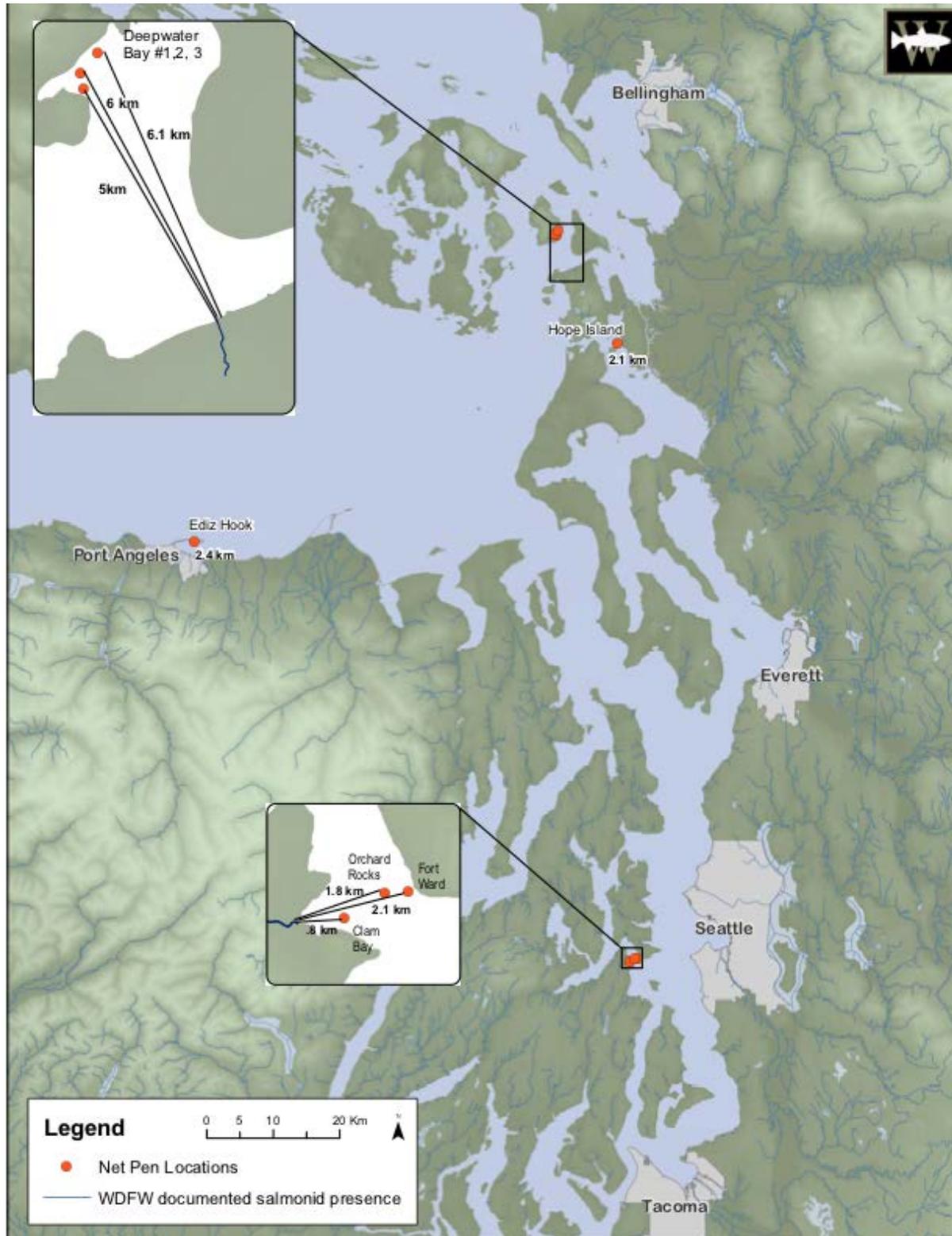


Figure 3. The total number of species encountered at each sample site in a survey of Cypress Island nearshore habitats, as well as the per-site percentage of all species netted from the Cypress nearshore. No single locale had greater than 65% of all species present across the 11 widely dispersed sites. From "Cypress Island Aquatic Reserve Pilot Nearshore Fish Use Assessment" (2011).

Map



Appendix

Section A

Extended illustration of the approach for determining a risk-averse standard for the maximum permissible number of diploids released into a new pen seeded with one million ostensibly triploid rainbow trout

We extend the illustrative analysis of the triploid failure rate provided in our comments and summarized in figure 2 to provide a probability distribution of the number of diploids that would survive to spawning grounds of wild steelhead.

Methods

We provide distributions for a) the proportion of fish that escape from a catastrophic failure of a net pen containing one million fish, b) the proportion of the escaped fish that elude recovery efforts, and c) the proportion of diploid fish sexually mature at or after the time of escape that survive to the spawning grounds of wild steelhead. We parameterize each of these three distributions using Beta probability distributions, with parameter values based on the point estimate values used by WDFW in its "Summary of Key issues", pp. 5-6. We then integrate these distributions with the Bayesian estimation of the number of diploids in a lot of 1,000,000 fertilized eggs subjected to triploid induction by extending the model used to generate the data shown in figure 2. All modeling was conducted in Stan running four chains of 20,000 iterations each with a burnin of 20,000 per chain and retaining a total of 40,000 samples from the joint posterior distribution.

We make the simplifying assumption that the total number of 1,000,000 fish growing in the net pen at the time of collapse resulted from plants of surviving fry from lots of 1,000,000 fertilized eggs from each of which 2950 random samples without replacement were obtained and tested

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for triploid induction of which a total of 5 individuals were diploid. Given this assumption the probability of the number of diploids in the net pen at the time of failure would follow the distribution shown in figure 2.

Each of the Beta distributions (a, b, and c1 – c3) was parameterized in terms of the mode and coefficient of variation (standard deviation/ mean). We evaluated three cases using different Beta distributions for (c), the proportion of diploid fish sexually mature at or after the time of escape that survive to the spawning grounds of wild steelhead. The parameterizations of the five Beta distributions together with the principal moments are listed in Table 1.

| Parameter | Alpha | Beta | Mode | Mean | CV | Central 50% | Central 95% |
|-----------|-------|-------|------|------|------|--------------|---------------|
| Beta a | 18.86 | 14.15 | 0.85 | 0.80 | 0.10 | [0.77, 0.88] | [0.67, .0.96] |
| Beta b | 22.83 | 6.46 | 0.78 | 0.80 | 0.10 | [0.73, 0.83] | [0.63, 0.92] |
| Beta c1 | 90.0 | 802.1 | 0.10 | 0.10 | 0.10 | [0.93, 0.11] | [0.08, 0.12] |
| Beta c2 | 70.13 | 162.3 | 0.30 | 0.30 | 0.10 | [0.28, 0.32] | [0.24, 0.36] |
| Beta c3 | 50.5 | 50.5 | 0.50 | 0.50 | 0.10 | [0.47, 0.53] | [0.40, 0.60] |

Table 1. Parameters of principal moments of the five Beta distributions employed to estimate the number of escaped diploid rainbow/steelhead (RBT) surviving to reach the spawning grounds of wild steelhead.

RESULTS

Convergence of each of the four chains in the stan model run was rapid and the Rhat statistic for all parameters to three digits was 1.000 or 1.001.

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Figure A1 (identical to figure 2 in Comments) shows the distribution of the number of diploid RBT in a net pen with a total population of 1,000,000 based on random sampling (without replacement) of 2950 fertile eggs tested for triploidy of which 5 were diploid (i.e., failed the test). This is the principal unknown parameter estimated by the stan model. Figure A2 show the distribution of the number of diploids in the net pen of 1,000,000 RBT (shown in figure A1) that escape from the net pen upon catastrophic failure. This is the result of integrating the distribution shown in figure A1 with the Beta distribution Beta a (Table 1). Figure A3 shows the distribution of the number of escaped diploid RBT that were not recaptured. This is the result of integrating the distribution shown in figure A2 with the Beta distribution Beta b (Table 1). Figures A4, A5, and A6, show the distribution of the number of uncaptured escaped diploid RBT that survive to mature and migrate to the spawning grounds of wild steelhead, given the distribution of survival probabilities Beta c1, Beta c2, and Beta c3, respectively.

Table 2 summarizes some key quantities from each of the distributions in figures A4, A5, and A6.

| Parameter | Mean | Std. Dev. | Median | 5 th %-ile | 95 th %-ile |
|--|-------|-----------|--------|-----------------------|------------------------|
| Probability of spawning: mode = 0.10 (Beta c1) | 131.6 | 59.0 | 125 | 53 | 242 |
| Probability of spawning: mode = 0.30 (Beta c2) | 390.9 | 172.7 | 365 | 160 | 720 |
| Probability of spawning: mode = 0.50 (Beta c3) | 642.9 | 284.0 | 600 | 270 | 1170 |

Table 2. Principal moments of the distributions of the numbers of escaped diploids surviving to mature and migrate to the spawning grounds of wild steelhead shown in Figures A4, A5, A6.

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We considered three survival scenarios for the survival to maturity and migration to the spawning grounds of wild steelhead in Puget Sound following the catastrophic failure of one of Cooke Aquaculture's net pens containing 1,000,000 RBT. The three scenarios bracket a reasonable range of probabilities, given the uncertainty due to lack of information regarding escaped farm-raised RBT, basic biology and life history of rainbow trout in their native environment, and concern regarding the risk that escaped diploid RBT on the spawning grounds of wild, ESA-listed Puget Sound steelhead may pose to wild steelhead.

The value that society places on protecting ESA-listed Puget Sound steelhead from harm due to escaped non-native (not members of the Puget Sound steelhead Distinct Population Segment) may appropriately be expressed (in part) by how many potential escaped diploids that may be permitted to survive to enter the spawning grounds of wild steelhead and with what probabilities. We argue that a risk-averse, precautionary, approach should be based upon the upper tail of probability distributions of adverse outcomes. In the case at hand, the 95th percentile of the probability distribution of the number of surviving escapes diploids should be the minimum of the upper tail of the distribution considered.

For the three scenarios evaluated the number of surviving escaped diploids at the 95th percentile is 242 for the lowest survival scenario, 720 for the intermediate scenario, and 1170 for the high (50% mean survival) scenario. This mean that there is probability of 0.05 (5%) that in the event of a catastrophic failure of a net pen containing 1,000,000 RBT that the number of surviving escaped diploids reaching the spawning grounds of wild steelhead is at least 242, 720, and 1170, respectively.

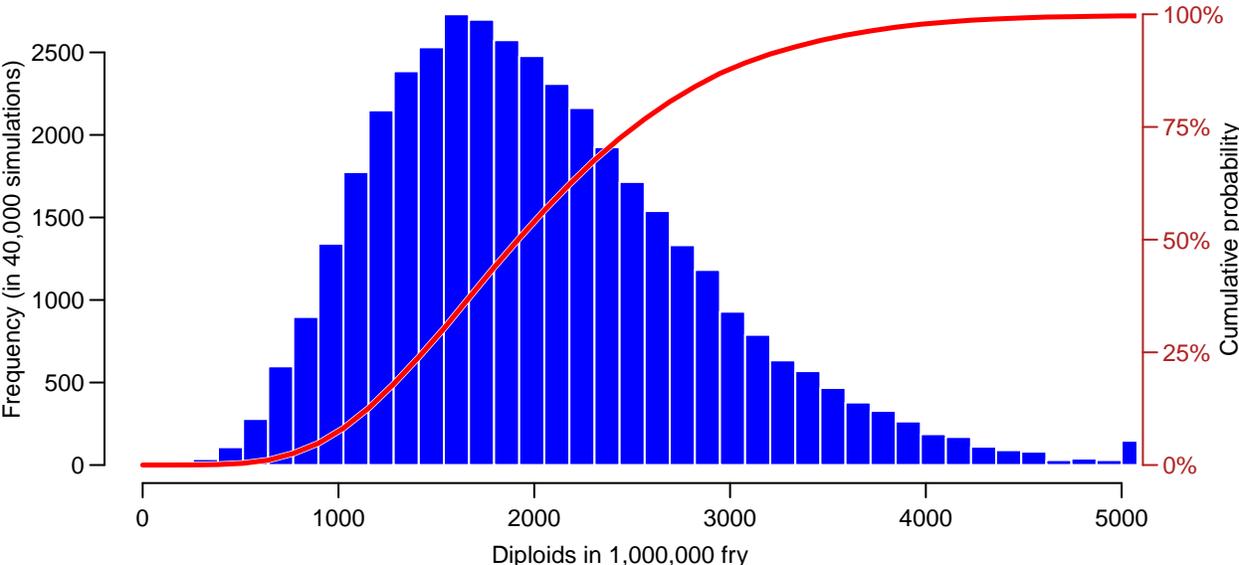
From a regulatory, ESA perspective, assuming that the appropriate risk-averse probability level to consider for an adverse outcome of an event such as a v pen is the 95th percentile (where the standard is to not allow an adverse outcome of magnitude X or greater to occur with a probability greater than 5 %), the maximum value of X (here, the number of escaped diploids surviving to the wild spawning grounds) needs to be determined. As discussed in the

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Comments, the choice of the specific maximum acceptable value of X and the maximum permissible probability of X occurring (conditional on a catastrophic failure of a net pen containing 1,000,000) will then determine the maximum allowable triploid-induction failure rate, as well as the appropriate minimum number of samples per million fertile eggs to be tested as well as the maximum number of failures in that number of samples.

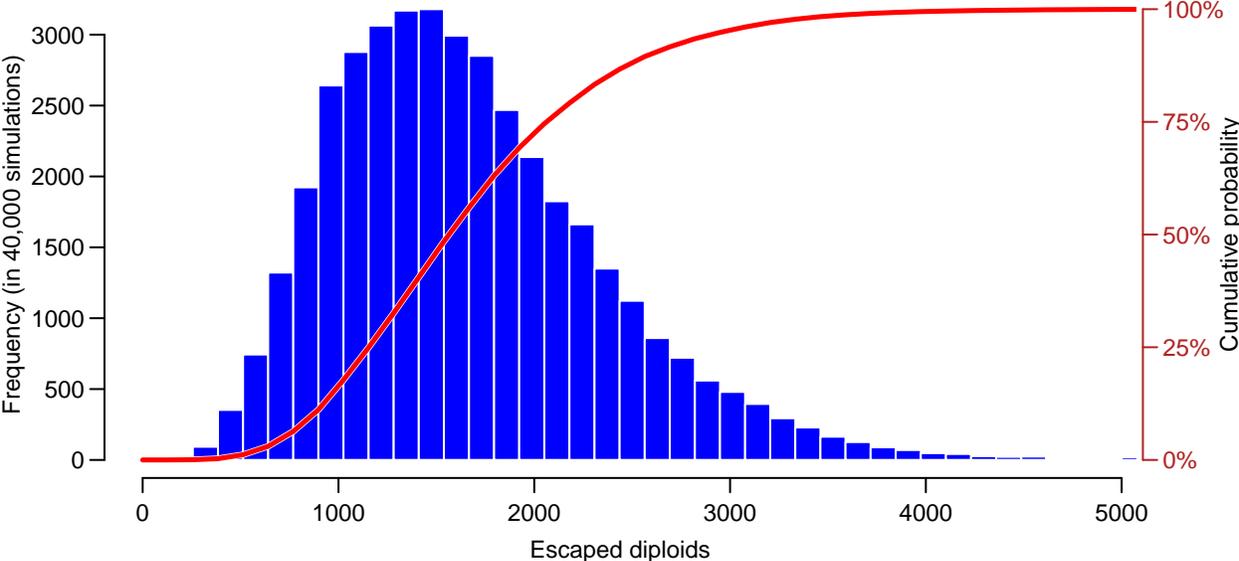
We would argue, based on the scenarios described herein, 5 failures (diploids) in a random sample of 2950 from a lot of 1,000,000 fertile eggs yields a distribution with unacceptably high numbers of total diploids in the lot of progeny from those eggs released as molts into any of Cooke’s Puget Sound net pens. An appropriate approach to identifying the minimum number of random samples per million eggs and the maximum permissible failures (diploids) in the sample is described in the main body of our Comments.

Appendix Figures

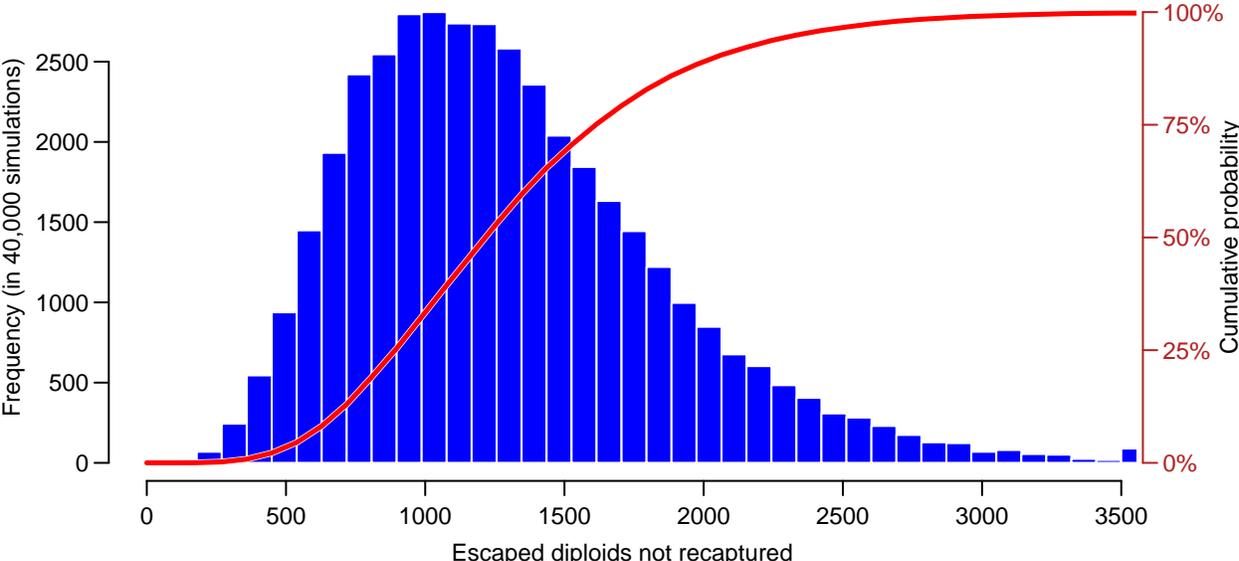


A1 Number of diploid RBT in a net pen of 1000000 RBT (identical to figure 2 above).

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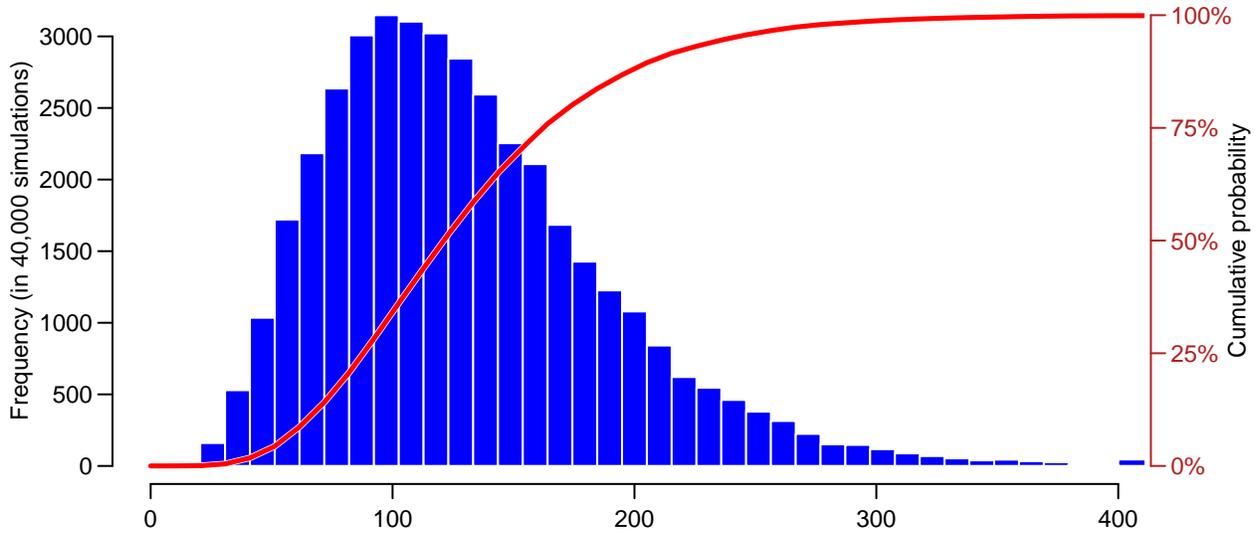


A2. Number of RBT that escape during a catastrophic failure of the net pen.



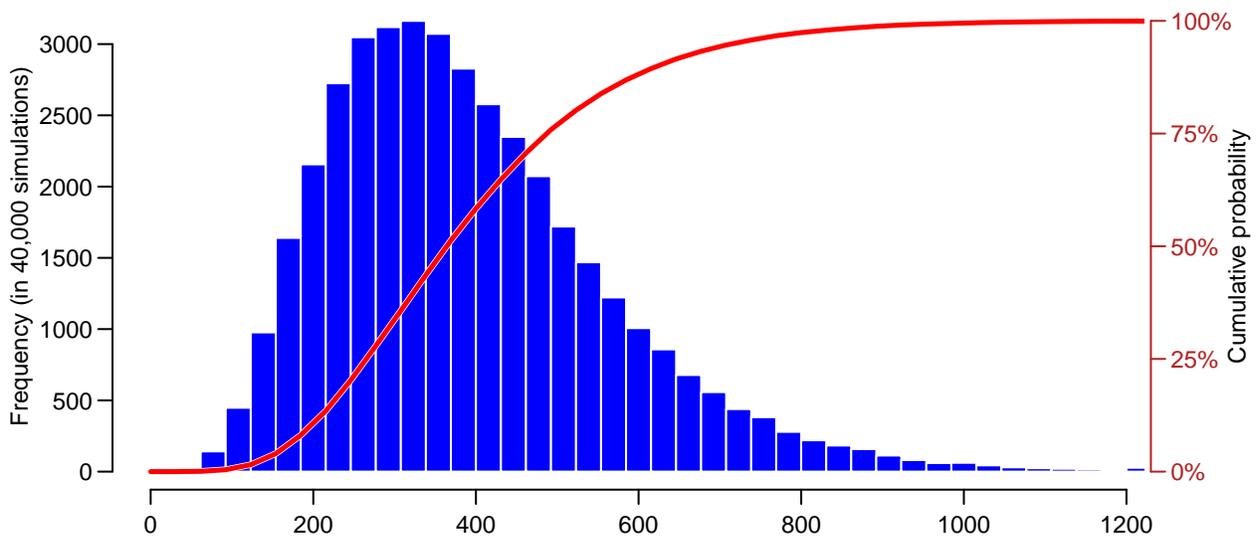
A3. Number of escaped RBT that are not immediately recaptured at the farm site

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Escaped diploids surviving to spawning grounds in the wild. Probability of spawning: mode = 0.10

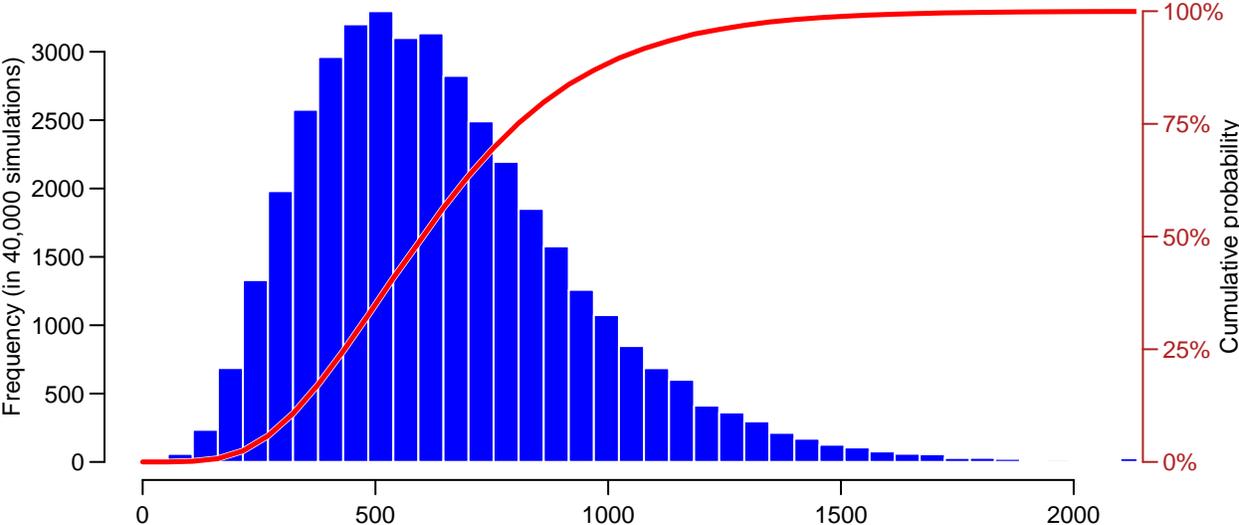
A4. Number of escaped diploid RBT surviving to spawning grounds in the wild when the modal probability of survival from escape to spawning grounds equals 0.10 (10%).



Escaped diploids surviving to spawning grounds in the wild. Probability of spawning: mode = 0.30

A5. Number of escaped diploid RBT surviving to spawning grounds in the wild when the modal probability of survival from escape to spawning grounds equals 0.30 (30%).

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Escaped diploids surviving to spawning grounds in the wild. Probability of spawning: mode = 0.50
A6. Number of escaped diploid RBT surviving to spawning grounds in the wild when the modal probability of survival from escape to spawning grounds equals 0.50 (50%). Note the different scale on the X axis compared to figures 4 and 5.

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Section B: Petition and signatures

We, the undersigned, have serious concerns over Cooke Aquaculture's new proposal to transition their net pen leases and permits to allow for the commercial propagation and harvest of biologically altered steelhead / rainbow trout in the waters of Puget Sound

(<https://wdfw.wa.gov/licenses/environmental/sepa/open-comments>). These concerns are described in detail in Our Sound, Our Salmon's technical comments (www.oursound-oursalmon.org/osos-sepa-comments).

This proposal is inconsistent with the public's will and seriously undermines the recovery of threatened and endangered wild salmon, steelhead, and Southern Resident killer whales.

We are further concerned at the pace this proposal is moving forward under the State Environmental Protection Act (SEPA) in the absence of a thorough and current environmental assessment.

The State's decision to rely on an outdated, 30 year old Environmental Impact Statement (EIS) completed in 1990, as well as a supplemental environmental review completed by Cooke Aquaculture themselves, erodes the public's trust in the process. Currently, this review fundamentally ignores three decades of well-established science and evidence demonstrating the serious and compounding ecological risks to native fish, water quality, and the overall health of Puget Sound.

This is the same evidence that moved the Washington State legislature to pass bipartisan legislation banning Puget Sound's industrial Atlantic salmon net pens by 2022, an action overwhelmingly supported and celebrated by the public at large.

Given that biologically altered steelhead / rainbow trout have never been reared at the proposed industrial scale in Puget Sound and therefore pose new and unknown risks, and given the public distrust in Cooke Aquaculture to act in the public's best interest, the State

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should uphold their responsibility to the public and approach this proposal with current, precautionary, and rigorous environmental review.

We, the undersigned, urge the Washington Department of Fish and Wildlife to withdraw the current SEPA threshold determination and draft a new, comprehensive Environmental Impact Statement that adequately reviews this issue of critical importance to the public.

This petition was signed and supported by the following 1,842 individuals on the following 35 pages.

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Abbey Kaufman
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OUR SOUND, OUR SALMON

Comments on Washington Department of Ecology Draft National Pollution Discharge Elimination System Waste Discharge Elimination Permits for Cooke Aquaculture Atlantic Salmon Net Pen Facilities Fort Ward, Clam Bay, Orchard Rocks, and Hope Island.

Our Sound, Our Salmon
02/25/19

On behalf of the undersigned members of Our Sound, Our Salmon, we appreciate the opportunity to provide comments on the content of the four draft permits. We limit our comments to two points: (1) Washington Department of Ecology (DOE, Ecology) should refrain from issuing the permits until the National Marine Fisheries Service (NMFS) and the U.S. Environmental Protection Agency (EPA) have completed formal consultation under Section 7 of the Endangered Species Act (ESA) on EPA's approval of Ecology's sediment management standards for marine finfish rearing facilities, and (2) Ecology must address and include conditions on discharge of various pollutants that affect the designated uses of receiving waters and land adjacent to the four facilities that are not included in the current drafts.

Ecology's Section 7(d) Obligations During ESA Consultation

Under Section 7(d) of the ESA, Ecology should defer issuing the permits until EPA and NMFS complete the ESA consultation on EPA's approval of Ecology's sediment management standards for marine finfish rearing facilities.

ESA consultation on EPA's approval of Ecology's sediment management standards for marine finfish rearing facilities has been contested for several years. Most recently, in 2015, Wild Fish Conservancy (WFC) sued EPA and NMFS for violations of the ESA associated with EPA's approval. As a result of that lawsuit, on October 3, 2018, EPA and NMFS reinitiated formal consultation on EPA's approval. The agencies expect to complete formal consultation by July 11, 2019. This consultation could—and hopefully will—result in recommended alternatives, mitigation measures, or other suggestions regarding the operation of marine finfish rearing facilities that could be incorporated or included in the permits.

Because EPA and NMFS are currently in consultation, Section 7(d) of the ESA applies and prevents Ecology from issuing the permits. Section 7(d) provides:

After initiation of consultation under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

16 U.S.C. § 1536(d). Ecology, as the applicant for EPA's approval of sediment standards, is subject to Section 7(d) and cannot irreversibly or irretrievably commit resources until EPA and NMFS complete formal consultation. Issuing the permits or otherwise entering into contracts during consultation constitutes an irreversible or irretrievable commitment of resources in violation of Section 7(d). *Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1056 (9th Cir. 1994); *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1127–28 (9th Cir. 1998). This is true even if the permits are subject to revision. WAC 173-220-190; WAC 173-220-150(1)(d); *see Nat. Res. Def. Council*, 146 F.3d at 1128 (finding violation of Section 7(d) even though water contract had a savings clause to allow for modifications to comply with federal law). Accordingly, Our Sound, Our Salmon requests that Ecology defer issuing the permits until formal consultation is complete, expected by July 11, 2019, so that Ecology can incorporate any reasonable and prudent alternative measures that result from the consultation.

OUR SOUND, OUR SALMON

Air and Noise Pollution Impacts to Adjacent Lands

The permits need to address and place limitations on the fouling of the air during net de-fouling and cleaning operations. Residents on shoreline properties near the Fort Ward facility, for example, cannot conduct normal outdoor activities, particularly during warm months, during net cleaning operations due to the foul smell of the air that directly results from the operations. This air pollution causes severe depression of local residential property values, apart from human respiratory impacts. DOE needs to determine appropriate maximum levels of airborne particulates and odor-causing chemicals and require facility operations to monitor and maintain the responsible airborne pollutants below maximum levels.

In addition, light from the net pen operations impairs uses of residential properties as does noise from the operations (e.g. generators for lights and pumps).

To this end, DOE should commission an appropriate sociological survey of resident households within one-half mile of the shorelines of the locations of each of the four farms. The survey should interview residents to assess the degree and frequency (times of day, times of year) that normal and desired residential activities (e.g., outdoor family activities and social events such as dinner parties) are disrupted and/or prevented by each of the three pollutants.

Light Pollution Impacts to the Nearshore Environment + ESA-Listed Species

Light pollution from the lighting of the net pens between the hours of dusk and dawn is a credible threat to ESA-listed salmonids and other native salmonid and non-salmonid fishes, as it acts as an attractant to migrating juvenile and returning adult salmonids such as ESA-listed Chinook salmon, bull trout, and steelhead. It can also increase the risks of predation on juvenile salmon rearing in adjacent nearshore environments by attracting them to the food and feeding fish (rearing farmed Atlantic salmon and others in the net pens) where fish, avian, and marine mammal predators congregate.

Apart from the predation risk, the lighting of the pens at night can delay migration thus impairing normal migratory behaviors, including timely migration through Puget Sound and resting and less energetically demanding night-time migration due to lower predation risk. DOE should restrict and, if necessary, ban the use of lighting of net pens in order to reduce the false attraction and associated risks of night-time lighting.

Feed Discharge Impacts to Native Fishes

Open water Atlantic salmon net pens routinely disperse large volumes of feed into public waters within the boundaries of the net pens as sustenance for their farmed Atlantic salmon. Some portion of the feed dispersed may not be consumed by Atlantic salmon in the pens, and thus makes its way into, and have an impact upon, the surrounding marine environment. The high-energy tidal zones in which many Atlantic salmon net pens are located may cause wide dispersal of unconsumed feed. This dispersal of feed into public waters represents a continuous and constant act of “chumming”, and attracts native fish species.

Physically small fish species, such as baitfish species and outmigrating and rearing salmonids (including ESA-listed Chinook and steelhead), may be attracted by net pen feed to the point where they physically enter a net pen facility and are vulnerable to predation from farmed Atlantic salmon in the pens. The constant dispersal of feed may also cause disruptions in the natural migratory patterns of native salmonids, as the pens provide a constant and unnatural food source that may cause salmonids to occupy a single location for a longer period of time than is typical, and deter rearing or migrating salmonids from developing key feeding strategies which are critical to their early growth and development. This constant source of broadcast feeding, otherwise known as “chumming” is also likely to draw native species (including ESA-listed Chinook and steelhead) from their protective shallow nearshore habitats to net pen

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locations located in deep water, increasing their exposure to both avian and aquatic predators within and outside the pens.

Additionally, feed dispersed by the Atlantic salmon net pen industry may have detrimental nutritional impacts on native fish species, as fish competing for survival in the wild may have distinct nutritional requirements from those being grown in an isolated facility.

Attraction, Entrainment, and Discharge of Native Fishes

All native fishes, including but not limited to bait fishes such as Pacific herring and potentially migrating or rearing juvenile salmon (including ESA-listed Chinook salmon and steelhead), may be attracted to the net pens due to the presence of feed and odor of rearing Atlantic salmon. Native fish that have entered the pens attracted by the large volumes of feed may then be entrained in the suction harvest machinery during the harvest of adult farmed Atlantic salmon. There are (at least) two issues that DOE needs to address with regard to this issue in the permits:

1. A comprehensive accounting of species composition as well as total numbers of non-Atlantic salmon fishes entrained during each net pen harvest period in which adult farmed salmon harvest occurs. This is required, among other reasons, in order that any take of ESA-listed salmon and steelhead may be accounted. All harassment injuries and mortalities of all individuals entrained in the vacuum pump harvesting equipment including but not limited to direct mortalities of ESA-listed individuals must be accurately determined and reported to DOE and NOAA and available for public review.
2. All non-Atlantic salmon entrained (sucked up) by the harvest operations are commonly “disposed of” by being thrown from the upper deck of the harvester ship back into the water on the outside of the nets. The volume of native fish is often so extensive it requires the harvester staff to use snow shovels to scoop them up from the landing area on board the harvest vessel. Pinnipeds and gulls are routinely observed in the water and air adjacent to the net pens, feeding on the native fish as they are being discarded. There are three additional issues here that DOE needs to address in the permits:
 - Indirect predation on ESA-listed juvenile Chinook salmon and steelhead (take).
 - The illegal feeding of pinnipeds, which provides an additional attraction for the pinnipeds that increases the likelihood of their predating on ESA-listed Chinook salmon and steelhead in the vicinity of the pens.
 - The operator of the Atlantic salmon net pen operations must obtain a fishing license or permit that would allow them to harvest native fish as described above. If such a permit is already in place, we have not been able to confirm its existence.

Discharge of Chemical and Pharmaceutical Pollutants

In order to treat specific diseases of fungal occurrences or to prevent infection, chemicals and pharmaceuticals are often applied by the industry to the fish, water, or feed in the net pens. Among the potential and likely harmful impacts to designated uses of surrounding water is the use of these chemical or pharmaceuticals for treating infections, parasites or diseases such as “yellow mouth” where the U.S. Food and Drug Administration (FDA) requires a 30 day waiting period before treated fish may be approved for human consumption. Native fishes in the immediate vicinity of the treated pens may also be exposed to or consume the very same chemicals and pharmaceutical treatments (including fish that may enter the pens attracted by the presence of feed and fish odors). These fish may then be caught in recreational or commercial fisheries and unknowingly be consumed by the public within FDA’s required 30 day waiting period.

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Similarly, the net pen industry's annual reports acknowledge that Atlantic salmon net pen escapes can and do occur. These escapes have been known to range from a few fish to thousands. The public may also be exposed to health risks any time Atlantic salmon escape the net pens due to the fact that these escapees may have recently, or were in the process of, receiving pharmaceutical or chemical treatments. The fact that the net pen industry has proven that it is unable to prevent such escapes puts the public's health and safety at risk.

Amplification and Discharge of Pathogens and Parasites

Pathogens present in Atlantic salmon net pens may infect native fishes, particularly salmonids, in the vicinity of the facilities. There are many pathogens that can be amplified in the marine environment by net pen facilities. Some notable examples include piscine reovirus (PRV), infectious hematopoietic necrosis virus (IHNV), and viral hemorrhagic necrosis virus (VHNV).

The physical and biological nature of all commercial net pens, including Atlantic salmon net pens, create an environment highly suitable for the spread and amplification of native or exotic parasites and viruses due to the large density of animals in small confined locations for extended periods of time.

Parasites and viruses can be spread from one animal to another through physical contact or through waterborne transport. While it is not uncommon for wild fish to contract harmful native viruses and parasites, infected wild fish are subject to natural selection and are therefore often consumed by predators that seek out fish with diminished physical or behavioral capacities. This exposure to predators (natural selection) significantly helps control the spread of infection to large numbers of fish in the wild. On the other hand, fish infected within the confines of a net pen are not subject to natural predation of any sort, which allows for parasites and viral pathogens to spread rapidly to large numbers of fish within the pen. This scenario can create an environment where the volume and distribution of viruses or parasites within and outside the pens can far exceed natural background levels. Such an environment can exceed nature's ability to suppress viral or parasitic outbreaks and can lead to epidemic conditions.

This amplification can be further exacerbated through waterborne tidal transport or by physical contact with native fish small enough to enter in and out of the net pens through the netting. These factors can create amplification scenarios that far exceed natural background levels and create a harmful discharge zone extending significant distances beyond the parameters of the physical pen.

The amplification of parasites or pathogens as we have described in this matter should be considered a dangerous discharge.

Fish Flesh Discharge

Atlantic salmon net pens chronically discharge particles of decaying fish flesh that are often consumed by native fish and birds. These particles may be contaminated with pathogens, parasites, pharmaceuticals or chemicals that may be ingested by native fishes, including salmonids. Studies have shown that these particles are potential vectors for pathogens such as PRV.

Discharge Pollution from Improper Net Cleaning Practices

DOE should require that net cleaning operations take place on land where removed waste materials and a multitude of aquatic organisms can be removed and properly disposed of on land (including the application of appropriate pre-disposal treatment of wastes). Net cleaning operations currently occur via high-pressure remote power-washing in/under the water (i.e., *in situ*) which occurs without any appropriate state or federal permitting and thus violates state and federal law.

OUR SOUND, OUR SALMON

Revised Pollutant Reporting Requirements

Currently, the monthly NPDES Reports provide data for the following:

- Total biomass of fish in the pens (in lbs. and kg.), total feed fed (lbs., kg.), regular feed (lbs., kg.).

In order to calculate the discharge of organic pollutants such as phosphorus and nitrogen from feeding operations, the following data should additionally be provided in monthly NPDES reports:

- Food conversion ratio (FCR), each month, including data and method(s) used to estimate FCR, separately for each pen.
- Food composition of feed fed; including protein, lipid, and carbohydrate content of the feed. Minimally, %phosphorus and %protein in the feed.
- Monthly fish loss (numbers and lbs./kg.) and estimated monthly mortality rate
- Daily Water temperature data

DOE must require the information needed to obtain a full understanding of the likely patterns of distribution of chemical, pathogen, and organic wastes (both solid and liquid) from occurrence in the net pens to the surrounding (“downstream”) environment via patterns of current circulation. DOE thus needs to employ one or more currently available tidal circulation models that are capable of estimating with high precision the distribution of particles of various sizes and specific gravities. This is essential to determining the habitats outside of the net pens and their limited benthic boundaries that are likely to receive doses of harmful pathogens, parasites, pharmaceuticals, chemical, and organic nutrient wastes discharged from the farm operations.

Transition to Closed-Containment

Several of the pollution discharges listed above are difficult, if not impossible, to address from a regulatory framework perspective. Many of the described discharges are not currently required to be reported under NPDES reporting guidelines. To rightfully address these discharges, all of which present credible and substantial risks to the health of the marine environment in Puget Sound, substantial resources would need to be dedicated. Most of these discharges, even if attempts at mitigation are made, are impossible to fully eliminate due to the fundamental operational nature of open-water Atlantic salmon net pens. Discharges that can never be reliably fully eradicated include:

- the amplification of pathogens and parasites
- dispersed feed impacts to native fishes
- the attraction, entrainment, and discharge of native fishes
- nuisance attraction
- chemical and pharmaceutical pollutants

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A transition of the industry to land-based closed-containment operations is the only way to fully eliminate these discharges. Land-based closed-containment facilities, by definition, would not allow for the marine environment to be impacted by the discharges listed above. Until such a transition is made, discharges from open-water Atlantic salmon net pens will continue to negatively impact Puget Sound and its native species.

These comments are supported by the undersigned members of Our Sound, Our Salmon:



THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

COOKE AQUACULTURE PACIFIC LLC,

Defendant.

CASE NO. C17-1708-JCC

ORDER

This matter comes before the Court on Plaintiff’s motion for partial summary judgment (Dkt. No. 29). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in part the motion for the reasons explained herein.

I. BACKGROUND

Defendant Cooke Aquaculture farms Atlantic salmon at net pen facilities located throughout Puget Sound. (See Dkt. No. 15 at 2.) The Clean Water Act (“CWA”) requires any entity that discharges pollutants into the waters of the United States to hold and comply with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. § 1342. Pursuant to the CWA, authorized state agencies may issue NPDES permits; in Washington, the Department of Ecology performs the functions necessary to “meet the requirements” of the CWA, including issuing permits. See 33 § U.S.C. 1342(b); Wash. Rev.

1 Code. § 90.48.260. A NPDES permit holder must prepare and implement certain plans to
2 minimize and monitor the release of pollutants. *Id.* at § 1342(a)(2). Defendant operates its
3 facilities pursuant to NPDES permits, which require, among other things, the preparation of a
4 Pollution Prevention Plan and a Release Prevention and Monitoring Plan (“Release Prevention
5 Plan”) (together, “the plans”) that satisfy the conditions of its permits. (*See* Dkt. No. 29-2 at 11–
6 12.)

7 Defendant operated eight net pen facilities across Puget Sound until the collapse of its
8 Cypress Site 2 (“Cypress 2”) facility on or about August 20, 2017. (*See* Dkt. No. 1 at 9–10.) The
9 collapse resulted in the release of thousands of Atlantic salmon into Puget Sound. (*Id.*) While
10 Cypress 2 is no longer operational, Defendant continues to operate its other seven net pen
11 facilities under its NPDES permits.¹ On August 24, 2017, Plaintiff sent Defendant a “Notice of
12 Intent to Sue Under the Clean Water Act” letter (“notice letter”) and sent a supplemental notice
13 letter on September 6, 2017. (*Id.* at 22, 30.) On November 13, 2017, Plaintiff filed a complaint
14 against Defendant asserting several CWA violations, including that Defendant’s plans are
15 facially noncompliant with their respective permits. (*See id.* at 2.) Plaintiff’s motion for partial
16 summary judgment asks the Court to find that Defendant’s plans violated Conditions S6 and S7
17 of their NPDES permits. (Dkt. No. 29 at 5–6.)

18 **II. DISCUSSION**

19 **A. Legal Standards**

20 1. Summary Judgment

21 “The court shall grant summary judgment if the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.

23 ¹ The Court does not address whether Cypress 2’s plans violated the conditions of its
24 permit in this order. Defendant asserts in its cross-motion for partial summary judgment that
25 Plaintiff’s alleged violations with respect to its permit for Cypress 2 are not ongoing or are moot.
26 (*See* Dkt. No. 41 at 4.) In the interest of judicial economy, this order applies to all of Defendant’s
facilities except Cypress 2, which the Court will discuss in a separate order addressing
Defendant’s cross-motion for summary judgment.

1 Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable
2 inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Anderson v.*
3 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly
4 made and supported, the opposing party “must come forward with ‘specific facts showing that
5 there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
6 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Material facts are those that may affect the
7 outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence
8 for a reasonable jury to return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49.
9 Ultimately, summary judgment is appropriate against a party who “fails to make a showing
10 sufficient to establish the existence of an element essential to that party’s case, and on which that
11 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

12 2. Clean Water Act

13 The CWA’s purpose is to “restore and maintain the chemical, physical, and biological
14 integrity of the Nation’s waters.” 33 U.S.C. § 1251. Private citizens may initiate actions against
15 alleged violators of the CWA’s requirements, including violations of permit conditions. *Ass’n to*
16 *Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc.*, 299 F.3d 1007, 1012 (9th Cir.
17 2002). In order to bring a CWA citizen suit, a plaintiff must satisfy the procedural requirement of
18 providing notice to: (1) the alleged violator; (2) the Environmental Protection Agency (“EPA”);
19 and (3) the state agency tasked with enforcing the CWA where the alleged violation occurred.
20 See 33 U.S.C. § 1365(b). The CWA “authorizes citizens to enforce all permit conditions.” *Nw.*
21 *Envtl. Advocates v. City of Portland*, 56 F.3d 979, 986 (9th Cir. 1995).

22 As a threshold matter, a plaintiff must have statutory and Article III standing to bring a
23 CWA claim. *Nat. Res. Def. Council v. Sw. Marine, Inc.*, 236 F.3d 985, 998 (9th Cir. 2000). A
24 citizen has statutory standing to bring an enforcement action under the CWA for “ongoing”
25 violations. *Id.* A citizen plaintiff can prove ongoing violations by demonstrating that either the
26 violations continue on or after the complaint is filed, or that a reasonable trier of fact “could find

1 a continued likelihood of a recurrence in intermittent or sporadic violations.” *Id.* To establish
2 Article III standing, a plaintiff must demonstrate that: (1) he or she has suffered a concrete
3 injury; (2) that the injury is fairly traceable to the defendant’s conduct; and (3) that the injury can
4 be redressed by prevailing in the case. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*
5 *(TOC), Inc.*, 528 U.S. 167, 181 (2000).²

6 **B. Sufficiency of Plaintiff’s 60-day Notice Letter**

7 Plaintiff asserts that Defendant’s Pollution Prevention Plans violate Conditions S6.F,
8 S6.D, and S6.E of its permits, and that its Release Prevention Plans violate Condition S7.6 and
9 the general requirements of Condition S7 of its permits.³ (*See* Dkt. No. 1 at 23–26). Defendant
10 argues that Plaintiff’s notice letter was insufficient with respect to alleged violations of
11 Conditions S6.D, S6.E, and S7, such that the Court lacks jurisdiction over the alleged violations.
12 (Dkt. No. 36 at 18.)⁴

13 For district courts to have jurisdiction over CWA citizen suits, a plaintiff must provide
14 notice to the alleged violator that contains “sufficient information to permit the recipient to
15 identify the specific standard, limitation, or order alleged to have been violated,” and “the
16 activity alleged to constitute a violation.” U.S.C. § 1365(b); 40 C.F.R. § 135.3(a). The Ninth
17 Circuit requires that a plaintiff’s 60-day notice letter includes “reasonably specific” information,
18 so that the alleged violator will be able to “take corrective actions [to] avert a lawsuit.” *Sw.*

19 _____
20 ² Defendant does not dispute and the Court finds that Plaintiff has representational
21 standing to sue on behalf of its members because: “(a) its members would otherwise have
22 standing to sue in their own right; (b) the interests it seeks to protect are germane to the
23 organization’s purposes; and (c) neither the claim asserted nor the relief requested requires the
24 participation of individual members in the lawsuit.” *Ecological Rights Found. v. Pac. Lumber*
Co., 230 F.3d 1141, 1147 (9th Cir. 2000) (quoting *Hunt v. Wash. State Apple Advertising Com’n*,
432 U.S. 333, 343 (1977)).

24 ³ The permits for all of Defendant’s seven net pen facilities were substantively identical.
25 (*See* Dkt. No. 29-2 at 7–62.) Therefore, the Court’s analysis of Plaintiff’s claims applies to all of
26 Defendant’s facilities, except for Cypress 2 as previously explained. *See supra*, footnote 1.

⁴ Defendant concedes that Plaintiff provided proper notice for alleged violations of
Conditions S6.F and S7.6. (*Id.*)

1 *Marine*, 236 F.3d at 996; *San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1158 (9th
2 Cir. 2002). If a plaintiff fails to provide reasonably specific notice of an alleged violation, then the
3 Court lacks jurisdiction over the claim. *Sw. Marine*, 236 F.3d at 997.

4 The Ninth Circuit does not require a citizen plaintiff to “list every specific aspect or detail
5 of every violation” in its notice letter, as long as it “is reasonably specific” and gives an alleged
6 violator the “opportunity to correct the problem.” *Waterkeepers N. California v. AG Indus. Mfg.,*
7 *Inc.*, 375 F.3d 913, 917 (9th Cir. 2004). “The key language in the notice regulation is the phrase
8 ‘sufficient information to permit the recipient to identify’ the alleged violations and bring itself
9 into compliance.” *Id.* at 916 (citing *Cmty. Ass’n for Restoration of the Env’t v. Henry Bosma*
10 *Dairy*, 305 F.3d 943, 951 (9th Cir. 2002)).

11 1. Conditions S6.D and S6.E

12 Plaintiff’s notice letter stated that Defendant was in violation of its permits for failing to
13 “prepare a Pollution Prevention Plan for each net pen facility that addresses ‘operations, spill
14 prevention, spill response, solid waste, and storm water discharge practices which will prevent or
15 minimize the release of pollutants from the facility to waters of the state.’ Condition S6.” (Dkt.
16 No. 29-2 at 11.) Condition S6.D requires that Defendant’s plans address “practices for the
17 storage and, if necessary, disposal of disease control chemicals.” (*Id.*) Condition S6.E requires
18 that Defendant’s plans address “how solid and biological wastes are collected, stored, and
19 ultimately disposed. Among the solid wastes of concern are . . . blood from harvesting
20 operations.” (*Id.*) Plaintiff alleges that Defendant’s plans failed to account for the storage and
21 disposal of medicated feed, iodine, and the anesthetic MS-222, and that its plans contained no
22 mention of the collection, storage, or disposal of harvest blood, in violation of Conditions S6.D
23 and S6.E. (Dkt. No. 29 at 15.) Defendant argues that Plaintiff’s notice letter was inadequate
24 because it did not specifically identify Conditions S6.D or S6.E as alleged violations. (Dkt. No.
25 36 at 13.)

26 Although plaintiff’s notice letter did not specifically list Conditions S6.D and S6.E, it

1 provided sufficient information for Defendant to identify and correct the alleged violations.
2 Condition S6 requires that Defendant’s plans address “solid waste” and practices to “prevent or
3 minimize the release of pollutants from the facility” into the state’s waters. (Dkt. No. 29-2 at 11.)
4 By specifically referencing that language, Plaintiff gave Defendant notice that it was allegedly in
5 violation of sub-conditions dealing with the handling of pollutants—disease control chemicals
6 and solid waste from harvest blood. (*See* Dkt. No. 1 at 25.) Condition S6 specifically lists
7 substances which are pollutants, including harvest blood and disease control chemicals. (Dkt.
8 No. 29-2 at 11.) The Plans also identify blood from harvesting operations under the category of
9 “solid wastes of concern.” (*Id.*) By reading the language of Condition S6 in conjunction with its
10 sub-conditions, Defendant could have reasonably identified that Plaintiff was alleging violations
11 of Defendant’s plans’ provisions for disease control chemicals, harvest blood, or other pollutants
12 and solid wastes listed under Condition S6.

13 Therefore, Plaintiff’s notice letter provided reasonably specific notice to allow Defendant
14 to identify alleged violations under Conditions S6.D and S6.E.

15 2. Condition S7’s “Best Management Practices” Requirement

16 Plaintiff’s notice letter alleged that Defendant failed “to identify and implement
17 technology that will minimize fish escapes” under a heading titled “Violations of the Fish
18 Release Prevention & Monitoring Plan.” (Dkt. No. 1 at 4–5.) Condition S7 requires, *inter alia*,
19 that Defendant’s Release Prevention Plan include “identification and implementation of
20 technology . . . [and] [r]outine procedures and best management practices used” to minimize the
21 risk of fish escapements. (Dkt. No. 29-2 at 12.)

22 Plaintiff asserts that Defendant’s mooring inspection intervals are not best management
23 practices, as required by Condition S7, based on the annual mooring inspection requirement in
24 Condition S6. (*See* Dkt. No. 29 at 19.) Specifically, Plaintiff argues that Defendant’s 2012 and
25 2014 Release Prevention Plans violated its permits’ requirements by providing for inspections of
26 the high-current-end moorings every three years and for other moorings to be inspected every six

1 years. (*Id.*) Plaintiff also asserts that Defendant’s 2017 Release Prevention Plan provides for
2 high-current-end moorings inspections every three years and does not address inspection
3 intervals for the other moorings. (*Id.*) Condition S7 does not require specific inspection periods.
4 (*See* Dkt. No. 29-2 at 11.)

5 Defendant could not have reasonably identified Plaintiff’s claim that Defendant was in
6 violation of Condition S7 based on an inspection regime imposed by Condition S6. This section
7 of the notice letter was clearly intended to address the Release Prevention Plans, which are
8 governed by Condition S7, not Condition S6. (*See* Dkt. No. 29-2 at 11–12.) Moreover, Condition
9 S7 does not require specific inspection intervals. (*See id.* at 12.) Plaintiff did not provide notice
10 that would allow Defendant to identify what alleged violation that it needed to cure in order to
11 avoid a lawsuit. As such, the Court cannot exercise jurisdiction over this claim. *See Sw. Marine*,
12 236 F.3d at 996.

13 The Court finds that Plaintiff’s notice letter did not provide Defendant with sufficient
14 notice as to this claim. Therefore, Plaintiff’s motion for partial summary judgment is DENIED as
15 to the alleged permit violations of Condition S7.

16 **C. Permit Requirements and Defendant’s Plans**

17 The Court has jurisdiction over Plaintiff’s claims regarding Conditions S6.D, S6.E, S6.F,
18 and S7.6.⁵ The Court next considers whether Plaintiff has demonstrated that no dispute of
19 material fact exists as to whether Defendant’s plans violated these permit conditions.

20 1. Condition S6.F

21 Condition S6.F requires that the plans include that Defendant will “[a]t least once per
22

23 ⁵ Plaintiff alleges that the permit violations in Defendant’s October 2017 Pollution
24 Prevention Plan and the 2017 Release Prevention Plan are also present in Defendant’s prior plans
25 during the five-year statute of limitations period. (Dkt. No. 29 at 7, 12.) Because violations in the
26 prior plans can give rise to daily penalties, this order discusses alleged violations with regard to
all of Defendant’s plans during the relevant statute of limitations period. *See Borden Ranch
P’ship v. U.S. Army Corps of Engineers*, 261 F.3d 810, 817 (9th Cir. 2001), *aff’d*, 537 U.S. 99
(2002).

1 year, conduct an inspection of the main cage structure and anchoring components above and
2 below the water line.” (Dkt. No 29-2 at 11.) Plaintiff alleges that Defendant’s Pollution
3 Prevention Plans violate Condition S6.F by failing to include adequate procedures for annual
4 inspections of its main cage structure. (Dkt. No. 29 at 13.) Specifically, Plaintiff asserts that
5 Defendant’s 2012, 2015, and April 2017 Pollution Prevention Plans do not contain any main
6 cage inspection requirements and that Defendant’s October 2017 plan only requires inspection of
7 the “cage system” as a whole after “a major storm event or any physical accident involving the
8 farm site.” (*Id.*; Dkt. No. 29-2 at 131.)

9 Defendant does not dispute that its plans prior to October 2017 were non-compliant with
10 Condition S6.F, but argues that its updated October 2017 plan provides for, across various
11 sections, at least annual inspections of the components of the main cage structure. (*See* Dkt. No.
12 36 at 18–21.) Defendant states that the “main cage structure” includes: (1) the cage system’s
13 floating walkway; (2) the stock (fish containment) nets; and (3) the predator nets. (*Id.* at 19–20.)
14 Defendant asserts that its “Weekly Surface Inspection Sheet,” which is attached to the October
15 2017 plan, provides for weekly inspection of the floating walkway, in satisfaction of Condition
16 S6.F. (Dkt. No. 29-2 at 131.) The Weekly Surface Inspection Sheet requires Defendant to
17 visually inspect the system mooring points; surface shackles, thimbles, and hardware; mooring
18 lines; surface chain connections; walkway hinge points; and walkway grading condition. (*Id.* at
19 133.) The Weekly Surface Inspection Sheet does not include inspection of the floatation devices
20 that support the walkway, which Plaintiff argues are part of the “below the water line” main cage
21 structure. (*Id.*; Dkt. No. 29 at 14.)

22 With respect to the fish and predation nets, Defendant argues that the October 2017
23 plan’s provisions for cleaning and repairing its nets satisfy Condition S6.F. (Dkt. No. 36 at 19.)
24 Defendant’s plan states that fish containment nets are “typically pulled to the surface once per
25 year” and that fish containment nets and predator nets are removed at the end of a growing cycle
26 for repair and cleaning. (Dkt. No. 29-2 at 129.) However, the plan’s net cleaning procedures,

1 included under the section titled “Net Washing Practices,” do not provide for annual inspection
2 of the fish or predator nets, only that the nets are “to be pulled from the water and transported to
3 a land based cleaning and repair facility” after a growing cycle. (*Id.*) Defendant’s plan does not
4 specify how often a growing cycle ends, or whether the cleaning and repair of nets represent the
5 inspection that is required by Condition S6.F. (*See id.*) Facially, it appears that Defendant’s net
6 washing provisions are intended to satisfy the permit’s requirement to include net cleaning
7 procedures, not for annual “inspection of the main cage structure and anchoring components
8 above and below the water line.” (*Id.* at 11.)

9 The Court finds that Defendant’s 2012, 2015, April 2017, and October 2017 Pollution
10 Prevention plans failed to include annual inspection of the main cage system as required by
11 Condition S6.F. Therefore, Plaintiff’s motion for partial summary judgment is GRANTED as to
12 Defendant’s permit violations of Condition S6.F.

13 2. Condition S6.D

14 Condition S6.D requires that the plan address “[p]ractices for storage, and if necessary,
15 disposal of disease control chemicals.” (Dkt. No. 29-2 at 11.) Plaintiff argues that Defendant
16 failed to include provisions to store and dispose of disease control chemicals in its 2012, 2015,
17 April 2017, and October 2017 Pollution Prevention Plans. (Dkt. No. 29 at 15–16.) Plaintiff
18 asserts that Defendant used medicated fish feed, iodine, and the anesthetic MS-222 as disease
19 control chemicals, which its plans do not properly address. (*Id.*)

20 With respect to medicated fish feed, Plaintiff asserts that while Defendant’s 2012 and
21 2015 Pollution Prevention Plans provided that the feed must be stored in leak proof containers,
22 the plans failed to account for the disposal of medicated feed. (*Id.*) Defendant’s 2012 and 2015
23 plans provide that “[a]ny medicated feed will be clearly marked on the label . . . [and] stored in
24 leak-proof containers while at the facility.” (Dkt. No. 29-2 at 113, 121.) Defendant’s plans do
25 not account for the disposal of medicated feed, which is required by Condition S6.D. (*See id.* at
26 11, 113, 121.) Defendant’s April and October 2017 Pollution Prevention Plans discuss medicated

1 feed under the section “Disease Control Chemicals.” (*See id.* at 125, 130.) Defendant’s April and
2 October 2017 plans provide that “any unused medicated feed that remains after the treatment
3 period ends will be removed from the net pen site and transported back to an upland facility for
4 covered storage” and that expired feed “will be disposed of at a solid waste facility.” (*Id.*)
5 Defendant’s 2017 plans provided for storage of the feed *after* it is no longer at the facility, but do
6 not address how it is stored when it is used to treat the fish at the facility.

7 Defendant argues that iodine and MS-222 are not disease control chemicals and therefore
8 do not need to be addressed in its plans. (Dkt. No. 36 at 25.) With respect to iodine, Defendant
9 states that “[i]odine is used as a disinfectant, primarily of boots.” (*Id.*) Defendant’s 2012, 2015,
10 and April 2017, and October 2017 Pollution Prevention Plans list “disinfectants used for
11 footbaths, dive nets, and other equipment” under the heading of “Disease Control Chemicals.”
12 (Dkt. No. 29-2 at 113, 121, 125, 130.) In response to an interrogatory asking it to “[d]escribe all
13 efforts to treat, reduce, and/or prevent diseases . . . including the method and/or substances
14 used,” Defendant responded by stating, “[a]s with all biosecurity measures at the net pens, the
15 mortality extraction bags used to collect the dead fish are disinfected after each use, using a 24
16 hour soak in an iodine solution.” (*Id.* at 258–261.) Additionally, Defendant listed iodine and MS-
17 222 on the 2016 “Annual Disease Control Chemical Use Report” required by its permits. (*Id.* at
18 247–55.) None of Defendant’s Pollution Prevention Plans include procedures for the storage of
19 iodine. (*See id.* at 113, 121, 125, 130.) Defendant’s 2012 and 2015 plans addressed the disposal
20 of iodine, but Defendant’s April and October 2017 plans do not. (*See id.*) Defendant’s plans do
21 not mention MS-222. (*See id.*)

22 The Court finds that Defendant failed to address the storage and disposal of disease
23 control chemicals in its 2012, 2015, April 2017, and October 2017 Pollution Prevention Plans.
24 Therefore, Plaintiff’s motion for partial summary judgment is GRANTED as to Defendant’s
25 permit violations of Condition S6.D.

26 3. Condition S6.E

1 Condition S6.E requires that the Pollution Prevention Plans address “[h]ow solid and
2 biological wastes are collected, stored, and ultimately disposed. (Dkt. No. 29-2 at 11.) Plaintiff
3 argues that Defendant’s Pollution Prevention Plans fail to account for the collection, storage, and
4 disposal of harvest blood. (Dkt. No. 29 at 16–17.) Defendant claims that its plan “adequately
5 addresses how harvest blood is collected, stored, and disposed” because it does not bleed fish at
6 the facilities. (Dkt. No. 36 at 26.) Defendant’s plans do not address how it collects, stores, and
7 disposes of harvest blood. (*See id.* at 113, 121, 125, 130.) Even if Defendant does not bleed fish
8 at its facilities, its plans still had to address procedures for blood generated from harvesting
9 operations. (Dkt. No. 29-2 at 11.) The plans’ complete silence on this issue places it in facial
10 violation of the permits. Therefore, Plaintiff’s motion for partial summary judgment is
11 GRANTED as to Defendant’s permit violations of Condition S6.E.

12 4. Condition S7.6

13 Condition S7.6 requires that Defendant’s plans include procedures for “routinely tracking the
14 number of fish within the pens, the number of fish lost due to predation and mortality, and the
15 number of fish lost due to escapement.” (Dkt. No. 29-2 at 12.) Plaintiff argues that Defendant’s
16 plans fail to address procedures to routinely track the number of fish lost to predation or
17 escapement. (Dkt. No. 29 at 17–18.) Defendant argues that its plans provide for routine tracking
18 of mortalities in a variety of systems and that “[p]redation losses are simply a variety of
19 mortalities at the site.” (Dkt. No. 36 at 22.)

20 Defendant’s 2012, 2014, and 2017 Release Prevention Plans state under the heading
21 “Procedures for Routinely Tracking the Number of Fish” that fish are observed from the surface
22 and that mortalities are removed and accounted for in a database (2012), log books (2014 plan),
23 or an inventory system (2017 plan) after removal. (Dkt. No. 29-2 at 142, 157, 187.) Even if
24 Defendant does track predation and escapement routinely, its permits state that the plan “must
25 include . . . the following elements . . . “[p]rocedures for routinely tracking . . . the number of
26 fish lost due to predation and mortality and the number of fish lost due to escapement.” (*Id.* at

12.) Defendant's Release Prevention Plans fail to provide for such tracking. (*See id.* at 142, 157, 187.) Thus, Defendant's argument is based on what it was allegedly doing in practice, not what was included in the plans.

The Court finds that Defendant's 2012, 2014, and 2017 Release Prevention Plans did not satisfy Condition S7.6 of the permits. Therefore, Plaintiff's motion for partial summary judgment is GRANTED as to Defendant's permit violations of Condition S7.6.

III. CONCLUSION

For the foregoing reasons, Plaintiff's motion for partial summary judgment (Dkt. No. 29) is:

- (1) GRANTED as to permit violations relating to Condition S6.F;
- (2) GRANTED as to permit violations relating to Condition S6.D for Defendant's 2012, 2015, April 2017, and October 2017 Pollution Prevention Plans;
- (3) GRANTED as to permit violations relating to Condition S6.E for Defendant's 2012, 2015, April 2017, and October 2017 Pollution Prevention Plans;
- (4) GRANTED as to permit violations relating to Condition S7.6 for Defendant's 2012, 2014, and 2017, and Release Prevention Plans; and
- (5) DENIED as to permit violations relating to Condition S7.

DATED this 26th day of April 2019.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

COOKE AQUACULTURE PACIFIC LLC,

Defendant.

CASE NO. C17-1708-JCC

ORDER

This matter comes before the Court on Defendant’s motion to exclude expert opinions (Dkt. No. 82), Plaintiff’s motion for partial summary judgment (Dkt. No. 79), and Defendant’s motion for partial summary judgment (Dkt. No. 84). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES Defendant’s motion to exclude expert opinions (Dkt. No. 82), GRANTS in part and DENIES in part Plaintiff’s motion for partial summary judgment (Dkt. No. 79), and DENIES Defendant’s motion for partial summary judgment (Dkt. No. 84) for the reasons explained herein.

I. BACKGROUND

This lawsuit arises out of the 2017 collapse of one of Defendant Cooke Aquaculture Pacific LLC’s Atlantic salmon net-pen facilities (“Cypress 2”) in Deepwater Bay off Cypress Island, Washington. (See Dkt. No. 1 at 9–10.) The Clean Water Act (“CWA”) prohibits discharges of pollutants into the waters of the United States, except pursuant to a National

1 Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. § 1342. As provided by
2 the CWA, authorized state agencies may issue NPDES permits and enforce permit requirements.
3 *See* 33 § U.S.C. 1342(b). In Washington, the Department of Ecology (“Ecology”) performs the
4 functions necessary to “meet the requirements” of the CWA, including issuing NPDES permits.
5 Wash. Rev. Code. § 90.48.260.

6 Prior to the collapse of Cypress 2, Defendant operated eight Atlantic salmon net-pen
7 facilities across Puget Sound pursuant to separate NPDES permits issued by Ecology. (*See* Dkt.
8 Nos. 29-2 at 7–62, 44 at 4–33.) The net pens are floating facilities into which Defendant transfers
9 Atlantic salmon smolts from its freshwater hatchery to be reared to a marketable size. (Dkt. No.
10 15 at 4.) The pens are made of metal walkways from which nets are hung. (Dkt. No. 29-2 at 70–
11 73.) The net pens are held in place by a mooring system comprised of mooring chains or ropes
12 attached to anchors. (*Id.* at 70–71, 87–88.) Defendant’s NPDES permits impose numerous
13 requirements for minimizing the discharge of pollutants from the facilities. (*See* Dkt. No. 44 at
14 8–21.) Defendant’s NPDES permit for Cypress 2 was issued in October 2007 and was in force at
15 all times relevant to this lawsuit. (Dkt. Nos. 42 at 5, 14; 44 at 1.)¹ Defendant operates its
16 facilities on lands leased from the Washington State Department of Natural Resources (“DNR”).
17 (*E.g.*, Dkt. No. 52-1 at 37–69.)

18 On August 19, 2017, Cypress 2 experienced mooring failures during very strong tidal
19 currents. (Dkt. No. 42 at 2.) These mooring failures progressed over the following days and
20 resulted in the facility’s collapse and eventual destruction. (*Id.* at 2–3.) The catastrophic collapse
21 of Cypress 2 resulted in the estimated release of more than 200,000 Atlantic salmon into Puget
22 Sound. (Dkt. No. 29-2 at 200.) The collapse also resulted in the release of other debris from the
23 facility into Puget Sound. (*Id.* at 211–12.) On August 24, 2017, Plaintiff sent Defendant a “Notice
24 of Intent to Sue Under the Clean Water Act” letter (“notice letter”) and sent a supplemental notice
25

26 ¹ Although scheduled to expire in 2012, the Cypress 2 permit was administratively extended multiple times. (Dkt. Nos. 42 at 9, 44 at 4.)

1 letter on September 6, 2017. (Dkt. No. 1 at 22, 30.) On the same dates, Plaintiff mailed copies of the
2 notice letter to the Administrator of the Environmental Protection Agency (“EPA”), the Regional
3 Administrator of Region 10 of the EPA, and the Director of Ecology. (Dkt. No. 1 at 2–3.) On
4 November 13, 2017, Plaintiff filed a complaint against Defendant asserting several CWA violations
5 related to the Cypress 2 collapse, as well as violations at Defendant’s seven other Puget Sound net-
6 pen facilities. (*See generally id.*)

7 On August 25, 2017, DNR notified Defendant that it had defaulted on its obligations
8 under the parties’ lease and demanded that Defendant remove all damaged materials from the
9 Cypress 2 site. (Dkt. No. 52-1 at 145.) DNR stated that it may terminate the lease if Defendant
10 did not cure the default by September 24, 2017. (*Id.*) In a letter to DNR dated September 1, 2017,
11 Defendant stated that it had “been implementing its Fish Escape Prevention Plan” and
12 “reserve[d] all rights with respect to the Lease.” (*Id.* at 149.) Defendant proceeded to conduct
13 cleanup, salvage, and remediation at and around the Cypress 2 site throughout the rest of 2017
14 and into 2018. (*See* Dkt. Nos. 42, at 3–4, 29-2 at 210–12.)

15 On January 30, 2018, Ecology issued a \$332,000 administrative penalty against
16 Defendant arising from the Cypress 2 collapse. (Dkt. No. 52-1 at 160–66.) Ecology concluded
17 that Defendant violated its NPDES permit by negligently allowing the release of farmed salmon,
18 failing to inspect anchoring components deeper than 100 feet, and not adequately cleaning the
19 facility’s nets. (*Id.* at 163–64.) On March 1, 2018, Defendant appealed Ecology’s penalty to the
20 Washington State Pollution Control Hearings Board. (Dkt. Nos. 42 at 4, 52-1 at 169); *see also*
21 Wash. Rev. Code §§ 43.21B.010, 43.21B.110.

22 On February 2, 2018, DNR terminated Defendant’s lease for Cypress 2. (Dkt. No. 42 at
23 4.) Defendant responded on March 1, 2018, by filing a complaint in Thurston County Superior
24 Court challenging DNR’s termination of the lease. (Dkt. No. 52-1 at 11–32.) Among other relief,
25 Defendant sought a declaratory judgment that DNR was not “entitled to withhold its consent to
26 [Defendant’s] reconstruction of [Cypress] 2 . . . and that it is entitled to restock [Cypress] 2 as

1 soon as it has been rebuilt.” (*Id.* at 28.)

2 On March 22, 2018, Washington’s governor signed legislation that prohibits DNR
3 from either granting new leases of aquatic lands for non-native finfish aquaculture projects or
4 renewing or extending a lease in existence as of June 7, 2018, that includes non-native finfish
5 aquaculture. *See* Wash. Rev. Code § 79.105.170; *see also* H.B. 2957, 65th Leg., Reg. Sess.
6 (Wash. 2018).

7 On April 24, 2019, Defendant and Ecology entered a consent decree to resolve
8 Defendant’s liability related to the Cypress 2 collapse and the corresponding violations identified
9 by Ecology in its notice of administrative penalty. (*See* Dkt. No. 74-1 at 4–11.) On April 25,
10 2019, the Pollution Control Board, pursuant to the consent decree, dismissed Defendant’s appeal
11 of Ecology’s administrative penalty. (*Id.* at 18.) Defendant has not conducted net-pen operations
12 at Cypress 2 since its collapse in August 2017. (Dkt. No. 43 at 3.) In fact, the Cypress 2 facility
13 no longer exists, and its remains were ultimately salvaged and removed from the site following
14 the collapse. (*Id.*; *see* Dkt. No. 29-2 at 210–12.) Defendant states that it has no intention of
15 rebuilding Cypress 2. (Dkt. No. 43 at 3.) On December 21, 2018, Defendant requested that
16 Ecology terminate the permit for Cypress 2. (Dkt. No. 86 at 4.) On August 29, 2019, Ecology
17 informed Defendant that it had completed its closure monitoring of Cypress 2 and that the permit
18 would be terminated as of September 28, 2019. (*See* Dkt. No. 86 at 6.) Defendant has
19 represented that it has not appealed the decision. (*See* Dkt. No. 84 at 9.) Defendant continues to
20 operate its other seven net pen facilities under its NPDES permits. (*See* Dkt. Nos. 29-2 at 7–62, 44
21 at 4–33.)

22 Defendant now moves to exclude Plaintiff’s expert opinions on risk of failure (Dkt. No.
23 82), Plaintiff moves for partial summary judgment on multiple claims (Dkt. No. 79), and
24 Defendant moves for partial summary judgment on the grounds of *res judicata* and mootness
25 (Dkt. No. 84).

26 //

1 II. DISCUSSION

2 A. Legal Standards

3 “The court shall grant summary judgment if the movant shows that there is no genuine
4 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
5 Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable
6 inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Anderson v.*
7 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly
8 made and supported, the opposing party “must come forward with ‘specific facts showing that
9 there is a *genuine issue for trial.*’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
10 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Material facts are those that may affect the
11 outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence
12 for a reasonable jury to return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49.
13 Conclusory, non-specific statements in affidavits are not sufficient, and “missing facts” will not
14 be “presumed.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990). Ultimately,
15 summary judgment is appropriate against a party who “fails to make a showing sufficient to
16 establish the existence of an element essential to that party’s case, and on which that party will
17 bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

18 B. Defendant’s *Daubert* Motion to Exclude Dr. Tobias Dewhurst’s Expert 19 Opinions Regarding Risk of Failure

20 The trial court has the “task of ensuring that an expert’s testimony both rests on a reliable
21 foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharmaceuticals*, 509
22 U.S. 579, 597 (1993). A witness who is qualified as an expert by knowledge, skill, experience,
23 training, or education may testify in the form of an opinion or otherwise if: (1) the expert’s
24 scientific, technical, or other specialized knowledge will help the trier of fact to understand the
25 evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data;
26 (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably

1 applied the principles and methods to the facts of the case. Fed. R. Evid. 702.

2 In *Daubert*, the Supreme Court rejected the rigid “general acceptance” test for the
3 admissibility of scientific evidence. 509 U.S. at 596. The Court reasoned that “[v]igorous cross-
4 examination, presentation of contrary evidence, and careful instruction on the burden of proof
5 are the traditional and appropriate means of attacking shaky but admissible evidence.” *Id.* When
6 determining admissibility, the text is “a flexible one,” with a focus on principles and
7 methodology. *Id.* at 595. Rule 702 is generally construed liberally. *United States v. Hankey*, 203
8 F.3d 1160, 1168 (9th Cir. 2000). And in determining the admissibility of expert testimony, “there
9 is less danger that a trial court will be ‘unduly impressed by the expert’s testimony or opinion’ in
10 a bench trial.” *FTC v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014).

11 Dr. Tobias Dewhurst is a marine engineering expert retained by Plaintiff to evaluate the
12 safety of Defendant’s net pens. (Dkt. No. 83-1 at 6.) To establish predicted environmental
13 conditions at the net pens, Dewhurst used an international standard, the Norwegian Aquaculture
14 Standard 9415 (“NS9415”), to analyze data on local environmental conditions as measured by
15 TerraSond, a company Defendant has retained. (*Id.* at 21–22.) Dewhurst used these predicted
16 conditions to calculate the loading forces exerted on the net pens. (*Id.* at 27–28.) Dewhurst then
17 compared the net pen manufacturer specifications with the predicted environmental conditions
18 for each site. (Dkt. No. 79-3 at 11–12.) Defendant argues that the Court should exclude from trial
19 Dewhurst’s opinion that each of Defendant’s current net pen facilities are “at risk of failure.”
20 (Dkt. No. 82.) Defendant offers three reasons to exclude Dewhurst’s testimony as unreliable
21 under Rule 702. (*See id.*)

22 First, Defendant argues that Dewhurst should have performed analytical modeling to
23 quantify the risk of failure. (*Id.* at 10–12.) This criticism is not an attack on the reliability of the
24 expert’s methodology, but instead an argument as to how to weigh the opinion. Thus, it is not a
25 ground to exclude the testimony under *Daubert*. *See* 509 U.S. at 595–96. Defendant cites an out-
26 of-circuit case in which the district court exercised its discretion to exclude an opinion in which

1 an expert offered an opinion on the degree of risk posed by contamination. (*See* Dkt. No. 82 at
2 13.) But that court concluded the expert opinion lacked a sufficient basis in facts or data under
3 Rule 702, not that the expert’s methodology was unreliable. *See Lewis v. FMC Corp.*, 786 F.
4 Supp. 2d 690, 702–03 (W.D.N.Y. 2011) (noting that the expert conceded further investigation
5 was required to determine the extent of the contamination).

6 Second, Defendant contends that Dewhurst’s opinion should be excluded because he
7 equates the net pen manufacturer specifications with the net pen’s safe operating limits.
8 Defendant argues that manufacturer specifications are too conservative a basis for determining
9 whether the net pen operations are safe, arguing that a non-compliant net pen could still be
10 shown to be safe based on an engineer’s analysis. (Dkt. Nos. 82 at 13–14, 104 at 3–7.) But it is
11 hard to see how Defendant could seriously contend that a manufacturer’s product specifications
12 are not at least relevant to the safe operations of a product. Indeed, Defendant’s own expert
13 conducted a similar analysis of predicted environmental conditions compared to conditions
14 allowed by the manufacturer. (Dkt. No. 83-1 at 22.) Thus, Defendant’s assertion that a non-
15 compliant net pen *might* still be safe likewise goes to the weight, not reliability, of Dewhurst’s
16 testimony. *Daubert*. *See* 509 U.S. at 595–96.

17 Third, Defendant argues that Dewhurst’s opinion should be excluded because he does not
18 quantify the degree of risk of failure for each net pen site and has not differentiated as to whether
19 there is a low or high risk of failure for each site. (Dkt. No. 82 at 14–15.) Once again, this is an
20 attack on weight, not reliability, of the expert opinion. *Daubert*. *See* 509 U.S. at 595–96.

21 Thus, Defendant has not raised any serious challenge to the reliability of the principles or
22 methodology supporting Dewhurst’s expert opinion. *See* Fed. R. Evid. 702. Defendant remains
23 free to challenge the expert opinion through “[v]igorous cross-examination” and “presentation of
24 contrary evidence.” *See Daubert*, 509 U.S. at 596. Therefore, Defendant’s motion to exclude
25 Dewhurst’s risk of failure testimony is DENIED on these grounds.

26 //

1 **C. Plaintiff’s Motion for Partial Summary Judgment**

2 1. Plaintiff’s Request to Strike

3 In a summary judgment ruling, a trial court may consider only evidence which could be
4 admissible at trial. *See* Fed. R. Civ. P. 56(c); *Nilsson v. City of Mesa*, 503 F.3d 947, 952 n.2 (9th
5 Cir. 2007). Plaintiff requests that the Court strike several items of evidence that Defendant has
6 submitted in opposition to Plaintiff’s motion for partial summary judgment. (*See* Dkt. No. 95 at
7 5–7.) The Court considers each request in turn.

8 a. *Declarations of Stephen Weatherford and Bill French*

9 Federal Rule of Civil Procedure 26(a) requires that parties disclose the names of “each
10 individual likely to have discoverable information—along with the subjects of that
11 information—that the disclosing party may use to support its claims or defenses.” Fed. R. Civ. P.
12 26(a)(1)(A)(i). A party must supplement its disclosure “in a timely manner if the party learns
13 that . . . the disclosure . . . is incomplete or incorrect, and if the additional or corrective
14 information has not otherwise been made know to the other parties during the discovery process
15 or in writing.” Fed. R. Civ. P 26(e)(1)(A). Where a party fails to disclose its intent to rely on a
16 witness either without substantial justification or where the nondisclosure was not harmless, Rule
17 37(c)(1) provides that the party is “not allowed to use that information or witness” at trial. Fed.
18 R. Civ. P. 37(c)(1); *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.
19 2001).

20 In opposition to Plaintiff’s motion for partial summary judgment, Defendant submitted
21 the declarations of Stephen Weatherford and Bill French. (Dkt. Nos. 90, 91.) Their declarations
22 primarily concern the inspections Defendant performed of anchoring components. (*See id.*)
23 Defendant did not previously disclose its intent to rely on these witnesses to Plaintiff. (*See* Dkt.
24 No. 95-1 at 4–7.) Weatherford and French are Defendant’s employees, and it appears there is no
25 justification for failing to timely identify these witnesses. This omission is not harmless because
26 Plaintiff has repeatedly sought discovery of information on Defendant’s inspections of anchoring

1 systems. Because the failure to disclose is neither substantially justified nor harmless,
2 Defendants may not introduce these witnesses. *See* Fed. R. Civ. P. 37(c)(1). *Yeti by Molly, Ltd.*,
3 259 F.3d at 1106. Therefore, the Court GRANTS Plaintiff's request to strike the declarations of
4 Stephen Weatherford and Bill French on this ground.

5 b. *Sham affidavit rule*

6 Under the "sham affidavit rule," a party cannot create an issue of fact with an affidavit
7 contradicting prior statements that the party made under oath. *Yeager v. Bowlin*, 693 F.3d 1076,
8 1079–80 (9th Cir. 2012); *see Miller v. Glenn Miller Prods., Inc.*, 454 F.3d 975, 980 (9th Cir.
9 2006). The rule applies to "clear and unambiguous" contradictions that cannot be resolved with
10 "a reasonable explanation." *Yeager*, 693 F.3d at 1080–81 (citing *Cleveland v. Policy Mgmt. Sys.*
11 *Corp.*, 526 U.S. 795, 806–07 (1999)). However, the rule "should be applied with caution because
12 it is in tension with the principle that the court is not to make credibility determinations when
13 granting or denying summary judgment." *Id.* at 1080. "[T]he non-moving party is not precluded
14 from elaborating upon, explaining or clarifying prior testimony elicited by opposing counsel on
15 deposition; minor inconsistencies that result from an honest discrepancy, a mistake, or newly
16 discovered evidence afford no basis for excluding an opposition affidavit. *Messick v. Horizon*
17 *Indus. Inc.*, 62 F.3d 1227, 1231 (9th Cir. 1995).

18 Plaintiff requests to strike under the sham affidavit rule portions of declarations by James
19 Parsons and Randy Hodgin that assert Defendant conducted mooring inspections for which
20 records do not exist. (Dkt. No. 95 at 5.) Defendant designated Parsons as its representative for a
21 30(b)(6) deposition on the topics of Defendant's inspections of the net pen anchoring
22 components, including how the inspections were documented. (*See* Dkt. No. 46-1 at 11, 21, 70.)
23 At his deposition, Parsons stated that he was prepared to testify on these topics. (*See, e.g.*, Dkt.
24 46-1 at 70.) Parsons repeatedly testified that the information Plaintiff sought is contained in the
25
26

1 records.² (Dkt. No. 46-1 at 156–59, 178–79.) For example, in response to Plaintiff’s inquiry as to
2 the names of the divers who conducted mooring inspections of Cypress 1 in 2016, Parsons
3 stated, “[i]t would have been any member of the dive team.” (*Id.* at 156–57.) And when asked for
4 the dates of when those inspections occurred, Parsons stated, “[t]hey would be available in the
5 dive logs and daily records.” (Dkt. No. 46-1 at 156–57.)

6 In its opposition to Plaintiff’s motion to compel a second 30(b)(6) deposition, Defendant
7 represented to the Court that, with respect to “specific details regarding the names, dates, and
8 locations of routinely conducted mooring inspections. . . . [a]ll of the information sought by
9 Plaintiff was contained in the tens of thousands of pages of business records produced to
10 [Plaintiff] before deposition, and all of the information could have been obtained by [Plaintiff]
11 simply by reviewing those documents.”³ (Dkt. No. 49 at 2.) Defendant stated that the records of
12 “which [] employee conducted which inspection on which day at which site—were provided to
13 Plaintiff many times in a variety of ways.” (*Id.* at 3.)

14 The Court allowed Plaintiff to depose Defendant for one additional day. (Dkt. No. 66 at
15 6.) At that deposition, Parsons testified that it was likely that not all inspections were reflected in
16 the records, (Dkt. No. 79-1 at 215), that just “[b]ecause the records may not exist doesn’t mean
17 that it wasn’t done,” (*id.* at 217), that the daily logs and dive logs are incomplete for Cypress, (*id.*
18 at 220), that “we have good records that [inspections] were occurring at all of the other sites,”
19 (*id.* at 220), and that additional information could be obtained from current and former
20 employees, (*e.g.*, *id.* at 132, 258). Thus, Defendant has changed its answer about its practice of
21 recording mooring system inspections: while Defendant initially maintained that all such

22
23 ² In its order on Plaintiff’s motion to compel, the Court evaluated Parson’s responses at
24 length and found them evasive. (*See* Dkt. No. 66 at 3–5.) The Court found this evasiveness,
25 combined with Defendant’s last-minute disclosure of over 30,000 documents days before
deposition, frustrated Plaintiff’s ability to develop testimony on the topic of mooring system
inspections. (Dkt. No. 66 at 5–6.)

26 ³ A court has discretion to consider whether a statement of fact contained in a brief may be
considered an admission *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 227 (9th Cir. 1988).

1 information was in its records, Defendant now maintains that not all inspections were logged in
2 the records, and further information can be obtained from its employees.

3 Plaintiff argues that Defendant's change in position amounts to a clear contradiction of its
4 own sworn testimony that *all* of the information on mooring inspections is contained in the
5 records. (Dkt. 95 at 5–6.) Defendant's misleading initial testimony frustrated Plaintiff's ability to
6 develop testimony on the topic of mooring systems inspections. (Dkt. No. 66 at 5–6.) Defendant
7 has not attempted to reconcile the difference in its initial position by explaining the discrepancy
8 as an honest mistake or caused by newly discovered evidence.⁴ (*See* Dkt. No. 87 at 19.) But
9 Defendant's new position is arguably an elaboration or clarification of Defendant's prior evasive
10 testimony. *See Messick*, 62 F.3d at 1231. Especially given the Ninth's Circuit caution to avoid
11 credibility determinations at summary judgment, Defendant's discrepancy is not such a clear and
12 unambiguous contradiction as to require striking Parsons's and Hodgkin's declarations under the
13 sham affidavit rule. *See Yeager*, 693 F.3d at 1080–81. Therefore, the Court DENIES Plaintiff's
14 request to strike Parsons's and Hodgkin's declarations.

15 c. *Parsons declaration and Defendant's interrogatory responses*

16 Plaintiff requests that the Court strike portions of the Parsons declaration that Plaintiff
17 asserts lacks foundation and are based on hearsay. (Dkt. No. 95 at 6.) Plaintiff also requests the
18 Court strike Defendant's interrogatory responses attached to the declaration of Douglas Steding.
19 (*See id.* at 7.) The Court recognizes that assertions in conclusory, self-serving affidavits are
20 insufficient, standing alone, to create a genuine issue of material fact. *Nilsson*, 503 F.3d at 952
21 n.2.

22 d. *Mott MacDonald Report*

23 Plaintiff requests that the Court strike the Mott MacDonald reports attached to James
24

25 ⁴ Instead, Defendant blames Plaintiff for failing to conduct fact witness depositions based on
26 Defendant's roster of over 200 employees and its response to Interrogatory No. 5. (*See* Dkt. No.
87 at 19.)

1 Parsons's declaration. (Dkt. No. 95 at 6.) Plaintiff argues that these unsworn reports constitute
2 inadmissible hearsay and that Parsons is not competent to testify as to the expert opinions the
3 reports contain. (*Id.*) Plaintiff does not dispute the authenticity of these reports that Mott
4 MacDonald prepared for DNR. (*See id.*) Indeed, Plaintiff appears to have submitted at least two
5 of the same reports in support of its motions. (*Compare* Dkt. No. 79-2 at 81, 87, *with* Dkt. No. 94
6 at 25, 32.) Given the likelihood that the material in the reports could ultimately "be presented in
7 a form that would be admissible in evidence" at trial, the Court declines to strike them. *See* Fed.
8 R. Civ. P. 56(c)(2).

9 2. Implementation of Technology to Minimize Fish Escapement

10 Condition S7.1 of the permits requires that Defendant identify and implement technology
11 that will minimize fish escapements. (Dkt. No. 29-2 at 12.) In its enforcement of NPDES
12 permits, Ecology incorporates Washington's "AKART" standard, which requires "all known,
13 available, and reasonable methods of treatment" to minimize water pollution. *See* Wash. Admin.
14 Code § 173-220-130(1)(a); *see also* *Snohomish County v. Pollution Control Hearings Bd.*, 386
15 P.3d 1064, 1067 (Wash. 2016).

16 a. *Pre-suit notice of violation of Condition S7.1*

17 For district courts to have jurisdiction over CWA citizen suits, a plaintiff must provide notice
18 to the alleged violator that contains "sufficient information to permit the recipient to identify the
19 specific standard, limitation, or order alleged to have been violated," and "the activity alleged to
20 constitute a violation." U.S.C. § 1365(b); 40 C.F.R. § 135.3(a). "The key language in the notice
21 regulation is the phrase 'sufficient information to permit the recipient to identify' the alleged
22 violations and bring itself into compliance." *Waterkeepers N. California v. AG Indus. Mfg., Inc.*, 375
23 F.3d 913, 916 (9th Cir. 2004) (citing *Cmty. Ass'n for Restoration of the Env't v. Henry Bosma Dairy*,
24 305 F.3d 943, 951 (9th Cir. 2002)).

25 Defendant contends that Plaintiff failed to provide notice regarding these claims because
26 its notice letter did not cite NS9415 or specifically allege Plaintiff's contention that Defendant

1 needs to conduct further engineering analyses of the cages. (Dkt. No. 87 at 17.) Plaintiff's notice
2 letter specifically lists Condition S7.1 and contains the language at issue for this claim. (Dkt. No.
3 1 at 25–26.) The letter alleged that Defendant violated permit requirements “at all eight of its
4 Puget Sound net pen facilities by failing to identify and implement technology that will minimize
5 fish escapements.” (*Id.*) Thus, Defendant could have reasonably identified Plaintiff's claims that
6 Defendant failed to implement technology to minimize fish escapes. Therefore, the Court FINDS
7 that Plaintiff's notice letter provided reasonably specific notice to allow Defendant to identify the
8 alleged violations under Condition S7.1.

9 b. *Technology necessary to evaluate suitability of salmon farms for their*
10 *locations*

11 Plaintiff argues that the Washington's AKART standard for technology requires
12 Defendant to reevaluate whether its salmon farm systems and configurations are suitable for the
13 local environmental conditions at each site. (Dkt. No. 79 at 11–13.) Plaintiff relies on Dewhurst's
14 opinion stating that since 2006, aquaculture standards including NS9415 have been available for
15 conducting a current analysis to determine whether Defendant's net pen systems were suitable
16 for those locations. (*Id.* at 12.) Plaintiff argues that following promulgation of the NS9415
17 standard, Defendant should have studied its equipment then in use and subsequently installed to
18 determine whether it could withstand the local conditions. (*Id.* at 11–13.) Plaintiff argues
19 Defendant's failure to conduct these analyses violated Condition S7.1. (*Id.*)

20 Defendant argues that it has complied with Condition S7.1 by providing Release
21 Prevention Plans that appropriately describe new cage systems as technology that has been or
22 would be implemented. (Dkt. No. 87 at 12.) Defendant argues that it is standard industry practice
23 to make suitability determinations at the time of installation or when making substantial changes
24 to the facility, and thus the standard that Dewhurst cites, NS9415, should not come into play.
25 (Dkt. No. 87 at 13.) It argues that AKART standards for technology are fully addressed during
26 permit issuance. (*Id.* at 14.) Defendant contends that the relevant AKART standard is set forth in
a different section of the Washington Administrative Code, § 173- 221A. (*Id.* at 15.) Finally,

1 Defendant contends that it would not be reasonable under the AKART standard to require
2 replacement of the net pens prior to the end of their useful life. (*Id.*)

3 Thus, material issues of fact remain as whether Condition S7.1 requires Defendant to
4 undertake a suitability analysis of its net pen systems. Therefore, Plaintiff's motion for summary
5 judgment is DENIED on this ground.

6 *c. Improvement to net pen structures*

7 In Defendant's Release Prevention Plans, Defendant has identified improved cage
8 systems to be implemented in the future. (Dkt. No. 29-2 at 136.) Plaintiff argues that these plans
9 required Defendant to undertake replacement of existing net pens. (Dkt. No. 79 at 13–14.)
10 Plaintiff further contends that the current net pens are at risk of failure because they do not
11 comply with manufacturer recommendations and because there has not been adequate
12 independent analysis of the suitability of the systems. (Dkt. No. 79 at 14.) Plaintiff relies on
13 Dewhurst's expert opinions that conclude the systems are at risk of failure. (*Id.*)

14 Defendant does not contest that its Release Prevention Plans required it to implement
15 new cage systems. (*See* Dkt. No. 87 at 15–17.) However, Defendant argues that its net pens are
16 safe and are not at risk of failure. (*Id.*) Defendant relies on Dean Steinke's expert testimony that
17 the manufacturer ratings are guidelines but do not indicate the true limits of the net pens. (*Id.* at
18 16–17.) Steinke asserts that the ratings lack detail and cannot be compared to NS9415 values.
19 (Dkt. No. 92 at 4–8.) Steinke also argues that Dewhurst's calculations of drag force are flawed
20 because they fail to account for net deflection that reduces projected surface area. (*Id.*)

21 Thus, material issues of fact remain as whether Defendant's net pen structures violate
22 Condition S7.1. Therefore, Plaintiff's motion for summary judgment is DENIED on this ground.

23 3. Annual Inspection of Anchoring Components

24 Condition S6.F of Defendant's NPDES permit requires the preparation and
25 implementation of a Pollution Prevention Plan that provides for at least annual inspections of the
26 anchoring components above and below the water line. (*See* Dkt. 44 at 19–20.) Plaintiff argues

1 that Defendant has violated this requirement by failing to annually inspect all underwater
2 mooring components, and Plaintiff further argues that Defendant's violations of this requirement
3 are ongoing because they have recurred since the complaint was filed. (*See* Dkt. No. 79 at 17.)

4 a. *Cypress Sites 1 and 3 (2013–2016)*

5 Altogether, Defendant's Cypress sites had a total of 71 anchor lines: Cypress 1 has 25
6 lines, Cypress 2 had 19 lines, and Cypress 3 has 27 anchoring lines. (Dkt. No. 46-1 at 147, 163,
7 173.) Defendant's records indicate that in 2013, one dive may have inspected two or three anchor
8 lines and seven additional dives might have involved work on up to 14 anchor lines. (*Id.* at 251–
9 53.) In 2014, one dive may have involved an inspection of a Cypress anchor line, and four dives
10 may have involved work on up to eight Cypress anchor lines. (*Id.* at 236–39.) In 2015, Defendant
11 performed work on two anchor chains at Cypress 2 and three anchor chains at Cypress 3, and
12 some surface inspections occurred. (*Id.* at 223–25, 232.) In 2016, records show Defendant may
13 have inspected the uppermost chain components plus one anchor chain. (Dkt. No. 79-1 at 193,
14 198–200, 211–13.) Thus, Plaintiff has made a showing that Defendant made spotty inspections
15 of its mooring systems and thus failed to complete the required annual inspections of the 25
16 mooring lines at Cypress 1 and 27 mooring lines at Cypress 3 in 2013, 2014, 2015, and 2016.

17 In opposition to Plaintiff's motion, Defendant does not point to a single additional record
18 to demonstrate that it conducted a below-water inspection of these mooring systems. (*See* Dkt.
19 No. 87 at 20–21.) Defendant relies instead on its responses to Interrogatory Topic No. 5 and the
20 Rule 30(b)(6) deposition of Defendant in which Parsons testified. (*Id.* at 18–20.) In the responses
21 and deposition, Defendant stated that it conducted the required annual inspections. (*See* Dkt.
22 Nos. 93 at 24–26, 94 at 301–320.) But self-serving declarations not based upon personal
23 knowledge are insufficient to demonstrate a factual dispute. *Nilsson*, 503 F.3d at 952 n.2.

24 Parsons testified that he was prepared to testify as to record-keeping practices and that all
25 inspections were in the records. (Dkt. No. 46-1 at 70, 156–59, 178–78.) Parsons later testified at
26 his second deposition that the absence of an inspection record does not necessarily mean that an

1 inspection did not occur. (Dkt. No. 79-1 at 217.) Defendant has admitted that the records
2 collected in response to Interrogatory No. 5 “mostly only tangentially contained evidence of
3 anchor inspections.” (Dkt. No. 87 at 20.) Defendant now argues that “the absence of a non-
4 mandatory record does not entitle [Plaintiff] to an inference that the inspections did not occur.”
5 (*Id.* at 17.)

6 On a summary judgment motion, credibility determinations are not appropriate, and a
7 court must draw all justifiable inferences in the light most favorable to the nonmoving party. *See*
8 *Liberty Lobby*, 477 U.S. at 255. A reasonable trier of fact could infer that the absence of non-
9 mandatory anchor inspection records does not prove that Defendant failed to make the anchor
10 inspections. Thus, material issues of fact remain as to whether anchor inspections occurred at
11 Cypress 1 and 3 between 2013 and 2016. Therefore, Plaintiff’s motion for summary judgment is
12 DENIED on this ground.

13 b. *Anchoring components deeper than 100 feet*

14 Five of Defendant’s sites have mooring components deeper than 100 feet: Orchard
15 Rocks, Clam Bay, Port Angeles, and Cypress 1 and 3. (Dkt. No. 46-1 at 68, 110–11, 136, 147,
16 173.) The Permits unambiguously require inspections of the entire mooring components, not
17 only those above 100 feet. (Dkt. 29-2 at 11.) Defendant’s employees may not dive deeper than
18 100 feet. (*See* Dkt. No. 25-1 at 63.) Until 2017, Defendant conducted visual inspections only of
19 the shallower components of these systems, but Defendant contends that it “inspected” the
20 deeper components by examining the condition of the shallower components and by checking
21 line tension or pulling up anchors. (*See* Dkt No. 46-1 at 61, 87 at 22, 89 at 2–3.) Ecology
22 concluded that this form of examination does not meet permit requirements for “inspection.”
23 (Dkt. No. 52-1 at 163–64.)

24 A court shall interpret an NPDES permit like any other contract. *Nat. Res. Def. Council,*
25 *Inc. v. County of Los Angeles*, 725 F.3d 1194, 1204–05 (9th Cir. 2013). If the language is plain,
26 the court construes its meaning. *Id.* If the language is ambiguous, the court “may turn to extrinsic

1 evidence to interpret its terms.” *Id.* As the agency charged with enforcing NPDES permits,
2 Ecology’s interpretation of the ambiguous term “inspection” is entitled to substantial deference.
3 *See Russian River Watershed Prot. Comm. v. City of Santa Rosa*, 142 F.3d 1136, 1141 (9th Cir.
4 1998) (holding that the district court properly deferred to the agency authorized to enforce
5 NPDES permits); *Nat. Res. Def. Council, Inc.*, 725 F.3d at 1205. Thus, Plaintiff has shown that
6 Defendant violated the permits by not inspecting mooring components deeper than 100 feet at
7 Orchard Rocks, Clam Bay, Port Angeles, and Cypress 1 and 3 in 2012, 2013, 2014, 2015, and
8 2016. Therefore, Plaintiff’s motion for summary judgment is GRANTED on this ground.

9 *c. Cypress 1 and 3 (2018) and Port Angeles (2017)*

10 Defendant’s Pollution Prevention Plan that went into effect in October 2017 required it to
11 use either a contracted dive service or a remotely operated vehicle to conduct inspections of its
12 moorings below the employee diver depth limit of 100 feet. (Dkt. No. 29-2 at 11, 131.) The plan
13 further required Defendant to document its visual inspection of each anchoring line and identify
14 maintenance concerns. (*Id.* at 131, 134.) The permits require Defendant to operate its facilities in
15 accordance with the plan. (*E.g., id.* at 11.)

16 As part of DNR’s investigation of Defendant following the collapse of Cypress 2, DNR
17 hired Mott MacDonald and its subcontractor Collins Engineers. (Dkt. No. 79-2 at 631–34.) Mott
18 MacDonald evaluated Cypress 1 and 3 in 2018 and Port Angeles in 2017. Defendant relies on the
19 inspections that Mott MacDonald performed to fulfill its anchor inspection requirements for
20 Cypress 1 and 3 in 2018 and Port Angeles in 2017. (Dkt. Nos. 46-1 at 333–34, 89 at 24–25.)

21 But the report was prepared for use by DNR and other state agencies; it was “limited in
22 scope” and “[d]etailed inspection and physical material sampling were not performed,” and the
23 report did not make repair or maintenance recommendations. (Dkt. No. 79-2 at 632.) Defendant
24 reviewed the report’s conclusion but did not undertake additional steps to determine whether
25 maintenance work was needed. (*See* Dkt. No. 79-2 at 147–53.) Parsons testified that Defendant’s
26 employees did inspect the mooring systems at Port Angeles in 2017, but he admits that the

1 mooring lines and anchors were not inspected below 100 feet. (*See* Dkt. No. 79-1 at 185–90.)
2 Thus, Plaintiff has demonstrated that Defendant violated the permits by failing to inspect
3 mooring components at Cypress 1 and 3 in 2018 and at Port Angeles in 2017 in the manner
4 required by the permits and the October 2017 Pollution Prevention Plan. Therefore, Plaintiff’s
5 motion for summary judgment is GRANTED on this ground.

6 d. *Completion of inspection forms (2017–2018)*

7 Defendant’s October 2017 Pollution Prevention Plan also required it to complete an
8 Annual Below Surface Visual Inspection form “to record the condition of the mooring
9 components and identify specific maintenance concerns.” (Dkt. 29-2 at 131–32, 134.) The form
10 requires a detailed assessment of the mooring system, including an assessment of (1) each
11 component of each mooring line, (2) whether routine or immediate repairs are needed, (3) the
12 dates when repairs were identified and completed, (4) a description of the repair, (5) the name of
13 the person completing the repair, (6) the name of the person completing the inspection form, and
14 (6) the date the form was completed. (*Id.* at 134.) As mentioned above, the permits require
15 Defendant to operate in accordance with the plan. (*E.g.*, Dkt. 29-2 at 11.)

16 It is undisputed that Defendant completed the form for its Hope Island site in 2017 and
17 2018. (*See* Dkt. Nos. 79 at 25, 79-1 at 142–45, 274–77.) It is likewise undisputed that Defendant
18 failed to complete the form for the remainder of its sites. (*See generally* Dkt. Nos. 79, 87, 95.)⁵
19 Under the Clean Water Act, Defendant is strictly liable for failure to use the required form. *See*
20 *Sierra Club v. Union Oil of Cal.*, 813 F.2d 1480, 1490–91 (9th Cir. 1987). Thus, Plaintiff has
21 demonstrated that Defendant violated the permits by failing to complete the required Annual
22 Below Surface Visual Inspection forms for Cypress 1 and 3, Port Angeles, Orchard Rocks, Fort
23 Ward, and Clam Bay in 2017 and 2018. Therefore, Plaintiff’s motion for summary judgment is

24
25 ⁵ Defendant observes that the Court has already found that the 2017 Pollution Prevention
26 Plans were deficient, (Dkt. No. 68), and suggests that “if any violation exists here, it is at most a
failure to implement a plan that the Court already has determined was insufficient.” (Dkt. No.
87.)

1 GRANTED on this ground.

2 4. Reporting of Fish Escapement and Tracking Fish Numbers

3 The permits require Defendant provide in its Release Prevention Plan “[p]rocedures for
4 routinely tracking the number of fish within the pens, the number of fish lost due to predation
5 and mortality, and the number of fish lost due to escapement.” (Dkt. No. 29-2 at 12.) The permits
6 further require Defendant to submit an Annual Fish Release Report by January 30 of each year,
7 which “must include, to the extent possible, all fish released or escaped to state waters, including
8 all Significant Fish Releases (see S8).” (*Id.* at 12.) Condition S8 defines a release as “significant”
9 when it involves “1,500 or more fish whose average weight exceeds 1 kilogram (kg) or 3,000 or
10 more fish whose average weight is equal to or less than 1 kg.” (*Id.* at 13.) Such releases must be
11 reported within 24 hours. (*Id.*) Thus, the permits require immediate reporting of significant fish
12 escapes and annual reporting of all fish escapes. (*Id.* at 12–13.)

13 Defendant tracks its fish using a software program called FishTalk. (Dkt. No. 79-1 at
14 428–29.) First, Defendant uses electronic counters to count the number of fish it places into
15 trucks for transport to its pens. (*Id.* at 296–97, 431.) Then Defendant assumes (without
16 verification) a loss during transport of five percent and enters this revised number into FishTalk.
17 (*Id.* at 297–98, 315.) While fish are rearing in the pens, there may be further losses through
18 mortality or removal for other reasons; Defendant states that these are entered into FishTalk. (*Id.*
19 at 300–01, 429.) Finally, Defendant counts the fish with electronic counters again when they are
20 harvested. (*Id.* at 306–07.) Defendant states that its electronic counters are accurate to plus or
21 minus two percent. (*Id.* at 297, 307.)

22 Defendant has represented in its Annual Fish Release Reports that it has lost no fish
23 through escapement. (Dkt. No. 79-2 at 584, 589, 593, 597, 601, 604, 609.) From 2012 to 2015,
24 Defendant reported that there were no “significant” fish escapes. (*Id.* at 585, 589, 593, 597.) In
25 the subsequent years, Defendant reported that there were no fish escapes. (*Id.* 601, 604, 609.)
26 However, Defendant’s data shows that there have been downward variations every year between

1 the number of fish it puts in its pens and the number of fish it removes and harvests. (*See id.* at
2 615–28.) The parties disagree as to whether this data shows that Defendant failed to report fish
3 escapes or whether these discrepancies are within an acceptable range of error.

4 Plaintiff argues that Defendant’s fish inventory data should be evaluated based on
5 variations within each individual pen. (Dkt. No. 79 at 27–29, 95 at 16.) This analysis shows that
6 there were negative deviations of more than four percent and up to 17 percent in numerous pens
7 (called “Units” in the data), including Unit 111 at Cypress 1 in January 2016; Unit F12 at Fort
8 Ward in May 2016, Unit R08 at Orchard Rocks in June 2016, Unit 10 at Hope Island in August
9 2016, Unit 06 at Port Angeles in December 2016, Units 121 and 124 at Cypress 1 in January
10 2018, and Units 315 and 324 at Cypress 3 in January 2018. (*See* Dkt. No. 79-2 at 619–25.)
11 Plaintiff contends that because these deviations in 2016 and 2018 were too large to explain by a
12 four percent margin of error, Defendant violated the requirement to report fish escapements.
13 (Dkt. No. 79 at 29.)

14 In contrast, Defendant argues that its fish inventory data should be evaluated based on
15 variations within each facility, not each pen. (Dkt. Nos. 26–27.) In support of this argument,
16 Defendant points to its expert report by Cormac O’Sullivan. (*Id.*) O’Sullivan states that it is
17 standard industry practice to “look at the entire farm, not the individual pens.” (Dkt. No. 88 at 6.)
18 O’Sullivan calculates that, across all eight farms, there was an average site variance of -2.65
19 percent, which is below the Best Aquaculture Practices Standards (“BAP”) of three percent for
20 accuracy of inventory tracking. (*Id.*) O’Sullivan therefore concludes that there is “no indication”
21 of either “large escape events from *any* of the sites or leakage from the sites.” (*Id.* at 5–6.)
22 Additionally, O’Sullivan applies the BAP standard to conclude that Defendant’s fish tracking
23 practices generally comply with best practices for accurate tracking. (Dkt. No. 88 at 4.)

24 The language of the NPDES permit is plain that Defendant must report all fish escapes
25 “to the extent possible.” It was possible for Defendant to identify in its data that there were
26 downward variations that exceeded three percent per pen in 2016 and 2018. (*See* Dkt. No. 79-2

1 at 615–28.) Extrinsic evidence of industry standards does not alter the plain meaning of the
2 permit. *Nat. Res. Def. Council*, 725 F.3d at 1204–05. Because the permits also require accurate
3 fish tracking, Defendant cannot avoid this requirement by arguing that human error explains the
4 variation. A failure to accurately track is likewise a violation of the permits. (Dkt. No. 29-2 at
5 12.) Furthermore, in the years 2012–2015, Defendant reported only whether there were
6 “significant releases.” (See Dkt. No. 79-1 at 585, 589, 593, 597.) This violates the Permits’
7 requirement to report “all fish releases or escaped,” and not only “significant” releases. (E.g.,
8 Dkt. No. 29-2 at 12.) Thus, Plaintiff has demonstrated that in 2012–2015, 2016 and 2018,
9 Defendant violated the permit requirement to track the number of fish in its net pens and report
10 all fish escapements. Therefore, Plaintiff’s motion for summary judgment is GRANTED on this
11 ground.

12 **D. Defendant’s Motion for Partial Summary Judgment**

13 Defendant moves for partial summary judgment on Plaintiff’s claims relating to
14 Defendant’s Cypress 2 facility, arguing that the S1 claims are barred by *res judicata* and all the
15 Cypress 2 claims are moot. (See Dkt. No. 84 at 5.)

16 1. *Res Judicata and Plaintiff’s S1 Claims*

17 “Congress is understood to legislate against a background of common-law adjudicatory
18 principles.” *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991). The
19 common-law principle of *res judicata*, also known as claim preclusion, is generally presumed to
20 apply to administrative decisions. See *Littlejohn v. United States*, 321 F.3d 915, 921–22 (9th Cir.
21 2003). Courts, however, do not “have free rein to impose rules of preclusion, as a matter of
22 policy, when the interpretation of a statute is at hand.” *Astoria*, 501 U.S. at 108. When “a
23 statutory purpose to the contrary is evident,” then the statutory claim preclusion bar applies
24 instead of common law *res judicata*. See *id.*; *Littlejohn*, 321 F.3d at 921–22.

25 In its 1987 amendments to the Clean Water Act, Congress added a provision that
26 specifies when claims for civil penalties are precluded by state or federal enforcement actions.

1 See 33 U.S.C. § 1319(g)(6)(A). Claims for civil penalties are barred for any violation

- 2 (i) with respect to which the Administrator or the Secretary has commenced
 3 and is diligently prosecuting an action under this subsection,
 4 (ii) with respect to which a State has commenced and is diligently prosecuting
 5 an action under a State law comparable to this subsection, or
 6 (iii) for which the Administrator, the Secretary, or the State has issued a final
 7 order not subject to further judicial review and the violator has paid a
 8 penalty assessed under this subsection, or such comparable State law

9 See 33 U.S.C. § 1319(g)(6)(A).

10 At the same time, Congress created an exception to the statutory bar for citizen suits in
 11 which the plaintiffs, prior to the enforcement action, either (1) filed suit or (2) provided notice to
 12 the Environmental Protection Agency or to the state with respect to the alleged violation. See 33
 13 U.S.C. § 1319(g)(6)(B); *Black Warrior Riverkeeper, Inc. v. Cherokee Mining, LLC*, 548 F.3d
 14 986, 991 (11th Cir. 2008) (holding that the prior-filed citizen suit exception to the civil penalties
 15 bar applies in both state and federal enforcement actions); *Thiebaut v. Colo. Springs Utils.*, 2007
 16 WL 2491853 at *5 (D. Colo. Aug. 29, 2007) (concluding that the prior-commenced exception
 17 limits the applicability of *res judicata*), *aff'd*, 455 F. App'x 795 (10th Cir. 2011). Congress's
 18 intent to create an exception to the statutory bar is evident in § 1319(g)(6) of the Clean Water
 19 Act; for that reason, there is no "legislative default" to common-law claim preclusion principles.
 20 See *Astoria*, 501 U.S. at 110. By creating this exception, "Congress reiterated its commitment to
 21 citizen suits, which a Senate Report described as 'a proven enforcement tool.'" *Black Warrior
 22 Riverkeeper, Inc.*, 548 F.3d at 988 (quoting the legislative record). The Clean Water Act thus
 23 alters the ordinary *res judicata* rule to allow a prior-commenced citizen suit to pursue a claim for
 24 civil penalties, even after a federal or state enforcement action related to the same violation has
 25 been resolved. See *id.*

26 This prior-commenced exception for citizen suits applies here.⁶ On August 24, 2017,

⁶ In a prior order, the Court found that the only Clean Water Act statutory bar to citizen suits that "could conceivably apply" to Ecology's enforcement action is § 1319(g)(6)(A)(iii), which bars citizen suits in which a state agency has issued a final order under the Clean Water Act, or comparable state law, and the violator has paid the penalty assessed. (See Dkt. No. 76 at 19.)

1 Plaintiff notified the EPA and Ecology of its intent to sue Defendant, and Plaintiff provided a
2 supplemental notice letter on September 6, 2017. (Dkt. No. 1 at 22, 30.) On November 13, 2017,
3 Plaintiff filed its complaint against Defendant asserting several CWA violations related to the
4 Cypress 2 collapse and violations at Defendant's seven other Puget Sound net-pen facilities. (See
5 Dkt. No. 1.) Ecology issued its notice of penalty on January 30, 2018. (Dkt. No. 52-1 at 160–66.)
6 On April 24, 2019, Defendant and Ecology entered into a consent decree regarding the Cypress 2
7 collapse, and on April 25, 2019, the Pollution Control Board, pursuant to the consent decree,
8 dismissed Defendant's appeal of Ecology's administrative penalty. (See Dkt. No. 74-1 at 4–11,
9 18.) Because Plaintiff commenced its action before Ecology, the entry of the consent decree
10 between Defendant and Ecology cannot preclude its enforcement action. See 33 U.S.C.
11 § 1319(g)(6)(A)–(B).

12 Defendant argues that, notwithstanding § 1319(g)(6), the common-law principle of *res*
13 *judicata* precludes Plaintiff's S1 claims because there is a final order in Ecology's state
14 enforcement action on the identical CWA violations. (See Dkt. No. 103 at 2–4.) Defendant relies
15 on a pre-*Astoria* case in which the Ninth Circuit concluded that the 1972 amendments to the
16 Clean Water Act did not modify "the normal rules of preclusion." (Dkt. No. 103 at 4 (citing
17 *United States v. IIT Rayonier, Inc.*, 627 F.2d 996 (9th Cir. 1980).) But *IIT Rayonier* did not
18 interpret Congress's 1984 amendments to the Clean Water Act, nor did it apply the principles
19 that the Supreme Court announced in *Astoria*. See *IIT Rayonier, Inc.*, 627 F.2d at 1000–02.
20 Defendant also argues that a Ninth Circuit case involving a class action of sport fishers alleging
21 state law violations demonstrates that § 1319(g)(6) did not alter normal claim preclusion rules.
22 (See Dkt. No. 103 at 11 (citing *Alaska Sport Fishing Ass'n v. Exxon Corp.*, 34 F.3d 769 (9th Cir.
23 1994).) But the parties in that case did not argue, and the court of appeals did not consider, that
24 § 1319(g)(6) created a specific statutory preclusion rule for citizen suits. See *Alaska Sport*
25 *Fishing Ass'n.*, 34 F.3d at 773–74.

26 Defendant's interpretation would render meaningless the prior-commenced citizen suit

1 exception. “If the statutory language is plain, [a court] must enforce it according to its terms.”
2 *See King v. Burwell*, 135 S. Ct. 2480, 2489 (2015). Accordingly, the Court begins and ends its
3 analysis with the plain language of the statute, which clearly permits prior-commenced citizen
4 suits to proceed notwithstanding a final order in a state-initiated administrative enforcement
5 proceeding. *See Burwell*, 135 S. Ct. at 2489. Thus, Plaintiff’s S1 claims are not barred by *res*
6 *judicata*, and Defendant’s motion for partial summary judgment is DENIED on this ground.

7 2. Mootness

8 To establish mootness, a defendant must show that the district court cannot order any
9 effective relief. *See City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000); *Sierra Club*, 853 F.2d at
10 669) (“The burden of proving that the case is moot is on the defendant.”). The cessation of illegal
11 conduct following the commencement of a suit “ordinarily does not suffice to moot a case” because
12 civil penalties still serve as a deterrent to future violations. *Friends of the Earth v. Laidlaw*, 528 U.S.
13 167, 193 (2000) (holding that a citizen suit was not moot where the polluting facility at issue had
14 been “permanently closed, dismantled, and put up for sale, and all discharges from the facility had
15 permanently ceased.”). “Only when it is ‘absolutely clear that the allegedly wrongful behavior
16 could not reasonably be expected to recur’ will events following the commencement of a suit
17 moot a claim for civil penalties.” *San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153,
18 1160 (9th Cir. 2002) (quoting *Laidlaw*, 528 U.S. at 189). This is because civil penalties under the
19 Clean Water Act serve “to deter future violations and thereby redress the injuries that prompted a
20 citizen suitor to commence litigation.” *Laidlaw*, 528 U.S. at 174. The deterrent effect of civil
21 penalties is no less potent when the defendant no longer operates or owns the polluting facility.
22 *See San Francisco BayKeeper*, 309 F.3d at 1160. “Allowing polluters to escape liability for civil
23 penalties for their past violations by selling their polluting assets would undermine the
24 enforcement mechanisms established by the Clean Water Act.” *Id.*

25 Here, Defendant argues that Plaintiff’s claim for civil penalties for violations at Cypress 2
26

1 should be dismissed as moot. (Dkt. No. 84 at 17.)⁷ Cypress 2 was destroyed and is no longer
2 operational. (See Dkt. Nos. 29-2 at 210–212, 43 at 3.) Ecology completed its closure monitoring
3 of the site, and Defendant has represented that the Cypress 2 permit has been terminated as of
4 September 28, 2019. (See Dkt. No. 86 at 6.) But in its previous order, the Court found that it
5 could still provide Plaintiff effective relief in the form of civil penalties because it was not
6 absolutely clear whether the site could be rebuilt and because Defendant continued to operate its
7 other seven net-pen facilities in Puget Sound under identical permits. (See Dkt. No. 76 at 16.)
8 Now, it seems clear that Cypress 2 is permanently closed, but Defendant continues its operations
9 in Puget Sound. Thus, civil penalties still serve to deter future Clean Water Act violations. See
10 *Laidlaw*, 528 U.S. at 193; *San Francisco BayKeeper*, 309 F.3d at 1160. Therefore, Defendant’s
11 motion for partial summary judgment in DENIED on this ground.

12 **III. CONCLUSION**

13 For the foregoing reasons, Defendant’s motion to exclude expert opinions (Dkt. No. 82)
14 is DENIED. Plaintiff’s motion for partial summary judgment (Dkt. No. 79) GRANTED in part
15 and DENIED in part as follows:

- 16 1. Plaintiff’s request to strike the declarations of Stephen Weatherford and Bill French is
17 GRANTED, and Plaintiff’s request to strike Parsons’s and Hodgins’s declarations is
18 DENIED;
- 19 2. Plaintiff’s motion for summary judgment its Condition S7.1 claim is DENIED;
- 20 3. Plaintiff’s motion for summary judgment on its S6.F claim is:
 - 21 a. DENIED as to Cypress 1 and 3 between 2013 and 2016,
 - 22 b. GRANTED as to inspections of anchoring components deeper than 100 feet at
23 Orchard Rocks, Clam Bay, Port Angeles, and Cypress 1 and 3 in 2012, 2013,
24 2014, 2015, and 2016. 2012 to 2016;

25
26 ⁷ The Court previously dismissed as moot Plaintiff’s claims for injunctive relief at Cypress 2.
(Dkt. No. 76 at 15.)

1 c. GRANTED as to Cypress Island Sites 1 and 3 (2018) and Port Angeles
2 (2017); and

3 d. GRANTED as to completion of the Annual Below Surface Visual Inspection
4 forms for Cypress Island Sites 1 and 3, Port Angeles, Orchard Rocks, Fort
5 Ward, and Clam Bay in 2017 and 2018.

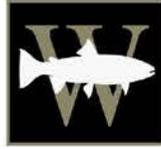
6 4. Plaintiff's motion for summary judgment is GRANTED as to its claim that in 2012–
7 2015, 2016 and 2018, Defendant violated the permit requirement to report all fish
8 escapements and track the number of fish in its net pens.

9 Defendant's motion for partial summary judgment (Dkt. No. 84) is DENIED.

10
11 DATED this 25th day of November 2019.

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14 

15 John C. Coughenour
16 UNITED STATES DISTRICT JUDGE
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Wild Fish Conservancy

N O R T H W E S T

S C I E N C E E D U C A T I O N A D V O C A C Y

**Comments on Washington Department of Fish and
Wildlife State Environmental Protection Act Review
of Cooke Aquaculture Proposal to Commercially
Propagate and Harvest *Oncorhynchus mykiss* in
Puget Sound net pens: SEPA #19056**

Submitted 11/22/19

Drafted and Submitted by:

Wild Fish Conservancy

Kurt Beardslee, Executive Director

Overarching Comments:

In addition to and as explained by the detailed technical comments below, Wild Fish Conservancy provides these overarching comments to highlight that the State's mDNS and SEPA process is legally flawed in many respects, including but not limited to the following:

- The State improperly relinquished its SEPA duties by delegating its primary responsibilities for evaluating the environmental impacts of Cooke's proposed net pens farms to Cooke. Cooke is clearly biased in favor of allowing its proposal, and all analysis and documents that Cooke or its consultants prepared are therefore unreliable.
- The net pens will have significant adverse impacts on the environment, and the State failed to prepare an environmental impact statement to fully consider and evaluate reasonably foreseeable consequences from these impacts. For example, and as detailed in these technical comments, escaped steelhead from the net pens will adversely affect wild salmonids by competing for food and forage space with native salmonids and by amplifying and transmitting diseases and parasites. The State did not fully consider this, instead relying on an outdated EIS and a paragraph from Cooke that incorrectly minimizes impacts on wild salmonids without citing any support for its assertion.
- A new EIS is required because there are significant adverse effects that are not addressed in the prior EIS and because there is substantial new information and changed circumstances. For example, the outdated EIS relied upon by the State addressed rearing of a different species—Atlantic salmon—and not the steelhead currently proposed for Puget Sound net pens and was prepared before the listing of various species in Puget Sound under the Endangered Species Act, including Puget Sound steelhead, Puget Sound Chinook, and the Southern Resident Killer Whale. Further, there is an abundance of new science informing the risks net pens pose to the environment since the 1990 EIS. The cursory additional information and analysis

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- is insufficient to update an entirely stale EIS. These comments detail some of the many ways the EIS and checklist fail to consider best available science that has come out in the last 30 years.
- The SEPA documents are neither complete nor accurate, failing to disclose many risks and harms associated with the net pens. Relatedly, the State failed to gather necessary additional information and failed to consider reasonably foreseeable consequences. For example, the State has not supplemented the decision documents with information from the recent Orchard Rocks incident. Regardless of whether the State considers the incident, the State has not provided the public with an evaluation of this incident and an opportunity to comment on the reasonably foreseeable risks posed by pen sinking.
 - The State failed to disclose and consider all direct, indirect, and cumulative impacts of the net pens, and accordingly failed to provide an accurate and complete analysis.
 - The State narrowed the project scope, improperly limiting its effects analysis and failing to consider many impacts posed by net pen farming in the State of Washington.
 - The State failed to articulate and analyze updated objectives or purposes, making it impossible to consider and evaluate reasonable alternatives. The 1990 EIS articulates an objection/purpose of assisting in resolution of conflict by evaluating the environmental impacts of fish farms on the biological and build (human) impacts. This objective/purpose is clearly outdated and based on the political climate at the time. The update in Attachment D does not provide any updated objectives/purposes, but simply states a "proposed action" of permitting steelhead/rainbow farming. This failure to articulate objectives or a purpose makes it impossible for the public to understand what reasonable alternatives are available that the State failed to consider.
 - The State failed to consider and evaluate reasonable, safer alternatives to raising the rainbow trout/steelhead at existing marine net pen sites in Puget Sound. For

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- example, the State should have considered an alternative requiring all salmon farms to be self-contained land-based facilities. As another example, the State should have considered an alternative regulation that restricts the number of steelhead/rainbow that may be farmed in the pens. These alternatives would significantly lessen the risks and impacts of salmon farming on the environment while still allowing Cooke to run a profitable salmon farming business.
- The no action alternative in the 1990 EIS is outdated and does not make sense because the “existing regulations and guidelines,” as well as the laws of the State of Washington related to net pens, that would form the basis for a no action alternative have changed in the last 30 years.
 - The State must prepare an EIS because of the significant negative environmental and health impacts from the net pens, examples of which are detailed in these comments.
 - The mitigation measures included in the decision documents are unenforceable; fail to address all significant adverse impacts on the environment; will not reduce impacts to a nonsignificant level; and otherwise do not comply with SEPA.
 - The regulatory agencies lack sufficient regulatory controls to allow the proposed action to go forward. As demonstrated by disease outbreaks—like the 2012 outbreak of IHNV and the PRV outbreaks—as well as equipment failure—like the 2019 Orchard Rocks incident and the collapse of Cypress Site 2 and its aftermath—the regulatory agencies are ill-equipped to mitigate any adverse impacts.

Under the State Environmental Protection Act (SEPA), this review requires a threshold determination of whether an action is likely to have a “significant adverse environmental impact.” The State’s current threshold determination of Mitigated Determination of Non-Significance (mDNS) is inadequate as an environmental review and fails to address many well-documented risks associated with farming salmonids in these exact pens. Industrial-scale, open-water finfish aquaculture poses significant environmental risks, and the transition from Atlantic salmon aquaculture to rainbow/steelhead trout aquaculture adds significant risks that

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cannot be adequately mitigated. The State has violated SEPA by not preparing a new Environmental Impact Statement (EIS). Below, we detail some but not all of the significant environmental impacts that compel a determination that this proposal poses significant adverse environmental impacts, and reasons why the mitigations proposed are not reasonably certain to address those risks. In evaluating the proposed actions, the State failed to properly consider all available alternatives, or the cumulative impacts of the many risks posed by this proposed action.

The State should withdraw the Mitigated Determination of Non-Significance (mDNS), issue a Determination of Significance, and draft an EIS to assess the full impacts of this transition. Furthermore, that EIS should incorporate into its no-action alternative the cessation of operation of the pens (and cessation of any environmental risk) after the legislative non-native aquaculture phaseout takes effect in 2022.

The public comment period was flawed

The initial 21-day comment period was too short to allow adequate public comment. That period was first extended by 10 days, and again by 21 days. These extensions were announced near the end of each comment period, meaning that commenters could not budget their time to conduct the depth of analysis and consideration that might have been possible had the comment period been announced at full length to begin with.

When first announced, the comment period ended before the deadline for a legislatively-mandated report from state agencies to the legislature regarding best practices on aquaculture licensing and practices. That report was mandated by HB 2957, the law which also phased out Atlantic salmon aquaculture and mandated stricter regulations of marine net pen aquaculture in general, and was supposed to be filed on November 1. The first extension of this comment period ended on that same day. Unfortunately, that report has still not been filed as we complete these comments, meaning the public has not been able to draw on the guidance of State agencies on how “to eliminate commercial marine net pen escapement and to eliminate

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negative impacts to water quality and native fish, shellfish, and wildlife.” Proceeding with review of this proposal before completing the mandated report to the legislature puts the cart before the horse, and makes it likely that the clear will of the legislature and voters will not be reflected in the State’s response to Cooke’s request.

Even with the extensions the State has granted, there is a great deal for the public to evaluate. The filing covers over 400 pages, including a lengthy bibliography that requires review and in some cases rebuttal, as well as hundreds of references within the text to review. In addition, it references and discusses material developed by two sources who are expert witnesses for Cooke Aquaculture currently preparing to testify in ongoing litigation regarding these net pens. Understanding their statements here requires consideration of expert testimony rebutting their claims from that ongoing litigation. Furthermore, the 1990 EIS (Environmental Impact Statement) on which the State is relying is woefully outdated, and addressing the environmental effects of this policy requires the public to integrate decades of new information regarding Puget Sound, wild salmonids and other native fish in the Sound, its endangered marine mammals, the physics of tides and currents and tsunamis in the Sound, and the effects of net pens and industrial finfish aquaculture on the Sound.

The submission includes a 76-page document authored by Cooke Aquaculture staff and contractors, which purports to serve as a supplement to the 1990 Programmatic EIS. This self-interested document cannot stand on its own as a supplement to the state’s EIS, and the document largely omits discussion of the specific environmental impacts of the net pens on the threatened and endangered species under discussion, including effects on the conspecific Puget Sound steelhead which are listed as threatened under the Endangered Species Act.

That there is so much additional information accumulated in those intervening decades—including multiple new federal and state listings of endangered and threatened species, newly-designated critical habitat, and substantial new evidence of the effects and risks posed by open-water salmonid aquaculture in Puget Sound—is a strong argument of the need for the

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appropriate state agencies to conduct a full EIS. Washington Department of Fish and Wildlife (WDFW) is the appropriate agency that should write such a supplement, and in view of Cooke's active defense in litigation over its ESA and CWA violations and the considerable controversy surrounding Cooke Aquaculture in general, the proposal at issue in particular, and the widespread public consensus supporting the complete elimination of open net pen finfish aquaculture in Puget Sound, WDFW should provide a period for public comment on that EIS once it is issued. Allowing the petitioner to write its own supplement to the 1990 Programmatic EIS rather than having the state to perform its own due diligence and impartial analysis, and offer the public the statutory amount of time for comment, represents a dangerous end run around key environmental protections.

During the comment period, new information became available that the public deserves an opportunity to understand and comment on. This includes the partial sinking of a net pen at the Orchard Rocks site, and Cooke Aquaculture's efforts to intimidate Wild Fish Conservancy and prevent us, our members, and our partners in the Our Sound, Our Salmon coalition from exercising First Amendment rights to comment on this matter of public interest.

Orchard Rocks, 2019

In the 2019 Orchard Rocks incident, neighbors on shore observed the pen sinking as early as October 15, and reported their concerns to Cooke. Initially, Cooke staff told these neighbors that the apparent sinking was simply a result of normal tidal movement, and neighbors observed no repairs and it appeared that the pen was operating as if nothing was wrong. On October 18, the corner of the pen was fully under water, and emails obtained through public records requests indicate that the initial emergency alert came not from Cooke's personnel, but from state employees visiting family near the pens during their off-hours. In response to these calls from WDFW staff, coordinating with staff at the Department of Natural Resources, the US Coast Guard mounted an emergency response and created a security cordon, while Cooke and DNR divers surveyed the damage and began repairs. According to a DNR spokesperson, fish could have escaped had the sinking pen been stocked at the time.

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Emails obtained through public records requests show that state regulators did not feel Cooke followed the emergency protocols that they had agreed to through previous permits. It is unclear why it took several days to begin repairs, or whether Cooke staff intentionally misled concerned members of the public during that delay. It appears that the public and agency staff initiated the emergency response, not Cooke or its staff. The public and state agencies cannot adequately evaluate Cooke's emergency response—a central component of the risk mitigation proposed in the mDNS—without clarity on those matters, and a clearer understanding of Cooke's monitoring and preventative maintenance. In emails obtained through public records requests, state agencies appear to be planning an internal investigation of this incident, and our records request remains open. Estimated times to complete the records search extend beyond the end of this comment period. As we complete these comments, no results have been announced from the agencies' investigation of this incident.

Silencing public comment

On October 3, 2019, less than two full days after the public comment period began and the day after Wild Fish Conservancy issued a press release informing the press and public about this comment period, Cooke Aquaculture issued a "cease and desist" notice to WFC. This letter instructed WFC (a group that convened and coordinates the Our Sound, Our Salmon coalition) to "cease and desist" from expressing opinions about the risks posed by Cooke's net pens in Puget Sound, opinions derived in part from and citing an engineering report prepared and submitted as part of ongoing litigation. Cooke's letter warned "If these statements result in delay in issuance of those permits...Cooke will seek recovery of damages against WFC and [WFC executive director] Mr. Beardslee personally, in addition to injunctive relief."

Describing evidence and opinions derived from that evidence, especially as part of a petition to a government agency for redress of grievances, is the epitome of First Amendment-protected free speech. The First Amendment protects the rights of citizens to make such fair comment on matters of public interest and public controversy. Washington State is one of the first states to legislatively shield reports like this from threats like Cooke's, declaring in 1989:

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“The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies” (RCW 4.24.500).

Cooke’s letter to WFC, and any similar letters sent to members of Our Sound, Our Salmon and other individuals or advocacy groups, may have chilled or otherwise limited the public’s participation in this important process. To correct any such chilling effect, the State should take measures to ensure that the public should feel no barrier to making their opinions heard. This might include asking the Attorney General to review existing laws and regulations to ensure that the State’s anti-SLAPP laws are sufficient to protect the integrity of the public comment process, and to investigate this incident and its harm to the integrity of the State’s public comment process.

Effects of escaped steelhead on wild steelhead genetics

The mitigated Determination of Non-Significance (mDNS) rightly treats the possibility of escape, both small- and large-scale, as a real and serious threat that must be addressed before planting fish in the net pens. Escaped fish pose a range of risks to endangered wild salmonids, and to the ecology of Puget Sound and its watersheds. The recovery efforts following the 2017 collapse demonstrated inadequacies of the existing escape plan even for non-native species (see comments below regarding inadequacies of the escape plan in the mDNS).

As DFW notes in the mDNS and their exchanges with Cooke in Attachment B, under this proposal, an escape on the scale of 2017 would have released a number of fertile female steelhead that “would have exceeded the number of wild steelhead returning to spawn in many rivers in Puget Sound.” DFW’s exchange with Cooke states that the use of eggs treated to induce triploid sterility “would reduce, but not eliminate the risk.”

We note in the section on failure of triploidy-induction below that monitoring of escapes of farmed Atlantic salmon in Norway (where the salmon are farmed in regions with wild

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conspicuous) demonstrates that escaped farmed salmonids do survive and feed and grow in marine feeding areas at rates similar to wild Atlantic salmon, and survive to mature and return to Norwegian rivers to interbreed in significant numbers with wild Atlantic salmon, with known adverse population level impacts to the affected wild populations (Disreud et al. 2019, Glover et al. 2019, Karlsson et al. 2016, Skilbrei et al. 2015). Importantly, Cooke's existing net pen sites are less than 20 kilometers (12.5 miles) by water from important wild steelhead rivers, including: the Elwha, Dungeness, Samish, Skagit, Stillaguamish, Cedar, and Green rivers (Map).

Table 1 shows the average wild steelhead population abundances in rivers nearest to the existing net pen facilities. State guidelines generally regard the risk of genetic harm as too high when wild fish are less than 95% of the spawners in a stream (5% hatchery-origin). Science would argue for a much lower threshold than 5% when the hatchery fish are as significantly domesticated as those proposed to be used by Cooke. Simulations of escape and survival scenarios (Appendix) indicate high likelihood that an escape on the scale of Cypress 2017 could cause the proportion of fertile farmed rainbow/steelhead trout spawning in streams to exceed 5%, or in some scenarios could exceed the entire wild population in streams.

A full understanding of the genetic risks posed would require more detailed information on the genotypes of the broodstock for the farmed salmon, and reportedly the egg supplier will not supply those data. While WDFW officials have offered assurances that they would require such information before authorizing a finfish transfer permit, the mDNS does not specify what standards would be applied in such a review. WAC 197-11-080 requires a worst case analysis and a discussion of the likelihood of that worst case. Rather a worst case scenario, the mDNS discussion adds a scenario that is less of a worst case than the proposal offered by Cooke.

In 2018, WDFW's fish health specialist—Dr. Ken Warheit—testified before the state legislature that raising native fish in these pens would actually represent “a greater risk to the state's native wild and hatchery salmonid populations, than is Atlantic salmon marine aquaculture.” That risk should be considered through a full EIS.

Effects of escaped steelhead on wild salmonids' prey and habitat

The escape of rainbow/steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, will pose risks to native salmonids rearing in nearshore marine habitats and rivers due to competition for food and foraging space.

This will be particularly true in the case of triploid individuals because, as noted in the SEPA checklist, they will have appetites that are likely to be considerably greater than rearing wild juvenile salmon and steelhead due to the faster inherent growth rate of these triploid fish.

Diploid individuals that result from the failure of triploid induction will pose a significant risk of becoming sexually mature and interbreeding and/or competing with native rainbow and steelhead on the spawning grounds of native fish. The effects of recurrent, annual low level escapes on wild Atlantic salmon Norway is well documented, and similar impacts on native rainbow and steelhead in Puget Sound are to be expected (Diserud et al. 2019, Glover et al. 2019). Research in escapes of farmed Norwegian Atlantic salmon has also shown that escaped salmon survive to rear in the ocean for one or two years and return as mature fish to spawn in rivers of wild salmon (Olsen et al 2013, Karlson et al. 2016). Further, analysis of monitoring of escapes of farmed Atlantic salmon in Norway has shown that the actual number of escaped farmed salmon is two to four times greater than the officially reported annual number of escapes (Diserud et al. 2019, Skilbei et al. 2015). Of course, these potential risks will be greater the greater the magnitude of an escape and the greater the frequency of small-scale leakage events. But, as is the case for wild Atlantic salmon in Norway and the north Atlantic in general, the risks posed by low level escapes can not be discounted.

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A full EIS would allow for updated analyses that incorporate this and other new research on the effects of salmonid aquaculture, rather than relying on the prospective analysis conducted nearly 30 years ago, in 1990.

Effects of escaped steelhead on wild salmonids' predators

Various operations at the net pens can attract threatened, endangered, and otherwise protected predator species to the vicinity, creating risks that those birds and mammals would be harassed, experience ship strikes, or become dangerously accustomed to human proximity. The process of feeding farmed rainbow/steelhead trout attracts juvenile and adult wild fish (including ESA-listed salmonids), which in turn aggregates predator species. Predators will also be attracted by the outflow of shed skin and other parts from the penned rainbow/steelhead, and could be exposed to diseases and parasites through that proximity. The harvest process results in the release of bycatch fish, blood, and other fish parts from harvested fish, which has been shown to attract marine mammals to close proximity to the pens and boats (as in this video: <https://drive.google.com/file/d/1TWXLMTcdG4s4QEvd3BM65-GpD1IEdaRJ/view?usp=sharing>). A comprehensive EIS should examine the risks to these protected species from raising steelhead/rainbow trout in these net pens, and develop appropriate mitigation measures in consultation with federal, tribal, and international co-managers.

Farmed steelhead diseases could harm wild salmonids

Raising native salmonid species, and rainbow/steelhead trout in particular, in open Puget Sound net pens likely increases the risk of disease transmission from farmed to wild native salmonids and other fish species. Rainbow/steelhead trout are susceptible to native, endemic, Pacific salmon viruses, bacteria and parasites as well as non-native, introduced pathogens

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including piscine orthoreovirus (PRV). Rainbow/steelhead trout are vulnerable to a deadly form of infectious hematopoietic necrosis virus that can spread to and kill wild steelhead. While vaccination and state monitoring can limit this risk, it remains a greater risk than existed with Atlantic salmon.

The experience from a 2012 outbreak of the Atlantic salmon-specific strain of IHN indicates the danger of an outbreak in farmed rainbow/steelhead trout. While response plans call for rapid culling of infected fish to prevent the spread of disease, in 2012 the culling dragged on for months, with the Northwest Indian Fisheries Commission's fish health specialist noting the pen owner "reported increased mortalities starting in April. We now are at end of May and infected fish are still in those pens shedding virus." (<https://nwifc.org/ihn-virus-detected-in-atlantic-salmon-farm-near-bainbridge-island/>) The effect of such a delay if farmed rainbow/steelhead trout were infected with the strain shared with wild steelhead would be catastrophic.

Concentrated populations raised in what are effectively aquatic animal feedlots, face greater risk of disease, parasitic, and viral amplification than free-ranging, especially wild, populations. When viral, bacterial, fungal, or parasitic diseases break out in net pens, the disease-causing organisms are rapidly amplified in number and leaked to the surrounding aquatic environment in large numbers. Because their conspecifics (and other salmonids of concern, including coho salmon, ESA-listed Chinook salmon and bull trout and as required by WAC 197-11-080) will be swimming in close proximity to the pens, there is likely to be a spread of disease to endangered wild steelhead and other salmonids. In 2017, a B.C. study documented a strong correlational connection between disease prevalence in net pens and disease transfer to wild fish populations (Morton et al., 2017). Recent research in British Columbia found novel viruses in endangered salmon, and found evidence that these novel viral infections may originate from farmed salmonids (Mordecai et al., 2019).

As with terrestrial feedlots, the diseases that spread in and from net pens are likely to include the spread of antibiotic- and fungicide-resistant pathogens to wild steelhead and hatchery

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steelhead, which poses additional risk to hatcheries and the humans and wild species that feed on steelhead and other Puget Sound salmonids (discussed further below, along with other risks of pollution from net pens). As the *Seattle Times* reported in October: "The risk is low, but consequences could be severe." (<https://www.seattletimes.com/seattle-news/environment/cooke-aquaculture-seeks-to-farm-native-steelhead-in-puget-sound-after-2017-atlantic-salmon-escape/>)

A comprehensive EIS should examine the risks to these protected species from raising biologically-engineered steelhead/rainbow trout in these net pens, and develop appropriate mitigation measures in consultation with federal, tribal, and international co-managers. That analysis should include an assessment of disease transmission to predator species, as well as the effects of these diseases on wild fish, and the potential for transmission of resistant strains to hatcheries.

Fertility of steelhead eggs treated for triploid sterility

The mDNS Summary (and Attachment A to Cooke's SEPA checklist) notes that the induction of triploidy in fertilized eggs at Cooke's hatcheries is imperfect. The likely adverse effects on native rainbow and steelhead from the escape of fertile aquaculture rainbow highlights the importance of providing firm risk-averse quantitative criteria and associated procedures regarding the estimation of the rate of triploid failure in each lot of eggs intended for production of smolts for outplanting to Cooke's marine net pen facilities. WDFW's Summary notes some concerns with the procedure Cooke employs to estimate the triploidy failure rate ("failure rate", Cf. Attachment B, Cooke's response to WDFW question C2, pp. B-25,26). We believe WDFW's concerns are valid but that their recommendations do not go far enough to adequately reduce the risk posed by the presence of diploid (fertile) rainbow/steelhead in net pens in Puget Sound.

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First, we note that the assertion by Cooke on page B-25 that the results of sampling to test triploid induction presented in Attachment A “are additive” is erroneous. The data in Appendix A show results from samples of 60 to 100 fertilized eggs from 36 separate lots sampled between 2013 and 2018. These samples can legitimately be pooled only if all 36 samples were obtained from a single lot (cohort) of eggs. This is clearly not the case. Further, Attachment A contains no data on the total number of eggs in each lot from which each sample was obtained. This missing information is critical to determining the adequacy of the sample sizes for estimating the triploid failure rate of each lot.

A Bayesian assessment of the data in Attachment A (modeling 36 separate draws of the same sizes observed, drawn from a hypergeometric distribution with unknown rate of diploidy) provides a 95% Highest Posterior Density Interval for the rate of diploidy of 0.06%-0.35%, and an 80% HPDI of 0.09%-0.28%. A worst case assessment as required by WAC 197-11-080 should consider not just the average triploidy rate in these samples, but the likely range of scenarios, and should attempt to cap the risk.

We recommend an alternative approach described in the following. The details in the approach we suggest also illustrate a robust general approach to risk assessment, particular in contexts of endangered species.

There are two basic issues in regard to the risk posed by the failure of triploid induction:

1. the failure rate itself (i.e., how many diploids will be reared and released into each net pen per batch of fertilized eggs in the hatchery that have been subjected to the triploid-induction treatment)?
2. The total number of diploids in a pen that would escape either via low level leakage or catastrophic failure.

The first (failure rate) in conjunction with the size (number) of fertile eggs subjected to the triploidy-induction procedure is relevant to determining the minimum sample size of eggs from

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each lot that should be tested for triploid failure in order to assure an appropriate low risk of diploids being released into the pens. The second determines the probability or likelihood that escapes – especially under conditions of a catastrophic failure – would survive in sufficient numbers to pose a significant threat to wild rainbow or steelhead. Here, we assume that ‘significant threat’ is one that would amount to a take of a threatened or endangered salmon, steelhead, and bull trout under the ESA. Determination of this number, therefore, requires an appropriate determination by National Marine Fisheries Service (NMFS) and issuance from NMFS of an appropriate Endangered Species Act (ESA) Incidental Take Statement (ITS).

Determining a risk-averse failure rate (issue 1) is dependent on determining the risk-averse probability that escapes under a catastrophic failure of a net pen would pose a ‘significant threat’ to ESA-listed salmonids from surviving escaped diploid rainbow/steelhead. This, in turn, requires, a determination of the maximum allowable number of diploids per total number of individuals out-planted to each farm facility. We follow WDFW in expressing this number per-million eggs tested.

On page 6 of the Summary, WDFW conducts a rough illustrative exercise estimating the numbers of diploids surviving to potentially interact with wild rainbow or steelhead on the spawning grounds. WDFW provides a lower estimate of 63 mature diploid fertile fish from a catastrophic escape from a pen initially planted with 1,000,000 smolts, given a variety of assumptions about intermediate rates leading from the initial escape to the presence of surviving diploids on the spawning grounds. WDFW calculates that there would be a total of 63 such fertile escaped rainbow/steelhead, under a presumed “low survival” scenario and 316 under a “high survival” scenario.

In order to be very risk-averse (in keeping with the high priority placed on protecting ESA-listed salmon, steelhead, and bull trout), suppose we adopt a maximum of 50 fertile diploid escapees from a total net pen failure of 1,000,000 rainbow/steelhead. Under the assumptions of the WDFW “low survival” scenario 1,000,000 rainbow/steelhead net pen rearing primarily sterile

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triploid fish would have to consist of a maximum of 1560 fish in which triploid-induction had failed (Table 2). 1560 escaped diploids would result in no more than 50 surviving with the potential to reach the spawning grounds of wild steelhead or rainbow, given the assumptions used in WDFW's low-estimate scenario, which we adopt here for the sake of illustration.

In a total population of 1,000,000, 1560 diploids yields a point estimate of the triploid-induction failure rate of 0.00156. To be risk-averse with respect to ESA-listed fish, we argue that the number of fertilized eggs post-triploidy induction sampled and tested for triploid failure should be large enough to assure a probability of 0.95 (95%) or greater that the total number of diploids in the lot of 1,000,000 eggs is no greater than 1560. This requires a sample of approximately 3000 randomly selected eggs (per million eggs). The standard would require a random sample of at least 3000 be tested from each lot of one million fertilized eggs (or hatched fry) and result in no more than 1 triploid failure (figures 1 & 2). A lower-cost alternative protocol with the same effect would be to test consecutive lots of 100 eggs from each batch of 1,000,000 fertilized eggs, and to continue testing lots until either one or more diploids is detected from the current lot or until a total of 3500 eggs has been tested and no more than one diploid has been found. The occurrence of one (or more) diploid eggs in a total number of eggs fewer than 3500 would result in a distribution of the total number of diploids in the one million egg lot being tested in which the 95th percentile of the cumulative probability distribution exceeds the critical value of 1560.

It is also of interest that if the total of 2950 samples tested for failure of triploid induction (diploidy) listed in Attachment A of Cooke's SEPA Checklist, of which 5 diploids were found, were obtained from a single lot of 1,000,000 fertile eggs, the mean number of diploid in the entire lot of 1,000,000 eggs would be more than 2000, the median number would be 1900, and there would be a probability of just over 5% that the true number was greater than 3500 (Figure 2). Each of these quantities is clearly greater than the hypothetical maximum of 1560 described above.

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In summary, the risk standard should be stated as a high probability that the outcome of a specified quantitative sampling protocol not exceed a specified quantitative upper bound judged sufficient to assure that an adverse outcome of management concern will not occur. Here, the quantitative upper bound is the number of triploid failures per 3000 random samples tested (here 1), which corresponds to a corresponding high probability that no more than some total number of triploid failures (here 1560) occur per batch of million fertile eggs or fry sampled. The latter maximum number (1560) is in turn derived from an appropriate estimation of the distributions of the quantities (parameters) required to estimate (with appropriately high probability) the total number of fertile escaped diploid farmed rainbow/steelhead that would survive following a catastrophic net pen failure, where the total number of surviving fertile escaped diploids is itself determined on the basis a similar assessment of the risk posed to ESA-listed steelhead by the presence of escaped diploid farmed rainbow/steelhead on the spawning grounds of wild steelhead. The determination of such a risk standard requires that full probability distributions of the relevant quantities of interest be calculated (estimated) so that risk-averse probabilities of attainment of a risk-averse standard can be specified as a probability from the relevant tails of the distributions. Picking a point estimate, such as the mean of a sample, as in the WDFW summary (picking the mean triploidy-failure rate of 0.0017 (0.17%) from Cooke's sampling data (Attachment A to Cooke's SEPA checklist) is inappropriate and very likely to be insufficiently risk averse.

This analysis is necessarily limited given the short comment window. The State must develop and "document...its worst case analysis and the likelihood of occurrence" as required by WAC 197-11-080. A fuller analysis of the genetic risks posed by escaped non-triploid rainbow/steelhead, and measures that might mitigate those risks, would be possible with a longer comment period, and should properly be undertaken as part of a comprehensive EIS.

The proposed escape recovery plan is clearly insufficient

It appears that Cooke's recovery plans are no different from the ones employed to address the catastrophic 2017 net pen failure and escape at Cypress Island. In Appendix B, they state:

Upon receiving authorization from WDFW, the company will commence recovery of escaped fish through one or more of the following actions: (1) use of company skiffs and seine nets; (2) contacting the Northwest Indians Fishery Commission and nearby tribal Natural Resource managers to help facilitate the recapture of escaped fish; (3) contacting and engaging the services of local commercial fishing boat operators to facilitate the recapture escaped fish.

This approach was inadequate in 2017, resulting in substantial unrecovered escapees. It is far less adequate for this proposal. Here, the escaped fish may school with threatened wild salmonids and conspecifics. While non-specialists might reasonably have been expected to make quick distinctions between a recovered Atlantic salmon and a wild salmonid, those distinctions will be much harder in this case. A captured steelhead might be a threatened wild steelhead that must be immediately released, or a hatchery-raised steelhead subject to catch limits, or a farm-raised steelhead that must be retained. This distinction may be difficult for non-specialists to make under emergency conditions. As a result, escapees are likely to be harder to recover than were Atlantic salmon.

A recent comprehensive review of efforts to recapture escaped fish from marine aquaculture (including open net pen farmed Atlantic salmon and rainbow trout) demonstrates that such efforts are largely unsuccessful (Dempster et al. 2018). This review casts considerable doubt that escaped farmed salmon and steelhead that escape during either persistent low-level "leakage" or less frequent catastrophic failures such as the one that occurred at Cypress Island in August 2017 cannot be recaptured in ecologically significant numbers.

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In passing HB 2957, the state legislature tasked state agencies “to eliminate commercial marine net pen escapement.” Using the same escape plan that failed dramatically in 2017 does not fulfill that statutory language, or the high standard that the legislature and the people of Washington demanded of the marine aquaculture industry. WAC 197-11-080 requires an analysis of the worst case scenario and its likelihood, which are not adequately discussed.

A full EIS would allow WDFW and other agencies and co-managers to consider a range of alternatives to better mitigate this risk.

The “no-recovery” option for escapes as an unmitigated environmental risk requiring SEPA review

SEPA review requires a threshold determination of whether an action is likely to have a “significant adverse environmental impact.” As the Department of Ecology SEPA FAQ notes, “An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe.” The FAQ explains further that an agency may issue a “mitigated DNS in lieu of preparing an EIS when there is assurance that specific enforceable mitigation will successfully reduce impacts to a nonsignificant level.”

In this case, one of the forms of mitigation required by the DNS seems to acknowledge that there are risks that cannot reduce impacts to a nonsignificant level. Regarding escape recovery plans, including scenarios for recovery after a catastrophic failure of the pens, the mDNS states:

It is conceivable that an attempt to recover fish after an escape event may negatively affect native Pacific salmonids more than no attempt to recover fish. Cooke is required to work with WDFW, Ecology, and DNR to include a no-recovery option in the 2020 Fish Escape Prevention, Response, and Reporting Plan, to be finalized December 2019. This option should include when, where, and under what conditions a recovery effort should not be attempted. A no-

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recovery option would be triggered by the state, in consultation with co-managers and federal agencies for the purpose of protecting native Pacific salmonids. A no-recovery option can be triggered by Cooke if the attempted recovery would put the health and safety of its employees at risk.

This scenario exceeds the scope of an mDNS and demonstrates the need for a finding of significance and an environmental impact statement.

The mDNS rightly treats the possibility of escape as a real and serious threat that must be addressed before planting fish in the net pens. Escaped fish pose a range of risks to endangered wild salmonids, and to the ecology of Puget Sound and its watersheds. The recovery efforts following the 2017 collapse demonstrated inadequacies of the existing escape plan even for non-native species. As DFW notes in the mDNS and their exchanges with Cooke in Attachment B, an escape on the scale of 2017 would have released a number of fertile female steelhead that “would have exceeded the number of wild steelhead returning to spawn in many rivers in Puget Sound.” DFW’s exchange with Cooke states that the use of eggs treated to induce triploid sterility “would reduce, but not eliminate the risk.”

To mitigate that risk, DFW requires Cooke to prepare an escape recovery plan. That escape recover plan itself could pose environmental risks. DFW recognizes that significant risk and imposes a further mitigation, one in which no recovery is attempted. This option could be triggered by the state in consultation with federal and tribal partners, but also can be triggered by Cooke based on its assessment of risk to its crew.

This creates a risk that there would be no mitigating effort taken to address the adverse environmental impacts of an escape. DFW’s own arguments in the mDNS lead to the conclusion that this impact cannot be mitigated, and that it is inappropriate to proceed with a mitigated Determination of Non-Significance. To assess the risks of this projects requires a full EIS.

The pens' structure is likely to be unsafe for prevailing conditions in Puget Sound

The joint DFW/DOE/DNR investigation of the Cypress Island net pen collapse of 2017 identified failures of maintenance and engineering which resulted in the collapse of that ten-cage net pen and the release of hundreds of thousands of farmed fish. In the course of ongoing litigation resulting from that collapse, Wild Fish Conservancy contracted an independent marine engineer to provide expert testimony evaluating the collapsed pen and assessing the risks posed by the surviving pens.

Like the state's own investigation, Dr. Tobias Dewhurst's assessment found evidence that the net pen had not been adequately cleaned, and that there had been a persistent failure to confirm the soundness of the pens and their anchoring systems, despite those cleanings and inspections being required by permits and industry best practices prevailing before 2017. In addition, Dr. Dewhurst compared manufacturers' ratings for the surviving pens with conditions at the sites where they are currently deployed, and found "conditions at each of its eight sites exceeded the maximum rated conditions specified by the net pen manufacturer. Based on Cooke's documentation that I have reviewed to date, these issues persist at many of the remaining net pen sites. Thus, the remaining net pen systems may be at risk of partial or catastrophic failure during instances of extreme environmental loading, which could result in fish escapement."

He concluded: "As a result of excessive loads on the net pen system created by:

- currents and net sizes exceeding those specified by the net pen manufacturer,
- biofouling levels potentially exceeding design values, and
- mooring system installations that deviate from manufacturer recommendations and were not approved by a marine engineer, pens and cages operated by Cooke were at risk of complete failure. One pen, Cypress Site 2, did experience a catastrophic failure."

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DFW and its partner agencies should not regard it as sufficient mitigation of risk to permit these pens to transition to rainbow trout/steelhead without new engineering plans in place. The current mitigation proposal would allow these pens to operate without “engineered mooring and anchoring plans and site-specific engineered drawings stamped by a structural engineer” until 2021, and would allow them to operate without a third-party inspection for periods as long as two years.

Given the history of these net pens, the consequences of the mismatch between their manufacturers’ ratings and conditions in Puget Sound, and the inadequate maintenance and inspection preceding the 2017 collapse, these pens should be required to have adequately-engineered structures before transitioning to rainbow trout/steelhead. The engineering plans should be incorporated into a full EIS, allowing independent engineers to review the plans and assess the risks posed by the re-engineered pens and anchoring systems. The analysis should incorporate worst case scenarios and their likelihood, as required by WAC 197-11-080. Without that information, how can DFW and its partner agencies, or the voting public and elected leaders who reacted with outrage to the 2017 collapse, assess the risk and sufficiency of this current proposal?

The pens’ structure is unsafe for foreseeable conditions in Puget Sound

Puget Sound is a seismically active area, with structures facing threats of significant damage from shaking in an earthquake, and from tsunamis caused by local earthquakes and those traveling from more distant quakes up and down the coast. A substantial tsunami is likely to occur during the life of these pens, and much state policy has been directed in recent years to make high-risk structures safe from seismic risks. While the exact time of such a tsunami is not predictable, there is a substantial likelihood of such a tsunami in the foreseeable future, and much attention and policymaking effort has been dedicated to incorporating that risk into planning.

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Unlikely as that risk might be, it is necessary to consider here because, as noted in the Department of Ecology SEPA FAQ: "An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe." Since there is evidence that the net pens are already operating at or past their engineered limits, and since the people of Washington State have seen the tremendous harm done when these pens fail, understanding low-probability/high-risk events that threaten further collapses is critical in addressing the pens' full environmental impact.

Modeling by Washington's Department of Natural Resources and NOAA recently examined consequences of tsunamis for Puget Sound. Tsunami waves in some ways simply amplify the existing concerns about the structural soundness of the net pens, and add to the likelihood of a partial or complete collapse of one or more pens already considered as part of Dr. Dewhurst's engineering study. The forces generated by tsunami waves may differ in more than just intensity from routine tidal flow, in part due to the intense oscillation and the rebound of waves off of nearby shores. This risk deserves additional concern and scrutiny as part of a comprehensive EIS. A full-blown analysis of these forces is impractical given the limited time available for public comment.

To help understand the consequences of tsunamis, we requested simulated wave amplitudes and current velocities for the net pen sites. The DNR/NOAA simulations show significant added risk to all of the sites in the event of a tsunami within Puget Sound. The Fort Ward and Clam Bay sites see modeled wave heights nearly 20 feet high, as does the Port Angeles site, while the Cypress Island sites would face a wave over 10 feet high. The Skagit Bay site and Fort Ward site would face variable currents, with current speeds as high as 14 knots and rapid changes in direction and intensity. This oscillation in the course of a tsunami seems likely to generate forces outside those in normal engineering assumptions, and call for further consideration of anchoring systems and structural integrity.

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There is no reason that a seismic catastrophe should be allowed to place Puget Sound's wildlife at needless risk due to inadequate planning and preparation. WAC 197-11-080 requires a consideration of worst case scenarios, and state law requires other facilities, such as hazardous waste storage sites, to be evaluated for seismic risks. These aquaculture net pens should be subjected to a full EIS that includes consideration of the seismic risks that they uniquely face as semi-permanent, in-water structures containing farmed fish whose escape would cause significant environmental risks.

Water withdrawal and discharge into Puget Sound

The SEPA checklist states "No surface water withdrawals or diversions are required to implement the species change proposal, or to continue operations at existing floating net pen facilities." This is incorrect, since routine operations—including harvest—entail drawing water out of the pens, extracting the fish on board the harvest ship, and then allowing the water to flow back into the Sound after sluicing across the ship. This process adds pollutants including fish blood, damaged fish parts, and injured bycatch fish to the water before it returns to the Sound. A full EIS would consider the environmental impacts of that removal and addition of water to the Sound.

Pollution from the pens would be harmful to the plants and animals in nearby waters, including to endangered and threatened species

Open water net pens raising salmonids routinely disperse large volumes of feed into public waters within the boundaries of the net pens as sustenance for their farmed fish. Some portion of the feed dispersed may not be consumed by fish in the pens, and thus makes its way into,

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and have an impact upon, the surrounding marine environment. The high-energy tidal zones in which these net pens are located may cause wide dispersal of unconsumed feed. This dispersal of feed into public waters represents a continuous and constant act of "chumming," and attracts native fish species into or near the pens.

Physically small fish species, such as baitfish species and out-migrating and rearing salmonids (including ESA-listed Chinook and steelhead), may be attracted by net pen feed to the point where they physically enter a net pen facility and are vulnerable to predation from farmed rainbow trout/steelhead in the pens. The constant dispersal of feed may also cause disruptions in the natural migratory patterns of native salmonids, as the pens provide a constant and unnatural food source that may cause salmonids to occupy a single location for a longer period of time than is typical, and deter rearing or migrating salmonids from developing key feeding strategies which are critical to their early growth and development. This constant source of broadcast feeding, otherwise known as "chumming" is also likely to draw native species (including ESA-listed Chinook and steelhead) from their protective shallow nearshore habitats to net pen locations located in deep water, increasing their exposure to both avian and aquatic predators within and outside the pens.

Additionally, feed dispersed by these rainbow trout/steelhead net pens may have detrimental nutritional impacts on native fish species, as fish competing for survival in the wild may have distinct nutritional requirements from those being grown in an isolated facility.

In order to treat specific diseases or fungal occurrences, or to prevent infection, chemicals and pharmaceuticals are often applied by the industry to the fish, water, or feed in the net pens. Among the potential and likely harmful impacts to designated uses of surrounding water is the use of these chemical or pharmaceuticals for treating infections, parasites or diseases where the U.S. Food and Drug Administration (FDA) requires a waiting period before treated fish may be approved for human consumption. Native fishes in the immediate vicinity of the treated pens may also be exposed to or consume the very same chemicals and pharmaceutical

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treatments (including fish that may enter the pens attracted by the presence of feed and fish odors). These fish may then be caught in recreational or commercial fisheries and unknowingly be consumed by the public within FDA's required waiting period. A full EIS would assess the risks posed to wild fish and their human and non-human consumers by outflows of food or medicine, and from exposures of native fish entering the pens.

An additional concern with antibiotic-treated feed and treatments to fish or water is the facilitation of the development of antibacterial resistant bacteria in the sediments (Heuer et al 2009, Cabello et al. 2013, Hu 2019). This issue needs to be explicitly addressed, including the provision of data pertaining to any monitoring of the sediments below each of the extant net pens in Puget Sound that may be available, if any.

In the SEPA checklist, Cooke refers in passing to the use of unspecified probiotics in net pens. These unspecified introduced microbes are likely to colonize the microbiome of native fish and the environment near net pens. Given the growing scientific appreciation of the role of the microbiome in health and development of fish and other animals and plants, this practice deserves greater scrutiny than is practical in the limited comment period available.

The pens are also subject to, and possibly causes of, lethal algal blooms. On November 15, marine aquaculture net pens in Clayoquot Bay began seeing die-offs due to a bloom of diatomaceous algae (<https://thetyee.ca/News/2019/11/20/Algal-Blooms-Tofino/>). The concentration of fecal material, excess food, and fish flesh near pens may exacerbate these blooms, and the resulting fish deaths then produce additional pollution as they cannot be extracted from the nets quickly enough. Observers near the recent die-offs report that the waters near the pens turned "a dark brown muddy river-like colour," due to the rotting flesh.

These die-offs are likely to be more frequent in the future, since reporters observe these algae and their large blooms "have expanded their range and frequency as climate change has warmed, acidified and robbed coastal waters of normal oxygen levels." As discussed below, the inability to quickly empty the pens in the event of massive deaths or a disease outbreak

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poses significant risks to Puget Sound at large. One such risk is that the weight of the dead fish itself can add stresses to the pens' structure, making a collapse more likely during those emergency operations, and when the contents of the pens pose the greatest risk to the environment.

In passing HB 2957, the state legislature tasked state agencies "to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Allowing these pens to continue emitting this pollution fails to comply with that statutory language and the high standard that the legislature and the people of Washington demanded of the marine aquaculture industry.

A full EIS would assess all of these risks, including the risks posed by artificial probiotics to the microbial biodiversity of the Sound and its wild denizens, and benthic effects near pens.

Bycatch of fish entering pens or in harvesting and escape recovery efforts

Native fishes—including but not limited to forage fishes such as Pacific herring and potentially migrating or rearing juvenile salmon (including ESA-listed Chinook and chum salmon, steelhead, and bull trout)—may be attracted to the net pens due to the presence of feed and the presence of lower trophic taxa drawn to the feed and waste emanating from the pens..

Native fish that have entered the pens attracted by the large volumes of feed may then be entrained in the suction harvest machinery during the harvest of adult farmed rainbow trout/steelhead. There are (at least) two issues that DFW and its partner agencies must address with regard to this issue in the permits as part of a full EIS:

1. A comprehensive accounting of species composition as well as total numbers of non-target fishes entrained during each net pen harvest period in which adult farmed rainbow trout/steelhead harvest occurs. This is required, among other reasons, in order that any take of ESA-listed salmon and steelhead may be accounted. All harassment injuries and mortalities of all individuals entrained in the vacuum pump harvesting

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equipment—including but not limited to direct mortalities of ESA-listed individuals—must be accurately determined and reported to state agencies and NOAA and available for public review.

2. As documented during Cooke harvesting operations in Puget Sound, all non-target fish entrained (sucked up) by the harvest operations are commonly disposed of by being thrown from the upper deck of the harvester ship back into the water on the outside of the nets. The volume of native fish is often so extensive it requires the harvester staff to use snow shovels to scoop them up from the landing area on board the harvest vessel. Pinnipeds and gulls are routinely observed adjacent to the net pens during the harvest, feeding on the native fish as they are being discarded in violation of state and federal laws prohibiting the feeding of pinnipeds.

It is not surprising that there would be such bycatch, and it is likely that it includes endangered and threatened species. British Columbia requires reporting of bycatch (or what they term “incidental catch”) at aquaculture facilities. A complete record of the species captured since 2011 is available from the Canadian Department of Fisheries and Oceans (<https://open.canada.ca/data/en/dataset/0bf04c4e-d2b0-4188-9053-08dc4a7a2b03>). In that dataset, salmon species are recorded for every year on file. In some cases, hundreds of thousands of fish are recorded as incidental catch as part of a rapid depopulation of the pens to control a disease outbreak. Even excluding those incidents, an average of over 35,000 incidental catches in net pens per year are recorded in British Columbia. It is likely that a proportionate amount of bycatch occurs in Puget Sound, and could have serious effects on the Sound’s sensitive ecology. Because Cooke does not report that bycatch, the state does not monitor their efforts, and independent observers are not able to view the harvest process in detail, we cannot fully measure the harm this bycatch causes.

Surveys of aquatic diversity at sites near these net pens indicate substantial numbers of threatened and endangered juvenile salmonids, and forage fish. State-funded surveys including “West Sound Nearshore Fish Utilization & Assessment (SRFB Grant: 07-1898)” (2010),

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“Cypress Island Aquatic Reserve Pilot Nearshore Fish Use Assessment” (2011), “West Whidbey Nearshore Fish Use Assessment” (2007), and the ongoing “Hood Canal Nearshore Juvenile Fish Use Assessment” find substantial populations of threatened coho, Chinook, pink, and chum salmon in near-shore waters at sites near and similar to those where net pens operate. Those surveys also demonstrate substantial variation in total species diversity and population sizes from site to site (e.g. Figure 3), and between surveys at the same site over time. Salmonid populations could vary by orders of magnitude from month to month, and between years. This highlights the difficulty of monitoring and predicting the potential bycatch that might occur in these pens without active, independent monitoring.

There are three additional issues here that DFW and partner agencies must address as part of a full EIS:

- Indirect predation by net pen steelhead on ESA-listed juvenile Chinook salmon, steelhead, and bull trout (take).
- The illegal feeding of pinnipeds, which provides an additional attraction for the pinnipeds that increases the likelihood of their predating on ESA-listed Chinook salmon, steelhead, and bull trout in the vicinity of the pens.
- The harvester crew and/or net pen operator must obtain a fishing license or permit that would allow them to harvest native fish as described above.

Further, addressing this and other issues concerning potential adverse impacts to public resources from the operations of each net pen requires that WDFW as the primary regulatory agency have the authority to conduct regular and unannounced site visits and to conduct any biological sampling and testing deemed advisable to assure the public that no adverse impacts are occurring. At the very least, mitigation should require the presence of independent observers on-site during each harvest operation to quantify and describe the species and life stages of all by-caught species. A full EIS would allow analysis of the effects of bycatch on Puget Sound ecosystems and recovery plans for ESA-listed species, and the proper regulatory

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frameworks to apply for monitoring and limiting bycatch, and due consideration of various alternatives for mitigation.

Air and noise pollution impacts to adjacent lands

Net de-fouling and cleaning operations have been found to cause fouling of the air and significant noise. Residents on shoreline properties near the Fort Ward facility, for example, cannot conduct normal outdoor activities, particularly during warm months, during net cleaning operations due to the foul smell of the air that directly results from the operations and the loud noises associated with generators, pumps, and other industrial equipment. This air and noise pollution causes severe depression of local residential property values, apart from human respiratory impacts. A full EIS would allow DFW and partner agencies to determine appropriate maximum levels of airborne particulates, odor-causing chemicals, and noise levels, and require facility operations to monitor and maintain appropriate airborne pollutant and sound levels.

As part of a full EIS, DFW and partner agencies should commission an appropriate sociological survey of resident households within one-half mile of the shorelines of the locations of each net pen facility. The survey should interview residents to assess the degree and frequency (times of day, times of year) that normal and desired residential activities (e.g., outdoor family activities and social events such as dinner parties) are disrupted and/or prevented by air and noise pollution.

Fish flesh discharge

Open-air salmonid net pens chronically discharge particles of decaying fish flesh that are often consumed by native fish and birds. These particles may be contaminated with pathogens, parasites, pharmaceuticals or chemicals that may be ingested by native fishes, including

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conspecific steelhead and other salmonids. Studies have shown that these particles are potential vectors for pathogens.

This fish flesh also serves as an attractant for protected marine mammals and birds, and a full EIS should be undertaken to assess the harm this may do to those protected species.

A NMFS-approved Hatchery Genetic Management Plan (HGMP) is required

In view of the several issues of potential concern to public waters and ESA-listed native salmonids posed by the proposed open water net pen operations, a NMFS-approved Hatchery Genetic Management Plan (HGMP) for each of Cooke's freshwater hatcheries hatching rainbow/steelhead eggs, rearing fry and smolts, and outplanting smolts to open water net pens is required. This is the required ESA Section 4 Incidental Take Permit required of any artificial production facility producing any species of finfish that may have an adverse impact on ESA-listed salmonids. It is clear that open water marine salmonid net pen operations, including those currently operated by Cooke and those proposed to be operated using "triploid" rainbow/steelhead pose risks to native ESA-listed steelhead, Chinook salmon, and bull trout.

Further, since evaluation and approval of an HGMP is clearly a federal action, NEPA likely applies and a NMFS evaluation of any such HGMP would therefore require a full NEPA analysis, including preparation of an EIS.

Need for a thorough economic cost-benefit analysis of the proposed action and alternatives

Regardless of the biological concerns posed by the proposed action, no credible evaluation of the possible benefits of the proposed action can be considered complete without a full cost-

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benefit analysis of the proposed action and reasonable alternative uses of the locations currently leased by Washington Department of Natural Resources (WDNR) to Cooke Aquaculture. The public and the public servants charged with making the decision on the proposed action cannot adequately evaluate the possible benefits of the proposed action in the absence of an understanding of what the presumed benefits to the public from the proposed action are and what benefits from reasonable alternative uses of the locations are or may be. It bears reminding that the locations at which the current net pens are located, including the bottom lands and the water in and surrounding each net pen belong to the public. The public needs to be presented with a complete and clear analysis of the economic costs and benefits of the proposed action and alternative uses of these resources. This can only be achieved by a thorough economic cost-benefit analysis embedded in a bona fide alternatives analysis through a full EIS.

The proposed mitigations are inadequate and not reasonably certain to address the risks

While a full EIS would be a more appropriate way to identify and evaluate methods for mitigating the risks of introducing steelhead into net pens, there are several important mitigations that are absent from the current proposal, or that must be strengthened before the proposal moves forward. As it stands, these mitigations are not reasonably certain to address the risks that the state acknowledges, and thus do not satisfy the requirements of SEPA.

While not comprehensive, these are some suggested changes to the proposed mitigations:

- As discussed above, the harvest process must be monitored by independent observers to assess bycatch and to ensure that blood, fish parts, or other waste is not discharged into public waters.

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- WDFW and other regulators must have clear authority to conduct unannounced visits and inspections of facilities. They must have authority to review maintenance logs and to examine the structures, fish, feed, medicine, mort tanks, and other regulated components of the facility to ensure that Cooke is fulfilling all obligations under its permits and the required mitigations here.
- Independent inspections of the facilities should be required on an annual basis, not biennially.
- Reports from the independent engineer, and all other reports required from Cooke as part of this mitigation, must be clearly recognized as public records and made available to the public immediately through a publicly-accessible website.
- As discussed above, the mitigation should not merely establish a consistent means of estimating triploidy error rate, but should set a maximum acceptable error rate, and a sampling regime sufficient to assure that the error rate is estimated probabilistically and with high precision. A minimum number of total random samples for a specific, fixed number of fertile eggs from each egg cohort should be specified to assure that the total number of diploids in a specific total number of eggs from each cohort does not exceed a specified maximum threshold number T with high probability P (95% or greater) The attainment standard would be a probability of less than $(1-P)$ that the number of diploids is not greater than the threshold number T . This error rate cap should be derived based on maximum number of fertile females that might escape from a pen.
- All forms of PRV should be reportable. In addition to screening eggs and smolts, WDFW inspectors should inspect the tanks to assess the rate at which net pens are amplifying pathogens, and act to address pathogen levels that might pose significant risks to wild species attracted to the pens' vicinity.
- All farmed fish should be clearly identifiable in the event of an escape. There is no basis for allowing any of these biologically-altered domestic rainbow/steelhead trout to be introduced without a clear and approved plan in place for visually distinguishing them from any other fish in Puget Sound.

The proposal is deficient by the standards of the 1990 EIS

As stated above, we disagree with the choice to rely on the 1990 EIS for analysis of the current SEPA review. Substantial changes in the list of endangered and threatened species in Puget Sound, improved understanding of the risks posed by industrial net pens and industrial aquaculture, and changes in state law all make a compelling demand for a new EIS. But since the EIS relies on that dated document, any failure to implement its guidelines should be ground to refuse to allow the proposed action or to compel a full environmental review of the effects of that deviation.

The 1990 EIS recognizes that aquaculture with native fish (such as the rainbow/steelhead trout at issue here) pose different, and in some cases greater, risks than non-native fish like Atlantic salmon. As such there are some guidelines which were not applied in planning and approving the siting and construction of the existing net pens for use with Atlantic salmon which must now be applied in evaluating the pens' use for rainbow/steelhead trout.

On pages 69-70 of the 1990 EIS, section 5.7.2.2 reads in full:

It is recommended that the following guidelines be used by WDF when reviewing fish farm proposals:

- When Pacific salmon stocks are proposed for farms in areas where WDF determines there is a risk to indigenous species, WDF should only approve those stocks with the greatest similarity to local stocks near the farm site.
- In areas where WDF determines there is a risk of significant interbreeding or establishment of harmful self-sustaining populations, WDF should only approve the farming of sterile or monosexual individuals, or genetically incompatible species.

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- In areas where WDF determines that wild populations could be vulnerable to genetic degradation, WDF should establish a minimum distance of separation between farms and river mouths.

In the following section, “Mitigation Measures and Unavoidable Significant Adverse Impacts,” the EIS states: “WDF and other local experts agree that the potential for significant genetic impacts resulting from farm escapees interbreeding with wild stocks is low. Existing regulations and the use of the guidelines indicated in the Preferred Alternative are adequate to avoid any significant adverse impacts and additional mitigation measures are not necessary.”

Unfortunately, there is no evidence that the guidelines indicated in the Preferred Alternative have been applied. We can locate no record of any policy regulating the distance of net pens to the mouths of rivers, and WDFW staff confirmed that they are also unaware of any policies addressing the distance of net pens to river mouths. This guideline only applied to proposals for native fish aquaculture, so would have been unnecessary under the 1990 EIS until now. WDFW staff queried about this guideline cited the use of monosexual and partially sterile stock in this proposal as adequate mitigation, but the plain language of the 1990 EIS requires both, not one or the other.

This issue is crucial in considering the risks of a farmed domestic fish in waters populated with a threatened wild conspecific, as with wild steelhead and rainbow/steelhead trout. Farmed fish that escape near a river mouth could rapidly migrate upriver and interbreed with wild fish. As noted above, the wild steelhead populations in many rivers could be swamped by the number of fertile females if an escape on the scale of 2017 occurred. But the threatened state of the wild species is so dire that population estimates for some rivers—according to the National Marine Fisheries Service steelhead recovery plan (NMFS 2018)—are as low as 5 individuals in some rivers. Even a single fertile female breeding in such a river could destroy the wild genetics.

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As shown in the attached map, the existing seven net pen farm sites are less than 20 kilometers (12.5 miles) by water from important wild steelhead rivers, including the Elwha, Dungeness, Samish, Skagit, Stillaguamish, Cedar, and Green rivers. Other nations restrict net pen farm sites from being as near as 10 km from river mouths, and distances of under 1 km clearly pose serious risk that escapees could breed before recovery.

It should be noted that even the discussion of risks from escapees on breeding grounds rely on dubious assumptions, discussed in detail above. The analysis ignores the loss of breeding opportunities when wild males attempt to mate with escapees (even if those matings are not successful), and the loss of mating opportunities if escapees are able to outcompete wild females for redd sites. Even if the reproductive fitness for escaped females was exactly zero, those effects mean there would still be harm to fragile wild populations. Furthermore, the analysis of reproductive success considers only a point estimate of reproductive success rate, and doesn't address the full distribution of this or other rates, and thus systematically underestimates the number of offspring that might result from escapes and the long-term harm to wild steelhead genetics. There is no worst case analysis or discussion of that worst case's likelihood, as required by WAC 197-11-080.

In the absence of established guidelines, and with no discussion in the SEPA checklist or associated documents assessing the risk of releasing these potentially-fertile fish in proximity to river mouths, the conditions set by the 1990 EIS have not been fulfilled, and the proposed actions must be deemed to carry too high a risk of environmental harm. The mDNS should be withdrawn and a full EIS should be conducted assessing the risks associated with each of the existing net pen sites and its neighboring rivers.

The SEPA analysis failed to account for changes in risk assessment imposed by new law

After the 2017 collapse, the Washington Legislature acted deliberately and overwhelmingly to limit open-water marine net pen aquaculture, and the Governor signed the new law enthusiastically. In addition to phasing out Atlantic salmon farming by 2022, the new law imposed a series of other requirements, and established its clear intent that future marine net pen aquaculture be subjected to greater scrutiny. Section 1 of the legislation passed by both houses states:

Recent developments have thrown into stark relief the threat that nonnative marine finfish aquaculture may pose to Washington's native salmon populations. But just as evidence has emerged that nonnative marine finfish aquaculture may endanger Washington's native salmon populations, so too has evidence emerged that marine finfish aquaculture in general may pose unacceptable risks not only to Washington's native salmon populations but also to the broader health of Washington's marine environment. Given this evidence, the legislature intends to phase out nonnative finfish aquaculture in Washington's marine waters. Because the state of the science and engineering with regard to marine finfish aquaculture may be evolving, the legislature further intends to study this issue in greater depth, and to revisit the issue of marine finfish aquaculture once additional research becomes available.

This language was vetoed as the Governor signed the law, but demonstrates the legislature's intent. That intent is also shown in Section 5 of the engrossed bill, which requires agencies to "continue the existing effort to update guidance and informational resources to industry and governments for planning and permitting commercial marine net pen aquaculture," and mandating: "The guidance must be designed to eliminate commercial marine net pen

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escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife.”

In finding that “marine finfish aquaculture in general may pose unacceptable risks” and mandating guidance to “eliminate” those risks the legislature overturned the 1990 EIS’s determination that Atlantic salmon aquaculture posed acceptable risks and imposed a stricter standard than existed previously. It is clear that the legislature intended to alter the risk assessment framework used for marine finfish aquaculture in general from the status quo. Relying on the 1990 EIS without acknowledging the significant shift in risk assessment mandated by this law is clearly unwarranted and contrary to the law passed in response to the 2017 catastrophe.

The legislature clearly understood that its actions would not only affect Atlantic salmon farming. In addition to the explicit statement to that effect in Section 1, they heard this testimony from Dr. Ken Warheit, supervisor of WDFW’s fish health program:

We suggest that if the State is going to restrict marine fish aquaculture, it removes authorization also for other nonnative fish. More importantly, it should also remove authorization for native salmonid marine commercial aquaculture which WDFW considers to be a greater risk to the State's native wild and hatchery salmonid populations, than is Atlantic salmon marine aquaculture.

The legislation did not forbid the use of biologically-altered rainbow/steelhead trout, but it did establish that the risks of Atlantic salmon aquaculture are too great, and express concern that the same might be true of all marine finfish aquaculture. It urged further study of that risk and raised the bar for future risk assessment.

Unfortunately, the guidance mandated to eliminate these risks has not been issued, even though a report to the legislature regarding its progress was due during this comment period.

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In light of that change in state law, it is inappropriate to apply the same risk assessment used in 1990 to a proposal today. In evaluating the risk of marine finfish aquaculture proposals not forbidden under HB 2957, state agencies should conduct an EIS on any proposal that is riskier than the best-case scenario for marine Atlantic salmon aquaculture. Since this proposal does not clear even the guidelines laid out in the 1990 EIS (since no assessment of proximity to river mouths was conducted), and since the farmed fish in this proposal could directly interbreed with a federally-listed steelhead species and degrade its genetics, a new EIS is clearly warranted.

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Tables

| River/River system | Population (five year geometric mean, 2010-2014) |
|-----------------------------------|--|
| Cedar | 4 |
| Green | 552 |
| Puyallup | 277 |
| White | 531 |
| Dungeness | 141 |
| East Hood Canal Tributaries | 60 |
| Sequim/Discovery Bay Tributaries | 19 |
| Samish/Bellingham Bay Tributaries | 846 |
| Skagit | 5123 |

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| | |
|---------------|-----|
| Stillaguamish | 392 |
|---------------|-----|

Table 1. Estimated wild adult steelhead populations (five year geometric mean, 2010-2014) in rivers within a 12 mile radius of the existing net pens. The highly domesticated fertile net-pen-origin females that are predicted to escape during a net pen failure comparable to that of 2017 would comprise a significant proportion of the spawning population in many Puget Sound rivers.

| | |
|--|---------|
| Number of Fish | 1000000 |
| Proportion Diploid | 0.00156 |
| Number Diploid Outplanted | 1560 |
| Probability of Escape | 0.82 |
| Number of Diploid Escapes | 1279.2 |
| Probability of Non-Recovery | 0.77 |
| Number Diploids Not Recovered | 985 |
| Proportion Sexually Mature_High Estimate | 0.5 |
| Number Mature Diploids_High Estimate | 493 |
| Proportion Sexually Mature_Low Estimate | 0.1 |
| Number Mature Diploids_LowEstimate | 99 |

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| | |
|--|-----|
| Proportion Fertile Surviving to Spawn | 0.5 |
| Number of Mature survivors_High Estimate | 247 |
| Number of Mature survivors_Low Estimate | 50 |

Table 2. Estimate of number of the maximum number diploid individuals per million farmed rainbow/steelhead outplanted to a net pen that would result in no more than the number of mature escapees surviving to sexual maturity (bottom row) given the assumptions in WDFW's mDNS Summary, page 6.

Figures

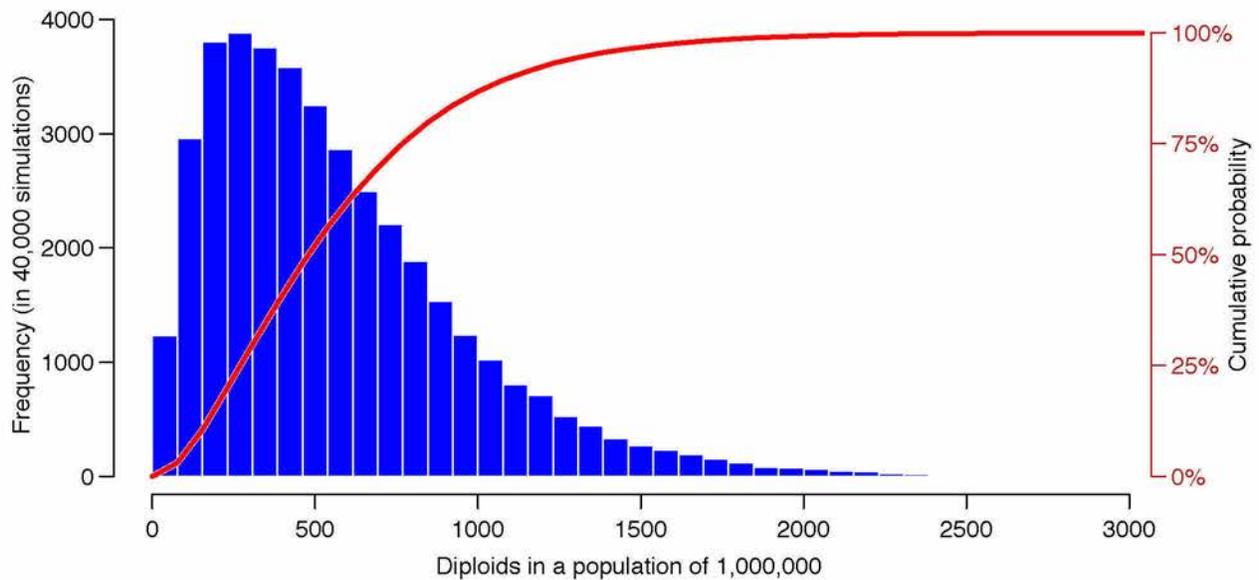


Figure 1. Distribution of the number of diploids (triploid-induction failures) in one million eggs when the number of diploids in a random sample without replacement of 3500 is one. The blue bars show the number of diploids in the interval on the horizontal x-axis (for example, 5000 in the interval between 3000 and 400 shown on the left y-axis). These numbers were computed through a Bayesian analysis that sampled 40,000 probable values (so the probability that the true number of diploids in the population of 1,000,000 is 5,000/40,000 = 0.125 or 12.5%). The

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red curve is the cumulative probability distribution. The shows the probability that a given value on the x-axis is less than or equal to the corresponding value on the right y-axis. For example, 95% of the distribution is less than 1400 and 97.5% is less than 1600, satisfying a risk-averse criteria that 95% of the distribution of possible values be no greater than 1560 diploid per million eggs or fry. About half the distribution (50%) is less than 500.

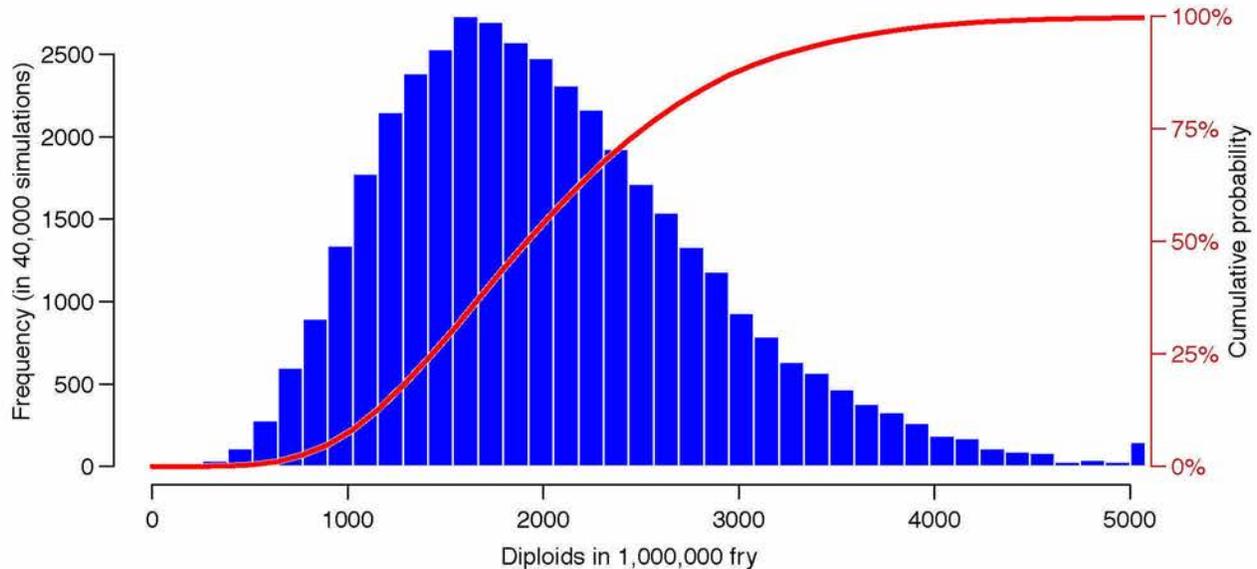


Figure 2. Distribution of the number of diploids (triploid-induction failures) in one million eggs when the number of diploids in a random sample without replacement of 2950 is five (per Attachment A of Cooke’s SEPA Checklist). The mean is 2029, the median is 1900. 95% of the distribution is less than 3600. There is a 5% chance that the true number of diploids is between 3500 and 5000.

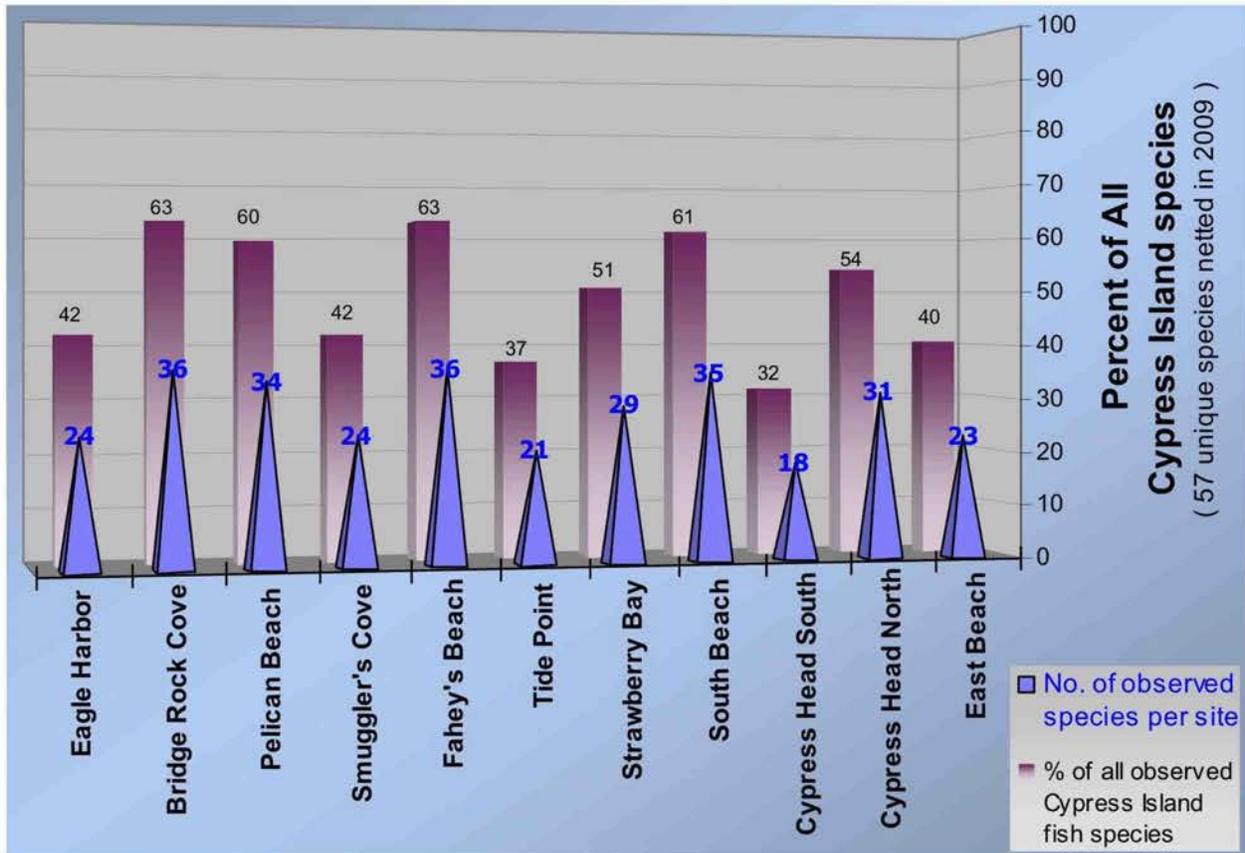
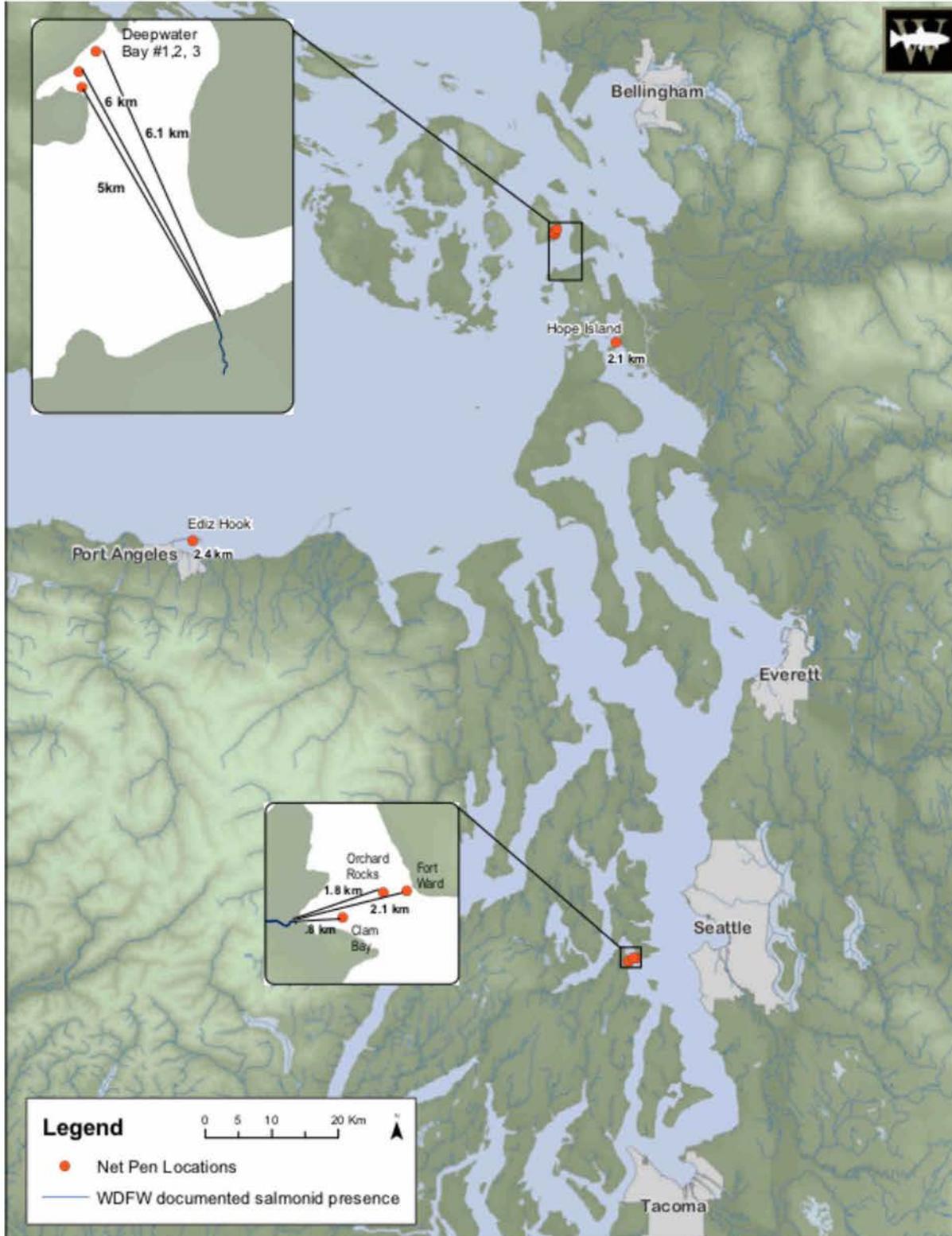


Figure 3. The total number of species encountered at each sample site in a survey of Cypress Island nearshore habitats, as well as the per-site percentage of all species netted from the Cypress nearshore. No single locale had greater than 65% of all species present across the 11 widely dispersed sites. From "Cypress Island Aquatic Reserve Pilot Nearshore Fish Use Assessment" (2011).

Map



The Appendix submitted with the original comments has been removed in order to meet the 30 MB file limit on Ecology's NPDES permit comment website. The full document with appendix can be viewed and downloaded online at the following link:

<https://drive.google.com/file/d/1gt5btZa5-6o7odMLpS-Mu0xPIMVuUjOj/view?usp=sharing>

ATTACHMENT 3



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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WATER
DIVISION

May 29, 2020

Dr. Kim Kratz
Assistant Regional Administrator
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Lacey, Washington 98503-1263

Dear Dr. Kratz:

On April 8, 2011, the Environmental Protection Agency and National Marine Fisheries Service completed the Endangered Species Act Section 7 consultation on the Washington State Department of Ecology's Sediment Management Standards (WAC 173-204-412) regarding marine finfish rearing facilities. Following the collapse of a net pen facility near Cypress Island in August 2017, and the following escapement recovery efforts, Wild Fish Conservancy supplemented the existing litigation regarding disease transmission against both agencies. On August 7, 2018, in *Wild Fish Conservancy v. EPA et al*, 331 F. Supp. 3d 1210 (W.D. Wash. 2018), the Court issued an order denying the federal agencies' motion for judgment on the pleadings and addressing the legal duty of both agencies with regard to reinitiation of ESA consultation and the scope of such consultation.

The EPA disagrees with the Court's holding that it retains sufficient discretion over previously approved state water quality standards to reinitiate consultation. However, consistent with the Court's order, the EPA sent NMFS a letter requesting the reinitiation of consultation on October 1, 2018, which NMFS accepted in a response dated October 3, 2018.

Enclosed is the 2020 Biological Evaluation Addendum prepared by the EPA to facilitate the reinitiation of formal consultation with NMFS. The Addendum incorporates the following new information since the 2008 and 2010 BEs:

- Disease transfer from Atlantic salmon net pen fish to Pacific salmon, primarily relying on a letter from NMFS dated January 12, 2016, and accompanying memo.
- An escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture's Site 2 net pen off Cypress Island and the follow up and the associated response actions.
- Updated National Pollutant Discharge Elimination System permitting actions by the Department of Ecology to minimize escapement risk and covers the planned transition at

existing commercial net pens facilities to raise steelhead instead of Atlantic salmon, which must be phased out by 2022 per Washington state law.

- The EPA NPDES general permit which currently covers tribal enhancement net pen facilities and the reissuance of the general permit in late 2020. The EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.).

In accordance with ESA Section 7(a)(2), the EPA is hereby providing our analysis of potential effects on listed species and critical habitat resulting from the EPA’s approval of portions of the Sediment Management Standards at the Washington Administrative Code 173-204, including new information since the previous BEs. The EPA’s effects determinations for the species under NMFS’s purview are presented in Section 8 of the BE Addendum and summarized below.

| | Species | ESU/DPS/Population | Species Effects Determination | Critical Habitat Designation | Critical Habitat Effects Determination |
|---|---|---|--------------------------------------|-------------------------------------|---|
| 1 | Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | LAA | Yes | NLAA |
| 2 | Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | LAA | Yes | NLAA |
| 3 | Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | LAA | Yes | NLAA |
| 4 | Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | LAA | Yes | NLAA |
| 5 | Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | (Puget Sound/Georgia Basin DPS) | LAA | Yes | NLAA |
| 6 | North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | NLAA | Yes | NLAA |
| 7 | Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | NLAA | Yes | NLAA |
| 8 | Humpback Whale (<i>Megaptera novaeangliae</i>) | Pacific Coast, Mexico DPS and Central America DPS | NLAA | No | -- |
| 9 | Killer Whale (<i>Orinus orca</i>) | Southern Resident, DPS | NLAA | Yes | NLAA |

LAA – likely to adversely affect

NLAA – may affect, but not likely to adversely affect

We respectfully request your concurrence on the Agency's determinations for the species and critical habitat that are not likely to be adversely affected.

For the species and critical habitat that are likely to be adversely affected by the Agency's proposed action, we request that you notify the EPA of your agreement to reinstate formal consultation within 30 days from the receipt of this letter. As described in the duration and extension of formal consultation section at 50 CFR 402.14(e), we anticipate receiving the biological opinion from NMFS within 135 days of initiating formal consultation and if an extension is necessary, procedures in this section will be followed.

The EPA appreciates the technical support from your staff, including the ongoing coordination to discuss NMFS's information needs. We remain available to provide any additional assistance and/or clarification of the enclosed Addendum.

If you have any questions or wish to discuss this matter further, please call me at (206) 553-1855 or contact Matthew Szelag, the EPA staff lead, at (907) 271-1208 or szelag.matthew@epa.gov.

Sincerely,

Daniel D. Opalski
Director

Enclosure

cc (e-copy): Jennifer Quan, NMFS
Jeff Vanderpham, NMFS
Caitlin Imaki, NMFS

**ADDENDUM TO THE UPDATED BIOLOGICAL EVALUATION
DATED DECEMBER 13, 2010**

**REGARDING THE EPA CLEAN WATER ACT ACTION ON
WASHINGTON'S MARINE FINFISH REARING FACILITY PROVISION
CONTAINED IN THE SEDIMENT MANAGEMENT STANDARDS AT
WASHINGTON ADMINISTRATIVE CODE 173-204-412**

PREPARED FOR:
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

PREPARED BY:
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE, SUITE 155
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May 29, 2020

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Preface

In the Biological Evaluation of April 17, 2008, and supplemented on August 6, 2008 (collectively referred to as the 2008 BE),¹ the EPA concluded that the approval of certain new and revised water quality standards at WAC 173-204, Washington's Sediment Management Standards, were not likely to adversely affect listed fish species or marine mammals or their designated critical habitat areas since the effects of such approval would be insignificant.

The EPA's approval, following the completion of Endangered Species Act consultation in 2008, of Washington's Sediment Management Standards was challenged in court by Wild Fish Conservancy. On April 28, 2010, the U.S. District Court for the Western District of Washington issued an order setting aside the 2008 consultation on Washington's Sediment Management Standards on grounds that the EPA and NMFS had failed to consider two NMFS recovery plans for Puget Sound Salmon and Southern Resident Killer Whales. *Wild Fish Conservancy v. U.S. Env'tl. Prot. Agency*, No. C08-156-JCC, 2010 U.S. Dist. LEXIS 41838, pp. 15-16 (Apr. 28, 2010). Following the Court's decision, the EPA reviewed the two NMFS recovery plans along with the data in the original 2008 BE and other updates to information and analysis and issued an Addendum to the 2008 BE on December 13, 2010 (referred to as the 2010 BE).²

1. National Marine Fisheries Service. 2007. Puget Sound Salmon Recovery Plan. Shared Strategy for Puget Sound adopted by National Marine Fisheries Service. Volumes I and II.³

2. National Marine Fisheries Service. 2008. Recovery Plan for Southern Resident Killer Whales (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington.⁴

Following a review of the information presented in the recovery plans, the EPA determined that although net pen operations in accordance with the provisions at WAC 173-204 may affect ESA listed species or their critical habitat, such effect is not likely to adversely affect (NLAA) the three species of salmonids and the southern resident killer whale. Therefore, the EPA reaffirmed the NLAA and no effect determinations contained in the 2008 BE. The EPA also provided an analysis and a NLAA determination for the three additional listed species of rockfish in Puget Sound: bocaccio, canary, and yelloweye rockfish. ESA consultation was completed on April 8,

¹ April 17, 2008. Supplemented August 6, 2008. U.S. EPA Region 10. *Biological Evaluation of Washington's Marine Finfish Rearing Facility Provision Contained in the Sediment Management Standards*. Prepared for U.S. Fish & Wildlife Service and National Marine Fisheries Service.

² December 13, 2010. U.S. EPA Region 10. *Update to the Biological Evaluation Submitted April 17 and August 6, 2008, Regarding EPA Action on Washington's Marine Finfish Rearing Facility Provision Contained in the Sediment Management Standards*. Prepared for National Marine Fisheries Service.

³ Available online at:

https://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/puget_sound/puget_sound_chinook_recovery_plan.html

⁴ Available online at:

https://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/recovery_plan.html

2011,⁵ and the EPA re-approved the applicable provisions on April 22, 2011.⁶

On November 4, 2015,⁷ Wild Fish Conservancy filed new litigation alleging that the informal consultation concluded in April 2011 was arbitrary, and that the EPA and NMFS had a duty to reinitiate consultation based on new information related to disease outbreak. On December 7, 2017, following the collapse of a commercial net pen and escape of Atlantic salmon, Wild Fish Conservancy filed a second amended complaint supplementing its litigation to claim that the net pen collapse presented additional information requiring both federal agencies to reinitiate consultation.⁸ The EPA acknowledged the net pen failure in a letter to NMFS on December 14, 2017.⁹ On August 7, 2018, the Court issued an order denying the federal agencies' motion for judgment on the pleadings and addressing the legal duty of both agencies with regard to reinitiation of consultation and the scope of such consultation.¹⁰ *Wild Fish Conservancy v. EPA et al*, 331 F. Supp. 3d 1210 (W.D. Wash. 2018).

The EPA disagrees with the Court's holding that it retains sufficient discretion over previously approved state water quality standards to reinitiate consultation. However, consistent with the Court's order, the EPA sent NMFS a letter requesting the reinitiation of consultation on October 1, 2018,¹¹ which NMFS accepted in a response dated October 3, 2018.¹²

This 2020 BE Addendum incorporates new information on several different topics. First, additional information regarding disease transfer from Atlantic salmon net pen fish to Pacific

⁵ April 8, 2011. Letter from William W. Stelle, Jr., Regional Administrator, NMFS to Jannine Jennings, Water Quality Standards Unit, EPA Region 10, *Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Proposed Approval of Finfish Rearing Facility Provision Contained in the Sediment Management Standards Rule Promulgated by the Washington State Department of Ecology (HUC 17110019, Puget Sound)*.

⁶ April 22, 2011. U.S. EPA Region 10. Letter from Michael A. Bussell, Director Office of Water and Watersheds, EPA Region 10 to Mr. Kelly Susewind and Mr. Jim Pendowski, Department of Ecology, *Re: EPA's Re-Approval of Washington's Revised Sediment Management Standards (WAC 173-204) including the Marine Finfish Rearing Facility Provision, as submitted on June 3, 1996*.

⁷ November 4, 2015. Case 2:15-cv-01731. WFC V. U.S. EPA and NMFS. *Complaint for Declaratory and Injunctive Relief*.

⁸ November 22, 2017. Case 2:15-cv-01731-BJR. WFC V. U.S. EPA and NMFS. *Plaintiff's Motions to Supplement Pleadings and Amend Case Schedule*.

⁹ December 14, 2017. Letter from Michael Lidgard, Acting Director, Office of Water and Watersheds, EPA Region 10 to Mr. Kim Kratz, Assistant Regional Administrator, NMFS, *Re: August 2017 Puget Sound Net Pen Failure*.

¹⁰ August 7, 2018. Case 2:15-cv-01731-BJR. WFC V. U.S. EPA and NMFS. *Order Denying (1) Federal Defendants' Motion for Judgment on the Pleadings and (2) Cooke Aquaculture's Motion to Dismiss*.

¹¹ October 1, 2018. Letter from Daniel D. Opalski, Director Office of Water and Watersheds, EPA Region 10 to Mr. Kim Kratz, Assistant Regional Administrator, NMFS *Re: Request to Reinitiate Endangered Species Act Section 7 Consultation on the Environmental Protection Agency's Approval of Washington State Department of Ecology's Sediment Management Standards (WAC 173-204-412) Regarding Marine Finfish Rearing Facilities*.

¹² October 3, 2018. Letter from Barry A. Thom, Regional Administrator, NMFS, to Dan Opalski Director Office of Water and Watersheds, EPA Region 10, *Re: Request to Reinitiate April 8, 2011 Endangered Species Act Section 7 Consultation on the Environmental Protection Agency's Approval of Washington State Department of Ecology's Sediment Management Standards (WAC 173-204-412) Regarding Marine Finfish Rearing Facilities (refer to NMFS No.: NWR-2010-6071)*.

salmon has been included, primarily relying on a letter from NFMS dated January 12, 2016,¹³ and accompanying memo in response to a request from the EPA on December 16, 2015.¹⁴ Second, further information regarding an escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture’s Site 2 net pen off Cypress Island, including the follow up and the associated response has been included in this 2020 BE Addendum. The Addendum incorporates updated National Pollutant Discharge Elimination System (NPDES) permitting actions by the Washington State Department of Ecology (Ecology), to minimize escapement risk and covers the planned transition at commercial net pen facilities to raise steelhead instead of Atlantic salmon which must be phased out by 2022. Lastly, the Addendum discusses facilities covered by the current EPA NPDES general permit (WAG132000),¹⁵ which covers tribal enhancement facilities. In their reissuance of the general permit in late 2020, EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.). Please note that throughout this Addendum, the EPA will refer to both the currently covered tribal enhancement facilities and the soon to be covered federal research facilities broadly as “facilities covered under EPA’s NPDES GP.” The current EPA general permit cites, but does not necessarily rely on, the Sediment Management Standards at WAC 173-204 for their permitted operations, and the reissued NPDES GP will be similar in this regard.

Given the gap between the 2010 BE and this 2020 Addendum, the EPA is providing updated information to be considered in this ESA consultation. Below is a crosswalk that explains the updates to each section of the 2010 BE that are included in this 2020 Addendum. The updates include:

1. Updates to the **Background** to revise the number of net pen facilities included in the consultation and Ecology’s permitting activities and moratorium on Atlantic salmon net pens
2. Minor updates to the **Description of the Agency Action** to reflect changes to the provisions at WAC 173-204
3. Updates to the **Description of the Action Area** to note the net pen facilities included in this consultation

¹³ January 12, 2016. Letter from Kim W. Kratz, Ph.D., Assistant Regional Administrator, Oregon Washington Coastal Office, NMFS, to Dan Opalski, Director Office of Water and Watersheds, EPA Region 10 with enclosed memo dated December 17, 2015 from Dr. Dickhoff to Dr. Kratz *Re: Scientific Review of Intent to Sue U.S. Environmental Protection Agency and National Marine Fisheries Service for violations of the Endangered Species Act associated with consultation of Washington State’s Revised Sediment Management Standards for Marine Finfish Facilities dated 25 August 2015.*

¹⁴ December 16, 2015. Letter from Daniel D. Opalski, Director Office of Water and Watersheds, EPA Region 10 to Mr. William Stelle, Administrator, West Coast Region, NMFS *Re: Washington’s Sediment Management Standards regarding Netpen Facilities.*

¹⁵ September 9, 2015. EPA Region 10. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-final-permit-2015.pdf>

4. Updates to the **Species Status and Life History** to include newly listed species of North American Green Sturgeon and Pacific Eulachon along with steelhead, bocaccio and yelloweye rockfish designated critical habitat since 2010
5. The **Environment Baseline** remains largely unchanged except where noted
6. Updates to the **Analysis of Effects** regarding the indirect effects associated with disease transfer, escapement events, permitting activity to minimize escapement risk/additional net pen facilities, and new native species reared
7. The **Cumulative Effects** section remains unchanged
8. New **Summary of Findings** to reflect the EPA's revised determinations
9. The **Sediment Testing Methodology Provisions** section remains largely unchanged except where noted
10. **References**
11. Updated **Maps**

1. Background

In 1991, the EPA approved Washington's Sediment Management Standards (SMS). On June 3, 1996, Ecology submitted revisions to WAC 173-204, which included minor revisions to the sediment testing methodology provisions and a new section for marine finfish rearing facilities at WAC-173-204-412. These revisions were subject to the Alaska Rule¹⁶ since they were adopted by Washington and submitted to the EPA for review prior to May 30, 2000, and the EPA took no action prior to that date. In accordance with 40 CFR 131.21(c)(1), Washington's 1996 sediment management standard revisions went into effect for Clean Water Act purposes as soon as they were effective under state law.

The addition of the marine finfish rearing facility section exempts net pen facilities in Puget Sound from portions of Washington's sediment management standards, underneath and around the immediate area of the net pen. The section also states that sediment quality compliance and monitoring requirements of net pen facilities are addressed through the NPDES permitting program. The section provides for a special sediment impact zone by rule within and including a distance of 100 feet from the outer edge of net pen facility structures; consequently, such facilities and their associated discharges are exempt from marine sediment quality standards, sediment impact zone maximum criteria, and sediment impact zone standards at WAC 173-204-415. The section also allows Ecology to authorize sediment impact zones beyond 100 feet via NPDES permits or administrative actions, subject to increased monitoring. The rule provides no exemptions to compliance with Washington's water quality standards for net pen facilities.

For commercially operated net pens, the Washington State Department of Natural Resources (WDNR) issues a site license for each facility (lease expiration date) and the Washington Department of Fish and Wildlife (WDFW) regulates disease control, fish health and escape management at each facility.

¹⁶ Rule specifying that new and revised standards adopted by States and authorized Tribes on or after May 30, 2000, become "applicable standards for Clean Water Act purposes" only when approved by EPA.
<https://www.federalregister.gov/documents/2000/04/27/00-8536/epa-review-and-approval-of-state-and-tribal-water-quality-standards>

Currently, there are four active commercially operated Atlantic salmon net pen facilities in Puget Sound operated by Cooke Aquaculture. Previously, there were eight active facilities, but due to the collapse of Site #2 off Cypress Island and the closure of the Port Angeles (Ediz Hook) net pen, among others off Cypress Island, the number of facilities has been reduced to four since the 2010 BE. The remaining net pens include one near Hope Island (Skagit Bay) and three in Rich Passage near Bainbridge Island. Although the operator may pursue using some of the previously active net pens in the future, the potential effects from those sites would be similar to the sites evaluated in this BE Addendum.

Ecology reissued NPDES permits for the four active commercially operated net pen facilities on July 11, 2019.¹⁷ The updated NPDES permit requirements allow Ecology to ensure that facilities are meeting water quality standards until the Atlantic salmon net pens are phased out. In 2018, following the collapse of Cooke's net pen facility Cypress Island—Site 2 and the resulting escape of approximately 250,000 Atlantic salmon, the Washington State Legislature passed House Bill 2957, phasing out marine rearing of all Atlantic salmon as the facility aquatic lands leases expire by 2022.¹⁸ More information regarding new permitting activity for these facilities is provided in the Analysis of Effects section of this BE Addendum.

These facilities are expected to be converted to steelhead (all-female triploid rainbow trout) facilities, as indicated in a permit application submitted by Cooke Aquaculture Pacific, LLC, to WDFW on January 18, 2019.¹⁹ On January 21, 2020, WDFW approved Cooke's application after completing the State Environmental Policy Act (SEPA) process.²⁰ The five-year permit enables Cooke to farm all-female, sterile (triploid) rainbow trout/steelhead in Puget Sound and applies to existing net pens in Puget Sound where Cooke holds valid aquatic land leases with the Washington Department of Natural Resources. This includes four pens currently operating near Rich Passage and Skagit Bay, but may later extend to three additional net pens owned by Cooke. Ecology is currently in the process of revising the NPDES permits authorizing Cooke to transition to rearing steelhead and is accepting public comments until June 8, 2020.²¹

To ensure a complete review and analysis in this 2020 Addendum, the EPA is also including facilities covered under EPA's NPDES GP. There are significant differences (such as the sizes of the facilities and types of operations, species raised such as Coho or sablefish, etc.) between the permittees covered under the EPA NPDES GP and Ecology's permitting of large commercial net

¹⁷ Washington Department of Ecology. Atlantic salmon net pen individual permits. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

¹⁸ March 26, 2018. Washington State House Bill 2957. Nonnative Finfish—Marine Aquaculture—Escape. Chapter 179, Laws of 2018.

¹⁹ January 18, 2019. Cooke Aquaculture Pacific, LLC. Fin Fish Aquaculture Permit – Plan of Operation. All-female Triploid Rainbow Trout (*Oncorhynchus mykiss*).

²⁰ January 21, 2020. WDFW. Justification for the Mitigated Determination of Non-Significance (MDNS) for Washington Department of Fish and Wildlife SEPA 19-056 and for the Approval of Cooke Aquaculture Pacific's Marine Aquaculture Permit Application. https://wdfw.wa.gov/sites/default/files/2020-01/marine_aquaculture_permit_justification-01-31-20.pdf

²¹ Washington Department of Ecology. Salmon net pen water quality individual permits. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

pen facilities. The permitting regulations distinguish between these two types of net pen facilities found in Puget Sound are discussed in more detail below in the Analysis of Effects.

2. Description of the Agency Action

The following is a list of the SMS provisions which could affect aquatic life and were addressed in the 2008 and 2010 BEs.

- WAC 173-204-200 (13): Definition of “Marine finfish rearing facilities.”
- WAC 173-204-315(1)(b)(ii)
- WAC 173-204-315(2)(b)
- WAC 173-204-315 (2)(d)
- WAC 173-204-320 (3)(d)
- WAC 173-204-412 (2): Applicability of marine finfish rearing facilities.
- WAC 173-204-412 (3)(a) and (3)(b): Sediment monitoring requirements of marine finfish rearing facilities.
- WAC 173-204-412 (4), (4)(a), (4)(a)(i), (4)(a)(ii) and (4)(b): Sediment impact zones for marine finfish rearing facilities.
- WAC 173-204-420 (3)(c)(iv)
- WAC 173-204-520 (3)(d)(iv)

This 2020 Addendum updates the following two provisions from the 2010 BE. These changes have no effect on the outcome of the consultations from 2010 and 2008. The remainder of the provisions have not been revised and there are no new additional provisions in the SMS to be included in this consultation.

1. On December 18, 2015, the EPA approved a minor non-substantive edit to the definition of “*marine finfish rearing facilities*” at *WAC 173-204-200 (13)*.²² The revisions are reflected below in strikeout. This minor revision has no effect on the updated consultation.

(13) “Marine finfish rearing facilities” (~~shall~~) means those private and public facilities located within state waters where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

2. The second provision that was revised is *WAC 173-204-520(3)(d)(iv)*. *Juvenile polychaete Puget Sound marine sediment cleanup screening levels and minimum cleanup level biological criteria*.

The state deleted and substantively replaced this provision as part of its revisions to the SMS in 2013. On December 18, 2015, the EPA rescinded its 2008 approval of this provision because it

²² December 18, 2015. Letter from Dan Opalski, Director, Office of Water and Watershed, EPA Region 10 to Maia Bellon, Director, Washington Department of Ecology, *Re: EPA’s Approval and Decision on Revisions to Washington’s Sediment Management Standards (SMS), Chapter 173-3014 WAC* and enclosed Technical Justification.

determined that Part V of the SMS is not a water quality standard. Therefore, this provision is no longer relevant to the consultation and this Addendum.

Note that the revisions outside of WAC 173-204-412 (and the definition of marine finfish rearing facilities) relate to sediment testing methodology. They were originally described in the EPA's August 6, 2008 supplement to the 2008 BE. The EPA reevaluated its conclusions in the August 6, 2008 supplement based upon new information and has not modified these conclusions since the provisions are applicable only to sediment testing methodology. See Section 9 of this Addendum for more information.

3. Description of the Action Area

The action area subject to this consultation on the SMS is the Puget Sound. The definition of Puget Sound has not been revised since the 2008 and 2010 consultation. Puget Sound is defined in the SMS at WAC-173-204-200(20): "Puget Sound basin" or "Puget Sound" means: (a) Puget Sound south of Admiralty Inlet, including Hood Canal and Saratoga Passage; (b) The waters north to the Canadian border, including portions of the Strait of Georgia; (c) The Strait of Juan de Fuca south of the Canadian border; and (d) All the lands draining into these waters as mapped in water resources inventory areas numbers 1 through 19, set forth in water resources management program established pursuant to the Water Resources Act of 1971, chapter 173-500 WAC.

The SMS for marine finfish rearing facilities are applicable to all commercially operated net pen facilities in Puget Sound, regardless of species reared. In this addendum, facilities covered under EPA's NPDES GP are also evaluated. Although the EPA's approval action of the SMS does not apply to, and thus the action area does not include, any waters within Indian Country (i.e., Native American reservations, Indian communities, and trust lands).

The EPA's view of the action area is informed by its understanding of the areas that may be affected directly or indirectly by its approval of the SMS related to marine finfish rearing facilities. Furthermore, the effects of the action – whether direct or indirect – occur within Puget Sound; therefore, the EPA continues to define the Puget Sound as the area that may be affected by this action. However, the EPA understands the concerns associated with escaped fish movement and recovery efforts related to the 2017 net pen collapse. To address such concerns, the EPA has chosen to voluntarily consider the effects of its action on freshwater steelhead critical habitat and freshwater Eulachon habitat and is making a corresponding effects determination in this Addendum.

4. Species Status and Life History of Fish Species Assessed

Subsequent to the 2010 BE and the addition of three rockfish species, two new species have been listed – North American Green Sturgeon and Pacific Eulachon (southern DPS). In addition, steelhead and two species of rockfish critical habitats have been designated for Puget Sound. Effective March 24, 2017, Canary Rockfish were delisted. The species status and life history for these newly listed species and critical habitat has been added below.

Please note the numbering in this section is consistent with the 2010 BE. There are no updates to 4.B.1. Chinook salmon and 4.B.2. Chum Salmon.

4.B.3. Steelhead Puget Sound DPS (Updated Critical Habitat)²³

Critical Habitat

Critical habitat designation for the Puget Sound steelhead was proposed on January 14, 2013. The areas under consideration include watersheds in Puget Sound and the Strait of Juan de Fuca in Washington.

Critical habitat was designated for the remaining five of Oregon and Washington listed steelhead on September 2, 2005 (70 FR 52630). Indian lands are excluded from critical habitat for these populations.²⁴

On February 24, 2016, NMFS issued a final rule designating critical habitat for threatened Puget Sound steelhead (81 FR 9251). The specific areas designated include approximately 2,031 miles (3,269 km) of freshwater and estuarine habitat in Puget Sound, including areas in the upper Elwha River that were not occupied by steelhead at the time of designation but that were determined to be essential for the conservation of the species. In keeping with the ESA and NMFS's past practice, the final designation excludes approximately 70 miles (113 km) of streams in Indian lands, 1,361 miles (2,190 km) of streams associated with approved Habitat Conservation Plans, and 28 miles (45 km) of streams associated with military lands where potential impacts on national security outweigh the benefits of designation as critical habitat. NMFS also excluded all habitat areas in three watersheds (Lake Washington, Lake Sammamish, and Sammamish River watersheds) where the economic impacts were deemed to outweigh the benefits of designation. A critical habitat map for this species is shown in the Maps section and is also available online.²⁵

On December 30, 2019, NFMS issued a recovery plan for the Steelhead Puget Sound DPS.²⁶

4.B.4. Bocaccio Puget Sound/Georgia Basin DPS

²³ This information has been adapted from the EPA's *Revised Biological Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge within Federal Waters Off the Coasts of Washington and Oregon Permit No. WAG520000*. Revised May 2017. <https://www.epa.gov/sites/production/files/2017-06/documents/r10-npdes-offshore-seafood-gp-wa-or-wag520000-biological-evaluation-2017.pdf>

²⁴ Further information from NMFS provided on ESA Critical Habitat for Puget Sound Steelhead website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/puget_sound/steelhead_recovery_workshop_2013/stone_habitat.html

²⁵ NMFS. Map of Designated Critical Habitat for Puget Sound Steelhead. Accessed May 26, 2020. https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/steelhead/ssteelhead_ps.pdf

²⁶ December 20, 2019. NOAA Fisheries. ESA Recovery Plan for the Puget Sound Steelhead Distinct Population Segment (*Oncorhynchus mykiss*). <https://www.fisheries.noaa.gov/resource/document/esa-recovery-plan-puget-sound-steelhead-distinct-population-segment-oncorhynchus>

Critical Habitat was designated for Bocaccio on November 13, 2014 (79 FR 68041). Critical habitat is found throughout Puget Sound. The specific areas in the final designation include 590.4 square miles of nearshore habitat and 414.1 square miles of deepwater habitat. A critical habitat map for this species is shown in the Maps section and is also available online.²⁷

Species range, critical habitat, life history and ecology, and population trends and risks for Bocaccio Puget Sound/Georgia Basin DPS can be found at https://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/rockfish/final_yel_loweye_rockfish_and_bocaccio_recovery_plan_508.pdf

4.B.5. Canary Rockfish Puget Sound/Georgia Basin DPS

Effective March 24, 2017, Canary Rockfish were delisted²⁸ and therefore are no longer part of this analysis.

4.B.6. Yelloweye Rockfish Puget Sound/Georgia Basin DPS

Critical Habitat was designated for Yelloweye Rockfish on November 13, 2014 (79 FR 68041). Critical habitat is found throughout Puget Sound. The specific areas in the final designation includes 414.1 square miles of deepwater habitat. A critical habitat map for this species is shown in the Maps section and is also available online.²⁹

Species range, critical habitat, life history and ecology, and population trends and risks for Yellow Rockfish Puget Sound/Georgia Basin DPS can be found at https://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/rockfish/final_yel_loweye_rockfish_and_bocaccio_recovery_plan_508.pdf

4.B.7. North American Green Sturgeon³⁰

The North American green sturgeon was officially divided into two Distinct Population Segments by the NMFS on January 29, 2003 (68 FR 4433). The Southern DPS, which includes

²⁷ NMFS. Map of Designated Critical Habitat for Bocaccio, Canary, and Yelloweye Rockfish Distinct Population Segments. Accessed May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf

²⁸ 82 FR 7711. January 23, 2017. Endangered and Threatened Species; Removal of the Puget Sound/Georgia Basin Distinct Population Segment of Canary Rockfish From the Federal List of Threatened and Endangered Species and Removal of Designated Critical Habitat, and Update and Amendment to the Listing Descriptions for the Yelloweye Rockfish DPS and Bocaccio DPS. <https://www.federalregister.gov/documents/2017/01/23/2017-00559/endangered-and-threatened-species-removal-of-the-puget-soundgeorgia-basin-distinct-population>

²⁹ NMFS. Map of Designated Critical Habitat for Bocaccio, Canary, and Yelloweye Rockfish Distinct Population Segments. Accessed May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf

³⁰ This information has been adapted from the EPA's *Revised* Biological Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge within Federal Waters Off the Coasts of Washington and Oregon Permit No. WAG520000. Revised May 2017. <https://www.epa.gov/sites/production/files/2017-06/documents/r10-npdes-offshore-seafood-gp-wa-or-wag520000-biological-evaluation-2017.pdf>

any coastal or Central Valley, California populations south of the Eel River in California (the only known population being in the Sacramento River), was listed as Threatened on April 7, 2006 (71 FR 17757).³¹

Species Range

Green sturgeon are the most broadly distributed, wide-ranging, and most marine-oriented species of the sturgeon family. The green sturgeon ranges from Mexico to at least Alaska in marine waters, and is observed in bays and estuaries up and down the west coast of North America (Moyle et al., 1995).

Critical Habitat

Critical habitat for the Southern DPS of North American green sturgeon was designated on October 9, 2009 (74 FR 52300). A critical habitat map for this species is shown in the Maps section and is also available online.³²

All of the freshwater riverine parts of the critical habitat are in California; there are none in Oregon or Washington.

Coastal bays and estuaries included in the critical habitat designation include Coos Bay, Winchester Bay, Yaquina Bay, and Nehalem Bay in Oregon; Willapa Bay and Grays Harbor in Washington; and the Lower Columbia River estuary in both states. Critical habitat in bays and estuaries includes tidally influenced areas as defined by the elevation of mean higher high water. The boundary between coastal marine areas and bays and estuaries are delineated by the COLREGS lines (33 CFR 80).

The marine portion of the critical habitat includes all U.S. coastal marine waters out to the 60 fathom (fm.) (110 m) depth bathymetry line (relative to MLLW) from Monterey Bay, California north and east to include waters in the Strait of Juan de Fuca, Washington. The Strait of Juan de Fuca includes all U.S. marine waters: in Clallam County east of a line connecting Cape Flattery, Tatoosh Island, and Bonilla Point, British Columbia; in Jefferson and Island counties north and west of a line connecting Point Wilson and Partridge Point; and in San Juan and Skagit counties south of lines connecting the U.S.-Canada border and Pile Point, Cattle Point and Davis Point, and Fidalgo Head and Lopez Island. Critical habitat in coastal marine areas is defined by the zone between the 60 (fm.) depth bathymetry line and the line on shore reached by mean lower low water (MLLW), or to the COLREGS lines.

The primary constituent elements of nearshore coastal marine critical habitat areas that are essential for the conservation of the Southern DPS of green sturgeon are:

- (i) Migratory corridor: a migratory pathway for the safe and timely passage within marine and between estuarine and marine habitats.
- (ii) Water quality: nearshore marine waters with adequate dissolved oxygen levels and acceptably low levels of contaminants (e.g., pesticides, organochlorines, elevated levels

³¹ Further information from NMFS provided on Green Sturgeon website accessed on May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/protected_species/green_sturgeon/green_sturgeon_pg.html

³² NMFS. Map of Designated Critical Habitat for Southern DPS of Green Sturgeon. Accessed May 26, 2020.

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/greensturgeon_ch_maps.pdf

of heavy metals) that may disrupt the normal behavior, growth, and viability of sub-adult and adult green sturgeon.

(iii) Food resources: abundant prey items for sub-adults and adults, which may include benthic invertebrates and fishes.

Certain areas in the Strait of Juan de Fuca and Whidbey Island, Washington that are owned or controlled by the Department of Defense, or designated for its use, are excluded from critical habitat.

All Indian lands of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw as well as the Coquille Indian Tribe in Oregon; and the Hoh, Jamestown S'Klallam, Lower Elwha, Makah, Quileute, Quinault, and Shoalwater Bay Tribes in Washington are excluded from critical habitat designation.

Life history and ecology

Green sturgeon are long-lived, slow-growing fish. Mature males range from 4.5-6.5 feet (1.4-2 m) in "fork length" and do not mature until they are at least 15 years old (Van Eenennaam, 2002), while mature females range from 5-7 feet (1.6-2.2 m) fork length and do not mature until they are at least 17 years old. Maximum ages of adult green sturgeon are likely to range from 60-70 years (Moyle, 2002).

Green sturgeon are believed to spend the majority of their lives in nearshore oceanic waters, bays, and estuaries. Early life-history stages reside in fresh water, with adults returning to freshwater to spawn when they are more than 15 years of age and more than 4 feet (1.3 m) in size. Spawning is believed to occur every 2-5 years (Moyle, 2002). Adults typically migrate into fresh water beginning in late February; spawning occurs from March-July, with peak activity from April-June (Moyle et al., 1995). Females produce 60,000-140,000 eggs (Moyle et al., 1992). Juvenile green sturgeon spend 1-4 years in fresh and estuarine waters before dispersal to saltwater (Beamsesderfer and Webb, 2002). They disperse widely in the ocean after their out-migration from freshwater (Moyle et al., 1992).

The only available feeding data on adult green sturgeon shows that they eat benthic invertebrates including shrimp, mollusks, amphipods, and even small fish (Moyle et al., 1992).

Population trends and risks

Little data on current population sizes exists and data on population trends is lacking. The principal factor in the decline of the Southern DPS is reduction of the spawning area to a limited section of the Sacramento River. Other threats to the Southern DPS include insufficient freshwater flow rates in spawning areas, contaminants (e.g., pesticides), bycatch of green sturgeon in fisheries, potential poaching (e.g., for caviar), entrainment by water projects, influence of exotic species, small population size, impassable barriers (dams) to spawning grounds, and elevated water temperatures.³³

³³ Further information from NMFS provided on Green Sturgeon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/green_sturgeon/green_sturgeon_pg.html

4.B.8. Pacific Eulachon (Southern DPS)³⁴

Eulachon (*Thaleichthys pacificus*), commonly called smelt, candlefish, or hooligan, are a small, anadromous fish from the eastern Pacific Ocean. The Southern DPS of the species was listed as threatened on April 13, 2011 (76 FR 20558).³⁵

Species range

Eulachon are endemic to the eastern Pacific Ocean, ranging from northern California to southwest Alaska and into the southeastern Bering Sea. In the continental United States, most Eulachon originate in the Columbia River Basin. Other areas in the United States where Eulachon have been documented include the Sacramento River, Russian River, Humboldt Bay and several nearby smaller coastal rivers (e.g., Mad River), and the Klamath River in California; the Rogue River and Umpqua Rivers in Oregon; and infrequently in coastal rivers and tributaries to Puget Sound, Washington. Eulachon occur in nearshore ocean waters and to 1000 feet (300 m) in depth, except for the brief spawning runs into their natal (birth) streams.³⁶

Critical habitat

Sixteen specific areas within the states of California, Oregon, and Washington, of which thirteen are in Washington and Oregon, were designated as critical habitat for the southern Distinct Population Segment (DPS) of Pacific Eulachon on October 20, 2011 (76 FR 65324). The designated areas are a combination of freshwater creeks and rivers and their associated estuaries, comprising approximately 539 km (335 mi) of habitat.

Critical habitat for this DPS includes portions of the Umpqua River, Tenmile Creek, and Sandy River in Oregon; Grays River, Skamokawa Creek, Elochoman River, Cowlitz River, Toutle River, Kalama River, Lewis River, Quinault River, and Elwha River in Washington; and Columbia River in both states. Tribal lands of four Indian tribes are excluded from designation.

A critical habitat map for this species is shown in the Maps section and is also available online.³⁷

Life history and ecology

Eulachon typically spend 3 to 5 years in saltwater before returning to freshwater to spawn from late winter through mid-spring. Spawning grounds are typically in the lower reaches of larger snowmelt-fed rivers with water temperatures ranging from 39 to 50° F (4-10° C). Spawning occurs over sand or coarse gravel substrates. Eggs are fertilized in the water column. After

³⁴ This information has been adapted from the EPA's *Revised* Biological Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge within Federal Waters Off the Coasts of Washington and Oregon Permit No. WAG520000. Revised May 2017. <https://www.epa.gov/sites/production/files/2017-06/documents/r10-npdes-offshore-seafood-gp-wa-or-wag520000-biological-evaluation-2017.pdf>

³⁵ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

³⁶ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

³⁷ NMFS. Map of Designated Critical Habitat for Southern DPS of Eulachon. Accessed May 26, 2020. https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/eulachon/eulachon-ch-maps.pdf

fertilization, the eggs sink and adhere to the river bottom. Most Eulachon adults die after spawning. Eulachon eggs hatch in 20 to 40 days. The larvae are then carried downstream and are dispersed by estuarine and ocean currents shortly after hatching. Juvenile Eulachon move from shallow nearshore areas to mid-depth areas. Within the Columbia River Basin, the major and most consistent spawning runs occur in the mainstem of the Columbia River as far upstream as the Bonneville Dam, and in the Cowlitz River.³⁸

Population trends and risks

Eulachon abundance exhibits considerable year-to-year variability. However, nearly all spawning runs from California to southeastern Alaska have declined in the past 20 years, especially since the mid-1990s. From 1938 to 1992, the median commercial catch of Eulachon in the Columbia River was approximately 2 million pounds (900,000 kg) but from 1993 to 2006, the median catch had declined to approximately 43,000 pounds (19,500 kg), representing a nearly 98 percent reduction in catch from the prior period. Eulachon returns to British Columbia rivers similarly suffered severe declines in the mid-1990s and, despite increased returns during 2001 to 2003, presently remain at very low levels. The populations in the Klamath River, Mad River, Redwood Creek, and Sacramento River are likely extirpated or nearly so.

Habitat loss and degradation threaten Eulachon, particularly in the Columbia River basin. Hydroelectric dams block access to historical spawning grounds and affect the quality of spawning substrates through flow management, altered delivery of coarse sediments, and siltation. The release of fine sediments from behind a U.S. Army Corps of Engineers sediment retention structure on the Toutle River has been negatively correlated with Cowlitz River Eulachon returns 3 to 4 years later and is thus implicated in harming Eulachon in this river system, though the exact cause of the effect is undetermined. Dredging activities in the Cowlitz and Columbia rivers during spawning runs may entrain and kill fish or otherwise result in decreased spawning success.

Eulachon have been shown to carry high levels of chemical pollutants, and although it has not been demonstrated that high contaminant loads in Eulachon result in increased mortality or reduced reproductive success, such effects have been shown in other fish species. Eulachon harvest has been curtailed significantly in response to population declines. However, existing regulatory mechanisms may be inadequate to recover Eulachon stocks.

Global climate change may threaten Eulachon, particularly in the southern portion of its range where ocean warming trends may be the most pronounced and may alter prey, spawning, and rearing success.³⁹

5. Environmental Baseline

The environmental baseline of Puget Sound and the surrounding area is largely unchanged from the previous consultation; however, additional studies and new information are provided

³⁸ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

³⁹ Further information from NMFS provided on Eulachon website accessed on May 26, 2020. https://www.westcoast.fisheries.noaa.gov/protected_species/eulachon/pacific_eulachon.html

throughout this Addendum. The human population of the Puget Sound region has continued to grow and as a result the pollution sources have also increased. However, as noted above, the number of commercial Atlantic salmon net pen facilities has been reduced from eight to four and the state of Washington has passed legislation to phase out non-native net pen rearing entirely by 2022. Additionally, it is expected that these four facilities will transition to rearing steelhead prior to the 2022 deadline. The EPA has also incorporated facilities covered under EPA's NPDES GP into this analysis as discussed in more detail below.

Water quality standards enhance the effectiveness of many of the state, local, and federal water quality programs, including point source permit programs, nonpoint source control programs, development of total maximum daily load limitations (TMDLs), and ecological protection efforts. Data acquired during chemical, physical, and biological monitoring studies is utilized in evaluating the quality of the State's waters and designing appropriate water quality controls. Waters identified as "water quality limited" are included on the CWA section 303(d) list, submitted to the EPA biennially. None of the currently permitted net pen facilities operate in areas that are listed as impaired for sediment on Ecology's most recent 303(d) list of impaired waters.

6. Analysis of Effects

The EPA's approval of Washington's revised sediment management standards, and in particular the marine finfish rearing facility provision at WAC 173-204-412, did not directly affect ESA listed or proposed species. However, there are potential indirect effects to ESA listed species and critical habitat through NPDES permitting that includes the revised SMS provisions that the EPA approved in 2008. Therefore, the effects analysis below updates the 2010 BE based on new information for the potential indirect effects from the EPA's prior approval action. This analysis reflects the current number of commercial net pen facilities being reduced from eight to four, the change in species being raised, and includes facilities covered under the EPA's NPDES GP. While the operator may pursue using some of the previously active sites in the future, the potential indirect effect would be similar to those analyzed in this BE Addendum.

The Analysis of Effects in the EPA's 2010 BE, Section 6.A.:

The EPA's 2010 analysis, incorporated herein (in italicized text) and updated in the next section, assumed there would not be an increase in the number of net pen facilities in Puget Sound, that Atlantic salmon would be the fish species reared in those net pen facilities, and that the regulatory structure would remain intact.

The EPA's approval and ESA determinations are based on the following six key findings along with information contained within the recovery plans.

- *The designated uses of Puget Sound are protected.*
- *Net pen facilities have an insignificant impact on aquatic life in Puget Sound.*
- *The existing regulatory framework for net pens provides protection to surrounding habitat and other species.*
- *The effects on the benthic community are accounted for and monitored.*

- *The closure procedures of net pen facilities ensure the aquatic environment is restored to baseline levels.*
- *The indirect effects of net pen facilities carry a low risk.*

These six findings, described in further detail below, are supported by information contained in the following three documents:

1) “Beneficial Environmental Effects of Marine Finfish Mariculture” J.E. Rensel and J.R.M. Forster. July 2007.

This report discusses the findings of a NOAA survey that was conducted from 2004-2006 at a commercial net pen farm in northern Puget Sound. The study found that net pens in Puget Sound provide a beneficial effect since they provide enhanced habitat for diverse populations of invertebrates and seaweeds. Therefore, the biofouling associated with net pens can be considered “beneficial” to species diversity and richly-populated marine food webs. The study also found that vaccines are typically used in place of antibiotics, sea lice problems do not exist due to natural salinity levels and facility siting location accounts for depth and current conditions that distribute net pens wastes over large areas where it may be incorporated into the food web.

2) “Review of Potential Impacts of Atlantic Salmon Culture on Puget Sound Chinook Salmon and Hood Canal Summer-Run Chum Salmon Evolutionarily Significant Units” F. William Waknitz. June 2002.

This NOAA technical memorandum examines the impacts of Atlantic salmon net pens on threatened salmon species found in Puget Sound. The report finds that escaped Atlantic salmon present a low risk to infect wild salmon, a low risk to compete with wild salmon for food or habitat, and a low risk to adversely impact Essential Fish Habitat. The study also finds there to be little risk regarding: hybridization between Atlantic and Pacific salmon; colonization of wild salmon habitat; Atlantic salmon feeding on Pacific salmon; pathogen transmission from Atlantic salmon to wild salmon; and, antibiotic-resistant bacteria development as a result of Atlantic salmon farming.

3) “The Net-pen Salmon Farming Industry in the Pacific Northwest” Colin Nash. September 2001.

This NOAA technical memorandum evaluates the risks associated with salmon net pen farming in the Pacific Northwest. This analysis finds the following issues carry the most risk: the impact of bio-deposits from farm operations on the environment beneath the net pens, the impact on benthic communities by the accumulation of heavy metals, and the impact on non-target organisms by the use of therapeutic compounds. Several of these issues have been addressed by Puget Sound facilities since this report was written in 2001. This memorandum finds several issues which carry a low risk: the physiological effect of low dissolved oxygen levels, the toxic effect of hydrogen sulfide and ammonia from net pen bio-deposits, the toxic effect of algal blooms, changes in the epifaunal community caused by the organic waste accumulation in sediments, the proliferation of human pathogens in the aquatic environment, the proliferation of

fish and shellfish pathogens in the aquatic environment and the increased incidences of disease among wild fish. The technical memorandum also finds the escape of Atlantic salmon and the impact of antibiotic-resistant bacteria on native salmonids to carry very little or no risk.

Update to Section 6.A.6. of the 2010 BE: Indirect Effects of Net Pen Facilities.

This Addendum incorporates new information on the following indirect effects. First, additional information regarding disease transfer from Atlantic salmon net pen fish to Pacific salmon has been included, primarily relying on a letter from NFMS dated January 12, 2016,⁴⁰ and accompanying memo. Second, further information regarding an escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture's Site 2 net pen off Cypress Island and the follow-up and the associated response has been included in the Addendum. This Addendum also discusses potential future uses of commercially operated net pen facilities as steelhead rearing facilities instead of Atlantic salmon rearing facilities. Lastly, the Addendum discusses facilities covered by the current EPA NPDES general permit (WAG132000),⁴¹ which covers tribal enhancement facilities. In their reissuance of the general permit in late 2020, EPA plans to expand the scope of the general permit to include federal research facilities and to allow for the marginal expansion of tribal enhancement facilities. The tribal enhancement facilities raise and release native salmonids and the federal research facilities will raise native fish (Pacific salmon, sablefish, etc.). The current EPA general permit cites, but does not necessarily rely on, the Sediment Management Standards at WAC 173-204 for their permitted operations, and the reissued NPDES GP will be similar in this regard. The effects from the EPA NPDES GP are also discussed in the context of disease transmission and escape.

Disease Transmission

The information regarding disease transfer from Atlantic net pen fish to Pacific salmon is summarized below, relying primarily on a letter from NFMS dated January 12, 2016,⁴² and accompanying memo dated December 17, 2015.

On August 25, 2015, the EPA requested NOAA Fisheries' views on the allegations raised by Wild Fish Conservancy regarding an outbreak of infectious hematopoietic necrosis virus (IHNV) in 2012 at the Atlantic salmon net pen facilities near Rich Passage off Bainbridge Island. This request was made as a result of Wild Fish Conservancy's notice of intent to sue issued in August

⁴⁰ January 12, 2016. Letter from Kim W. Kratz, Ph.D., Assistant Regional Administrator, Oregon Washington Coastal Office, NMFS, to Dan Opalski, Director Office of Water and Watersheds, EPA Region 10 with enclosed memo dated December 17, 2015 from Dr. Dickhoff to Dr. Kratz *Re: Scientific Review of Intent to Sue U.S. Environmental Protection Agency and National Marine Fisheries Service for violations of the Endangered Species Act associated with consultation of Washington State's Revised Sediment Management Standards for Marine Finfish Facilities dated 25 August 2015.*

⁴¹ September 9, 2015. EPA Region 10. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-final-permit-2015.pdf>

⁴² January 12, 2016. Letter from Kim W. Kratz, Ph.D., Assistant Regional Administrator, Oregon Washington Coastal Office, NMFS, to Dan Opalski, Director Office of Water and Watersheds, EPA Region 10 with enclosed memo dated December 17, 2015 from Dr. Dickhoff to Dr. Kratz *Re: Scientific Review of Intent to Sue U.S. Environmental Protection Agency and National Marine Fisheries Service for violations of the Endangered Species Act associated with consultation of Washington State's Revised Sediment Management Standards for Marine Finfish Facilities dated 25 August 2015.*

2015. On January 12, 2016, NMFS responded via letter and an accompanying memo dated December 17, 2015 from Walton Dickhoff, Ph.D., Director, Environmental and Fisheries Sciences Division, Northwest Fisheries Science Center (NWFSC). That memo outlines scientific opinions on the information provided by Wild Fish Conservancy and concludes that the information provided does not substantiate the claims and that there were substantial errors in the assumptions and analysis of impacts.

In short, NOAA Fisheries' NWFSC's experts concluded that the technical claims in the notice of intent to sue were not supported by the best available scientific and commercial information. After reviewing NWFSC's memo, NMFS concluded that the factual allegations presented by Wild Fish Conservancy do not establish any potential for new or different effects of the commercial salmon farms in Puget Sound from what was already considered in the EPA's consultation with NOAA Fisheries that concluded on April 8, 2011, following the submission of the EPA's 2010 BE.

In addition, on March 5, 2019, NMFS provided additional documents to the EPA regarding disease transfer to be considered in this consultation building on those that have been part of the previous record for this consultation. These are listed in the table below. Although the EPA has reviewed these documents, and is including them in the administrative record, the EPA is relying upon the technical expertise from NMFS in evaluating these studies in detail. The EPA does not have additional technical information beyond what has been supplied by NMFS on this topic.

In the EPA's assessment of the technical information provided by NMFS, the EPA notes the following key findings regarding disease risk and transmission:

- “The 2012 outbreak of IHNV in Atlantic salmon does not represent a new or unexpected event, but is an example of the previously reported observation that diseases in Atlantic salmon farms are caused by local pathogens that they obtain from local Pacific salmon. This is known to occur, and was considered thoroughly in the original report by Nash et al., 2001. The 2012 netpen outbreak conforms to that description and is not a new phenomenon that was not previously considered.”... “For any Chinook salmon or steelhead that did become infected, the probability that the infection progressed to cause disease or mortality is extremely unlikely, and not expected to occur.” (Gael Kurath, page 6).
- “The ubiquitous nature of piscine orthoreovirus (PRV), its apparent historic presence in wild Pacific salmonid stocks in the Pacific Northwest and the lack of clear association with disease in Pacific salmonids suggest the virus poses a low risk to wild species of Pacific salmonids.” (T.R. Meyers, page 2).
- “In response to reported findings of infectious salmon anaemia virus (ISAV) in British Columbia (BC), Canada, in 2011, U.S. national, state and tribal fisheries managers and fish health specialists developed and implemented a collaborative ISAV surveillance plan for the Pacific Northwest region of the United States. ...All 4,962 completed tests were negative for ISAV RNA. Results of this surveillance effort provide sound evidence to support the absence of ISAV in represented populations of free-ranging and marine-

farmed salmonids on the northwest coast of the United States.” (Gustafson, L.L., Creekmore, L.H., Snekvik, K.R., Ferguson, J.A., Warg, J.V., Blair, M., Meyers, T.R., Stewart, B., Warheit, K.I., Kerwin, J. and Goodwin, A.E, pages 1-2).

- “Our analysis showed evidence of Heart and skeletal muscle inflammation (HSMI) histopathological lesions over an 11-month timespan, with the prevalence of lesions peaking at 80-100% in sampled fish, despite mild clinical signs with no associated elevation in mortalities reported at the farm level.” (Di Cicco, E., Ferguson, H.W., Schulze, A.D., Kaukinen, K.H., Li, S., Vanderstichel, R., Wessel, Ø., Rimstad, E., Gardner, I.A., Hammell, K.L. and Miller, K.M., page 1).
- “Viral genome sequencing revealed no consistent differences in (Piscine orthoreovirus Strain) PRV-1 variants intimately involved in the development of both diseases suggesting that migratory chinook salmon may be at more than a minimal risk of disease from exposure to the high levels of PRV occurring in salmon farms.” (Di Cicco E, HW Ferguson, KH Kaukinen, AD Schulze, S Li, A Tabata, OP Günther, G Mordecai, CA Suttle, and KM Miller, page 599).
- “We conclude that the longer-term presence of PRV in BC prior to 2001 has not been adequately described and that the evidence that the virus was introduced from Norway is more robust than the hypothesis that PRV is endemic to the eastern Pacific Ocean.” (Kibenge, M.J., Wang, Y., Morton, A., Routledge, R. and Kibenge, F.S., page 5).
- “Importantly, infectious salmon anemia virus, salmonid herpesvirus, salmon alphavirus, and infectious pancreatic necrosis virus were not detected. Furthermore, while the agents associated with proliferative gill disease (*D.lep*, *Ca.B.cys*, and gill chlamydia) were all detected, few fish showed evidence of lesions associated with this multifactorial disease. The majority of agents detected on BC salmon farms were known to be endemic, but new findings include the marine detections of some infectious agents reported to only cause freshwater or hatchery-based diseases (*Flavobacterium psychrophilum* and *Ichthyophthirius multifiliis*.” (Laurin, E., Jaramillo, D., Vanderstichel, R., Ferguson, H., Kaukinen, K.H., Schulze, A.D., Keith, I.R., Gardner, I.A. and Miller, K.M., page 220).
- “Overall, the assessment concluded that IHNV attributable to Atlantic Salmon farms in the Discovery Islands poses minimal risk to Fraser River Sockeye Salmon abundance and diversity under the current fish health management practices.” (Mimeault, C., Wade, J., Foreman, M.G.G., Chandler, P.C., Aubry, P., Garver, K.A., Grant, S.C.H., Holt, C., Jones, S.R.M., Johnson, S.C. and Trudel, M., page v).
- “These results suggest that PRV transfer is occurring from farmed Atlantic salmon to wild Pacific salmon, that infection in farmed salmon may be influencing infection rates in wild salmon, and that this may pose a risk of reduced fitness in wild salmon impacting their survival and reproduction.” (Morton, A., Routledge, R., Hrushowy, S., Kibenge, M. and Kibenge, F, page 1).

- “... we tested a subset of these samples for infectious salmon anaemia virus (ISAV) RNA with three additional published molecular assays, as well as for RNA from salmonid alphavirus (SAV), piscine myocarditis virus (PMCV) and piscine orthoreovirus (PRV). All samples (n = 2,252; 121 stock cohorts) tested negative for RNA from ISAV, PMCV, and SAV. In contrast, there were 25 stock cohorts from Washington and Alaska that had one or more individuals test positive for PRV RNA; prevalence within stocks varied and ranged from 2% to 73%. The overall prevalence of PRV RNA-positive individuals across the study was 3.4% (77 of 2,252 fish tested).” (Purcell, M.K., Powers, R.L., Evered, J., Kerwin, J., Meyers, T.R., Stewart, B. and Winton, J.R, page 347).

The EPA has discussed the scientific finding with NMFS and concluded that its analysis of effects for species and critical habitats remains unchanged from the findings in the 2010 BE regarding disease transmission. Further details are available in the December 17, 2015 memo by NWFSC and the documents identified in the table below and the EPA is relying upon the technical expertise from NMFS in evaluating these studies in more detail.

| Date | Author(s) | Title/Journal |
|----------|--|---|
| 8/1/17 | Gael Kurath, M.S., Ph.D., U.S.G.S. Western Fisheries Research Center, Microbiologist | Scientific Review of the Risk Posed to Endangered Pacific Salmon in Puget Sound, Washington, by an Outbreak of the Salmon Virus, IHNV in Atlantic Salmon Farm Netpens in Puget Sound. RE: Case No. 2:15-CV-01731-MJP, <i>Wild Fish Conservancy v. United States Environmental Protection Agency and the National Marine Fisheries Service</i> . USGS. 26 pages. |
| 9/17 | T.R. Meyers, Alaska Department of Fish and Game, Juneau Fish Pathology Laboratory | Piscine Orthoreovirus (PRV) in the Pacific Northwest Appears to be of Low Risk to Wild Pacific Salmonids. The Pacific Northwest Fish Health Protection Committee. 6 pages. |
| 8/28/18 | Gustafson, L.L., Creekmore, L.H., Snekvik, K.R., Ferguson, J.A., Warg, J.V., Blair, M., Meyers, T.R., Stewart, B., Warheit, K.I., Kerwin, J. and Goodwin, A.E | A systematic surveillance programme for infectious salmon anaemia virus supports its absence in the Pacific Northwest of the United States. <i>Journal of fish diseases</i> , 41(2), pp.337-346. |
| 2/22/17 | Di Cicco, E., Ferguson, H.W., Schulze, A.D., Kaukinen, K.H., Li, S., Vanderstichel, R., Wessel, Ø., Rimstad, E., Gardner, I.A., Hammell, K.L. and Miller, K.M. | Heart and skeletal muscle inflammation (HSMI) disease diagnosed on a British Columbia salmon farm through a longitudinal farm study. <i>PLoS One</i> , 12(2), p.e 0171471. |
| 4/23/18 | Di Cicco E, HW Ferguson, KH Kaukinen, AD Schulze, S Li, A Tabata, OP Günther, G Mordecai, CA Suttle, and KM Miller. | The same strain of Piscine orthoreovirus (PRV-1) is involved in the development of different, but related, diseases in Atlantic and Pacific Salmon in British Columbia. <i>FACETS</i> 3:599–641. |
| 11/30/17 | Kibenge, M.J., Wang, Y., Morton, A., Routledge, R. and Kibenge, F.S. | Formal comment on: Piscine reovirus: Genomic and molecular phylogenetic analysis from farmed and wild salmonids collected on the |

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|----------|---|--|
| | | Canada/US Pacific Coast. PloS one, 12(11), p.e 0188690. |
| 8/29/18 | Laurin, E., Jaramillo, D., Vanderstichel, R., Ferguson, H., Kaukinen, K.H., Schulze, A.D., Keith, I.R., Gardner, I.A. and Miller, K.M. | Histopathological and novel high-throughput molecular monitoring data from farmed salmon (<i>Salmo salar</i> and <i>Oncorhynchus</i> spp.) in British Columbia, Canada, from 2011–2013. Aquaculture. |
| 12/1/17 | Mimeault, C., Wade, J., Foreman, M.G.G., Chandler, P.C., Aubry, P., Garver, K.A., Grant, S.C.H., Holt, C., Jones, S.R.M., Johnson, S.C. and Trudel, M. Fisheries and Oceans Canada (DFO). | Assessment of the Risk to Fraser River Sockeye Salmon Due to Infectious Hematopoietic Necrosis Virus (IHNV) Transfer from Atlantic Salmon Farms in the Discovery Islands, British Columbia. Canadian Science Advisory Secretariat (CSAS). |
| 12/12/17 | Morton, A., Routledge, R., Hrushowy, S., Kibenge, M. and Kibenge, F | The effect of exposure to farmed salmon on piscine orthoreovirus infection and fitness in wild Pacific salmon in British Columbia, Canada. PloS one, 12(12), p.e 0188793. |
| 9/6/17 | Purcell, M.K., Powers, R.L., Evered, J., Kerwin, J., Meyers, T.R., Stewart, B. and Winton, J.R | Molecular testing of adult Pacific salmon and trout (<i>Oncorhynchus</i> spp.) for several RNA viruses demonstrates widespread distribution of piscine orthoreovirus in Alaska and Washington. Journal of fish diseases, 41(2), pp.347-355. |

Additionally, the EPA has discussed the scientific findings on disease transfer with NMFS and understands that similar disease transmission concerns remain relevant between net pen facilities raising native species (Coho, sablefish, future steelhead facilities, etc.) and wild salmon; however, the risks and pathways may vary. The analysis of the net pen facilities in this Addendum addresses the low risk associated with disease transfer between the additional native species and wild salmon.

Escapement

Information regarding an escapement event that occurred on or around August 19, 2017, at Cooke Aquaculture’s Site 2 net pen off Cypress Island and the follow up and the associated response is summarized below.

On March 5, 2019, NMFS provided documents to the EPA regarding the 2017 escapement event to be considered in this consultation. These are listed in the table below. Although the EPA has reviewed these documents and is including them in the administrative record, the EPA is relying upon the technical expertise from NMFS in evaluating these studies in more detail and providing analysis. The EPA does not have further technical information beyond what has been supplied by NMFS on this topic.

In the EPA’s assessment of the technical information provided by NMFS, the EPA notes the following key findings regarding the escapement event:

- “Cooke reacted to the August 19 failure with substantial resources in an attempt to save the net pen again. When its efforts were unsuccessful, the company then turned to

stabilizing the collapsed structure, extracting the dead fish, and salvaging the pen. Cooke removed the surface portions of the net pen by September 24. Although Cooke stated by letter that it had removed all debris from the bottom of Deepwater Bay, an inspection by DNR on October 27 showed that substantial debris remained. DNR required further cleanup that lasted into January 2018.” (D Clark, K Lee, K Murphy, A Windrope, pages 7-8).

- As a result of the 2017 net pen failure and escapement event, 56,810 fish were recovered and between 186,149-205,849 fish were not recovered. 390 fish were recovered through beach seining in Deepwater Bay by Cooke and the smelt fishery caught 2,261 fish in the San Juan Islands through beach seining efforts. (D Clark, K Lee, K Murphy, A Windrope, page 111 and page 97).
- “Recovering fish from Puget Sound required a detailed understanding of co-management, fish regulations, fish science and an existing relationship with the fishing fleets. In the future, it may be more effective for DFW and co-managers to work together to design and implement recovery efforts with input and support from the net pen operator. The combined recovery effort could be tested and refined similar to the preparations for oil spill response.” (D Clark, K Lee, K Murphy, A Windrope, page 112).
- “The recovery response plan was not adequately detailed and future response plans need to be tailored to the site such that they reflect site-specific conditions, geography, currents and best approaches for recovery given those specifics. Initial recovery efforts were successful as the fish kept close to shore and were within the immediate area. As the recovery period moved past the first few weeks, however, the fish became widely dispersed or died and recovery became very difficult. In the future, recovery efforts should be immediate and comprehensive prior to dispersal.” (D Clark, K Lee, K Murphy, A Windrope, page 112).
- “1) To date, there is no evidence that the escaped Atlantic salmon were eating native fauna nor is there evidence that they were sexually mature. 2) Over time, the fish in the marine system contracted native pathogens and have shown decreasing health status. 3) Atlantic salmon have been found in a limited number of rivers in Puget Sound (Skykomish and Skagit rivers). Atlantic salmon have not been seen at any DFW hatchery despite monitoring. There is no indication that Atlantic salmon have been caught in Nooksack drainage or at Whatcom Creek Hatchery drainage. DFW was present at the chum spawns in late fall at Bellingham Technical College and did not see any Atlantic salmon in Whatcom Creek. 4) The limited numbers of Atlantic salmon found in the freshwater system appear healthy. There is no evidence that they were feeding in the freshwater system nor were they sexually mature. The Atlantic salmon in freshwater may survive for some time.” (D Clark, K Lee, K Murphy, A Windrope, page 113).
- “The 2017 Deepwater Bay releases were significant in size but follow a long period of minimal releases in Washington State and British Columbia and do not redefine the declining trend in Washington or B.C.” (Rensel, J.E., page 2).

- “No self-sustaining runs of Atlantic salmon have been established in either Washington State or British Columbia, either from repeated intentional plantings by government agencies starting many decades ago or from farmed salmon escapes. It is apparent that the vast majority of these fish do not survive very long outside aquaculture facilities as stomachs of recaptured fish in marine or freshwater are almost always empty. Five hundred fish stomachs were sampled from recovered fish in the 2017 Deepwater Bay releases. All stomachs were empty and that pattern occurs for the vast majority of other releases in the past.” (Rensel, J.E., page 2).
- “Cooke agrees with many of the lessons learned, particularly with respect to need for greater and closer coordination with the state, tribes, and the federal government. Cooke has already drafted revisions to its Fish Escape and Response Plan, is evaluating whether other operational changes may be needed and invites continued dialogue with agencies on how to improve regulatory oversight of its operations.” (Steding, D.J., page 11)

The EPA has discussed the scientific finding and lessons learned from the 2017 escapement event with NMFS. The EPA has concluded that its analysis of effects for certain species should be modified from the not likely to adversely affect (NLAA) finding in the 2010 BE to likely to adversely affect (LAA) due to the escapement risks and associated response. Although the inbreeding risk between the two species is low as a result of the escapement, adverse effects to listed species and take could occur from the process of collecting escaped fish (and facility debris) and potential bycatch of ESA-listed species. See 6.B., 6.C., and 6.D. below for the analysis of those effects and the EPA’s modification of the determinations to species and critical habitat. Further details are available in the documents identified in the table below and the EPA is relying upon the technical expertise from NMFS in evaluating these studies in more detail.

| Date | Author(s) | Title/Journal |
|-------------|---------------------------------------|---|
| 1/30/18 | D Clark, K Lee, K Murphy, A Windrope. | 2017 Cypress Island Atlantic Salmon Net Pen Failure: An Investigation and Review. Washington Department of Natural Resources. Olympia, WA. 120 pages. ⁴³ |
| 2018 | Rensel, J.E. (Jack) | Escaped Atlantic Salmon in Washington State. Prepared by Rensel Associate Aquatic Sciences for Cooke Aquaculture Pacific, Inc. 59 pages. |
| 1/29/18 | Steding, D. J. | Letter to Investigation and Review Panel, RE: Draft of Incident Review Board Report. January 29, 2018. |

As noted previously, the EPA has discussed the scientific findings on escapement with NMFS and understands that escapement risks remain relevant between net pen facilities raising native species that are not intended for release (sablefish, future steelhead facilities, etc.) and wild salmon. The proposed steelhead rearing activities would only raise sterile all-female triploid trout; therefore, if escapement were to occur it is the EPA’s understanding that the fish would

⁴³ January 30, 2018. D Clark, K Lee, K Murphy, A Windrope. *2017 Cypress Island Atlantic Salmon Net Pen Failure: An Investigation and Review*. Washington Department of Natural Resources. https://www.dnr.wa.gov/sites/default/files/publications/aqr_cypress_investigation_report.pdf?vdqi7rk

have a low likelihood of reproduction. While the EPA anticipates that steelhead would not prey on other species, the Agency is relying upon the technical expertise from NMFS in evaluating the potential risks of steelhead escapement and any subsequent reproduction and competition for space and resources. The inclusion of these facilities in this Addendum addresses the low risk of escapement and the interaction between the additional native species and wild salmon. Fish from salmon enhancement facilities (like those covered under the EPA’s NPDES GP) will be released into the wild at a future date, and their time in the net pens only serves to imprint the fish for purposes of return. Therefore, the inclusion of those facilities in this Addendum does not impact the analysis of effects due to escapement.

NPDES Permitting Actions to Minimize Risk

Lastly, this Addendum incorporates updated NPDES permitting actions by Ecology to minimize escapement risk and the upcoming phase out and moratorium on non-native fish species rearing by 2022, as well as the inclusion of facilities covered under the EPA’s NPDES GP. This Addendum also discusses the proposed rearing of steelhead trout in the net pens facilities previously used for Atlantic salmon.

NPDES permitting regulations for net pen facilities are found in the following regulations: 40 CFR Part 451, 40 CFR Part 122.24, and 40 CFR Part 122 appendix C, which together comprise the permitting regulatory requirements for different types of net pen facilities. One main difference is that net pen facilities that produce 100,000 pounds or more per year of aquatic animals, except for facilities rearing native species released after a growing period of no longer than 4 months to supplement commercial and sports fisheries, must follow the Effluent Limitation Guidelines (ELGs) at 40 CFR part 451. Facilities that do not fall under the ELGs may require an NPDES permit to discharge if the facility operates for more than 30 days per year, produces more than 20,000 pounds of harvest or release weight of aquatic animals per year, and feeds more than 5,000 pounds of food during the calendar month of maximum feeding.

Commercially Operated Net Pen Facilities

As indicated in the Background section, currently there are four commercial net pen facilities still in operation in Puget Sound. The 2010 BE evaluated impacts from eight facilities, but due to the collapse of Cooke’s net pen facility Cypress Island—Site 2 and the closure of the Port Angeles (Ediz Hook) net pen facility among others off Cypress Island, the number of active facilities has been reduced to four, including three in Rich Passage near Bainbridge Island (Clam Bay, Fort Ward, and Orchard Rocks) and one near Hope Island (Skagit Bay). The locations are shown on the maps included at the end of this Addendum.

Below is a table with information on the four current commercial net pen facilities in Puget Sound permitted by Ecology:

| Waterbody | Rich Passage (Clam Bay) | Rich Passage (Fort Ward) | Rich Passage (Orchard Rocks) | Skagit Bay (Hope Island) |
|-----------------------|--------------------------------|---------------------------------|-------------------------------------|---------------------------------|
| Facility Owner | Cooke Aquaculture | Cooke Aquaculture | Cooke Aquaculture | Cooke Aquaculture |
| Permit Number | WA0031526 | WA0031534 | WA0031542 | WA0031593 |
| Latitude | 47° 34’ 17’’ N (47.57139) | 47° 34’ 30’’ N (47.5750) | 47° 34’ 30’’ N (47.5750) | 48° 24’ 28’’ N (48.4078) |

| | | | | |
|---|---|---|---|--|
| Longitude | 122° 32' 25'' W (-122.54028) | 122° 31' 30'' W (-122.5250) | 122° 31' 50'' W (-122.5306) | 122° 33' 32'' W (-122.5589) |
| Net Pen Area (in feet) | 1010 x 185 | 650 x 185 | 900 x 185 | 10 pens approximately 80 square feet |
| Minimum Water Depth at Site ^ | 65 feet | 45 feet | 45 feet | Between 113 and 80 feet |
| Lease Acreage | 98.62 total (for all Rich Passage facilities) | 98.62 total (for all Rich Passage facilities) | 98.62 total (for all Rich Passage facilities) | 31.47 |
| Lease Expiration Date⁴⁴ | 11/10/2022 | 11/10/2022 | 11/10/2022 | 3/31/2022 |
| Current Species | Atlantic Salmon | Atlantic Salmon | Atlantic Salmon | Atlantic Salmon |
| Future Species | Native species | Native species | Native species | Native species |

^ Depths are given at Mean Lower Low Water (MLLW).

Information obtained from WDNR and Ecology draft permits.

In 2018, following the collapse of Cooke's net pen facility Cypress Island—Site 2 and the resulting escape of approximately 250,000 Atlantic salmon, the Washington State Legislature passed House Bill 2957, phasing out marine rearing of Atlantic salmon as the facility aquatic lands leases expire in 2022. Under the provisions of House Bill 2957, Ecology is authorized to renew the NPDES permits for the marine Atlantic salmon net pen facilities until the leases administered by DNR expire. Until Atlantic salmon farming is officially banned from Puget Sound starting in 2022, companies are required to have water quality discharge permits (NPDES permits). The updated permits incorporate lessons learned from the Cypress Island net pen failure and include closure requirements for the phaseout.

Ecology issued new NPDES permits for these four commercial net pen facilities on July 11, 2019.⁴⁵ The previous permits for these facilities were issued in 2007 and administratively extended in 2012. The NPDES permits require Best Management Practices (BMPs), monitoring, and reporting to ensure water quality standards are met. These facilities are operated to rear fish for harvest and market sale. Uneaten fish food, fish feces, antibiotics and the accidental release of Atlantic Salmon are the primary pollutants resulting from the operation of these facilities. The requirements in the permits allow Ecology to ensure that facilities are meeting water quality standards.

Additional protective measures in the updated 2019 permits include:

- Increasing underwater video monitoring of net pens.
- Conducting inspections to assess structural integrity of the net pens and submit inspection reports certified by a qualified marine engineer to Ecology.

⁴⁴ December 21, 2018. Personal communication with Jeff Vanderpham, NMFS. Information regarding Washington DNR aquatic leases.

⁴⁵ Washington Department of Ecology. Atlantic salmon net pen individual permits website. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

- Improving net cleaning and maintenance procedures to prevent biofouling and fish escape.
- Requiring the permittee to develop site specific response plans in the event of a fish release, and to conduct and participate in preparedness trainings.
- Requiring improved maintenance of the net pens.
- Maintaining contact information to notify area tribes in the event of a fish release.⁴⁶

The fact sheet for the permits summarizes the updated requirements as follows:

“This permit increases the frequency of sediment sampling from twice per permit cycle to annually between August 15 and September 30, and to conduct additional sediment monitoring within two weeks before or after each fish harvesting. Underwater video survey is also required annually rather than twice per permit cycle. Daily dissolved oxygen (DO) sampling at the edge of the pens in August and September has been added to the permit, to verify that aeration of the pens, a BMP employed to maintain DO levels within the pens, is effective during this critical period. Monitoring of current velocity has been added to this permit, as strong currents contribute to wear on the net pen structures. With this issuance of the permit, the Permittee is required to use the Water Quality Permitting Portal to submit electronic discharge monitoring reports (DMRs) and other required permit submittals and reports.

As part of the required pollution prevention plan, fish escape prevention plan, and fish escape reporting and response plan, this permit adds requirements related to engineering documents, notification of structural issues and repairs, net cleaning to prevent excess biofouling, and staff training in escape prevention and response.”⁴⁷

While these NPDES permitting requirements for Atlantic salmon net pen facilities should reduce the risk of escapement and the effects of response efforts related to an escapement event interfering with listed species and their critical habitat, they do not eliminate them. These permitting activities do not affect facilities covered by the EPA’s NPDES GP.

As indicated elsewhere in this Addendum, all-female triploid rainbow trout are expected to replace Atlantic salmon at all commercial net pen facilities. On January 21, 2020, WDFW approved an application from Cooke Aquaculture to farm all-female, sterile (triploid) rainbow trout/steelhead in Puget Sound. Ecology is now in the process of revising the NPDES permits to authorize the transition to rearing steelhead and is accepting public comments until June 8, 2020. Those potential indirect effects have been discussed above.

Facilities Covered Under the EPA’s NPDES General Permit

Out of an abundance of caution, the EPA is including facilities covered under the EPA’s NPDES GP which cites, but does not necessarily rely upon, the SMS at WAC 173-204, in this 2020

⁴⁶ Washington Department of Ecology. Atlantic salmon net pen individual permits website. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

⁴⁷ Washington Department of Ecology. Atlantic salmon net pen individual permits website. Fact Sheets. Accessed May 26, 2020. <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits/Net-pens>

Addendum. There are significant differences (including duration, size, operation, etc.) between the permittees covered under the EPA’s NPDES GP, which applies to tribal enhancement and federal research facilities, and those covered under Ecology’s NPDES permits for large commercial net pen facilities for fish harvest and sale.

The EPA’s NPDES GP, which expires October 31, 2020, covers five tribal enhancement facilities⁴⁸ and specifically limits coverage to facilities rearing and releasing native fish species. One federal facility does not yet have permit coverage but is expected to be covered by the reissued EPA NPDES GP by the end of 2020. The reissued EPA NPDES GP anticipates including the facilities listed in the table below:

Facilities Covered Under the EPA’s NPDES GP

| Waterbody | Agate Pass | Elliott Bay | Peale Passage | Port Gamble | Quilcene Bay | Clam Bay |
|--------------------------|-------------------|--------------------|----------------------|-----------------------------|---------------------|--|
| Facility Operator | Suquamish Tribe | Suquamish Tribe | Squaxin Island Tribe | Port Gamble S’Klallam Tribe | Skokomish Tribe | NOAA (Manchester Research Station) |
| Coverage Status | Covered | Covered | Covered | NOI Submitted | NOI Submitted | Applied – will be covered under new general permit |
| EPA Permit # | WAG132001 | WAG132002 | WAG132003 | WAG132004 | WAG132005 | N/A |
| Latitude | 47.7036 | 47.6222 | 47.2004 | 47.8454 | 47.7893 | 47.5734 |
| Longitude | -122.5750 | -122.3676 | -122.9042 | -122.5738 | -122.8519 | -122.5456 |
| lbs of fish | 45,000 | 90,909 | 47,500 | 45,850 | 13,000 | 58,429 |
| # Months/Year | March-June (4) | March-June (4) | January-June (6) | February – May (4) | January-May (5) | Year-round |

⁴⁸ September 9, 2015. EPA Region 10. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-final-permit-2015.pdf>

April 30, 2015. EPA Region 10. Fact Sheet. Tribal Marine Net Pen Enhancement Facilities NPDES General Permit for Washington. WAG132000. <https://www.epa.gov/sites/production/files/2018-03/documents/r10-npdes-washington-tribal-net-pen-gp-wag132000-fact-sheet-2015.pdf>

| | | | | | | |
|---------------------------------------|-----------|---------|-------|------|---------|--------------------|
| Lease Acreage | 5.5 | Unknown | 20.89 | 1.62 | Unknown | Unknown |
| Current Species | Coho | Coho | Coho | Coho | Coho | Sablefish |
| Min Clearance to Seafloor (ft) | 15 | 15 | 9.7 | 23 | | |
| Mean Low Water Depth (ft) | 45 | 40 | 24.5 | 48 | 30 | ~36 (unknown tide) |
| Current (cm/sec) | 206 (max) | 77 | 7 | 82 | 257 | |

NOI – notice of intent

In the EPA’s NPDES GP, the Total Organic Carbon (TOC) reference value table for sediment characterization directly underneath each net pen facility from the SMS was used. Also, the EPA cited the SMS regulations and net pen provisions in the factsheet in response to Ecology’s CWA section 401 certification. However, the EPA did not permit the allowance of a sediment impact zone. The permit already includes language prohibiting anoxic sediments beneath the net pens and dissolved oxygen water column monitoring and evaluation.

In addition, the EPA acknowledges the existence of other net pens in Puget Sound, however, since there are no NPDES permits associated with these facilities, the SMS regulations at WAC-173-204-412 do not apply. Therefore, these facilities are not analyzed in this BE Addendum.

6.B. ANALYSIS OF EFFECTS ON FISH SPECIES

The analyses in this Addendum and the previous BEs with the support of the NOAA technical memorandums, conclude that the marine finfish rearing facility provision is protective of designated uses, including those related to wild salmon in Puget Sound, and net pen facilities carry an insignificant risk of negatively affecting wild salmon. However, due to escapement concerns and effects following the 2017 net pen collapse, the EPA has concluded that its approval of WAC 173-204-412 **is likely to adversely affect** the following listed species:

| | |
|---------------------------------|--|
| <i>Oncorhynchus tshawytscha</i> | Chinook Salmon (Puget Sound ESU) |
| <i>Oncorhynchus keta</i> | Chum Salmon (Hood Canal summer-run ESU) |
| <i>Oncorhynchus mykiss</i> | Steelhead (Puget Sound, DPS) |
| <i>Sebastes paucispinis</i> | Bocaccio (Puget Sound/Georgia Basin DPS) |
| <i>Sebastes ruberrimus</i> | Yelloweye Rockfish (Puget Sound/Georgia Basin DPS) |

Note that this determination is a result of the indirect effects of the operation of commercial net pen facilities. There is a low risk of competition between the escaped fish and ESA-listed species. The risk is also low associated with bycatch of ESA-listed species during potential recovery efforts.

The EPA has concluded that its approval of WAC 173-204-412 is unchanged from the 2010 BE as escape from commercial net pens is not likely to create an increased risk to non-salmon species. This analysis has been updated to include North American Green Sturgeon (Southern DPS) and Pacific Eulachon (Southern DPS). Therefore, the EPA has concluded its action **may affect, but is not likely to adversely affect** the following listed species:

| | |
|-------------------------------|--|
| <i>Acipenser medirostris</i> | North American Green Sturgeon (Southern DPS) |
| <i>Thaleichthys pacificus</i> | Pacific Eulachon (Southern DPS) |

6.C. ANALYSIS OF EFFECTS ON MARINE MAMMALS

The EPA has concluded that its approval of WAC 173-204-412 is unchanged from the 2010 BE as escape from commercial net pens is not likely to create an increased risk to marine mammals. Therefore, the EPA has concluded its action **may affect, but is not likely to adversely affect** the following listed species:

| | |
|-------------------------------|--|
| <i>Megaptera novaeangliae</i> | Humpback Whale (Pacific Coast, Mexico DPS and Central America DPS) |
| <i>Orinus orca</i> | Killer Whale (Southern Resident, DPS) |

6.D. EFFECTS OF THE ACTION ON CRITICAL HABITAT

The listed species with designated critical habitat analyzed in the 2010 BE are Chinook salmon (Puget Sound ESU), Chum salmon (Hood Canal summer-run ESU), and Killer Whale (Southern Resident, DPS). This Addendum has been updated to include critical habitat for Steelhead (Puget Sound, DPS), North American Green Sturgeon (Southern DPS), Pacific Eulachon (Southern DPS), Bocaccio (Puget Sound/Georgia Basin DPS) and Yelloweye Rockfish (Puget Sound/Georgia Basin DPS).

After evaluating escape concerns and effects following the 2017 net pen collapse, the EPA has concluded that its approval of WAC 173-204-412 **may affect, but is not likely to adversely affect** critical habitat for the following listed species. Despite concluding likely to adversely affect due to escapement and response efforts for these species, critical habitat is not implicated in the same manner as the species themselves.

| | |
|---------------------------------|--|
| <i>Oncorhynchus tshawytscha</i> | Chinook Salmon (Puget Sound ESU) |
| <i>Oncorhynchus keta</i> | Chum Salmon (Hood Canal summer-run ESU) |
| <i>Oncorhynchus mykiss</i> | Steelhead (Puget Sound, DPS) |
| <i>Sebastes paucispinis</i> | Bocaccio (Puget Sound/Georgia Basin DPS) |
| <i>Sebastes ruberrimus</i> | Yelloweye Rockfish (Puget Sound/Georgia Basin DPS) |

This analysis has been updated to include North American Green Sturgeon (Southern DPS) and Pacific Eulachon (Southern DPS) critical habitat. As with the determination above, the EPA has concluded its action **may affect, but is not likely to adversely affect** the critical habitat for the following listed species:

Acipenser medirostris
Thaleichthys pacificus

North American Green Sturgeon (Southern DPS)
 Pacific Eulachon (Southern DPS)

Consistent with the 2010 BE, the EPA is not revising the analysis of effects on critical habitat for the Killer Whale (Southern Resident, DPS) as escapement risk and the EPA’s action **may affect, but is not likely to adversely affect** critical habitat for that marine mammal species.

7. Cumulative Effects

The findings for this section are unchanged from the 2010 BE.

8. Summary of Findings

Table 8-1 Species and Critical Habitat that this Consultation May Affect (LAA or NLAA).⁴⁹

| | Species | ESU/DPS/Population | Critical Habitat Designation |
|---|---|---|-------------------------------------|
| 1 | Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | Yes |
| 2 | Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | Yes |
| 3 | Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | Yes |
| 4 | Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | Yes |
| 5 | Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | (Puget Sound/Georgia Basin DPS) | Yes |
| 6 | North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | Yes |
| 7 | Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | Yes |
| 8 | Humpback Whale (<i>Megaptera novaeangliae</i>) | Pacific Coast, Mexico DPS and Central America DPS | No |
| 9 | Killer Whale (<i>Orinus orca</i>) | Southern Resident, DPS | Yes |

Table 8-2 summarizes the EPA’s determinations, updated from the 2010 BE, for ESA-listed species, under NOAA jurisdiction, analyzed for the EPA’s approval of Washington’s marine finfish rearing facility provision, WAC 173-204-412.

Table 8-2 LAA Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA’s Approval of WAC 173-204-412 |
|---|---------------------------|--|
| Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | LAA |

⁴⁹ March 7, 2019. Personal communication with Jeff Vanderpham, NMFS. Species list/critical habitat for net pen consultation.

| | | |
|--|----------------------------------|-----|
| Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | LAA |
| Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | LAA |
| Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | LAA |
| Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | Puget Sound/Georgia Basin DPS | LAA |

LAA – Likely to adversely affect

Table 8-3 summarizes the EPA’s determinations, updated from the 2010 BE, for ESA-listed species, under NOAA jurisdiction, analyzed for the EPA’s approval of Washington’s marine finfish rearing facility provision, WAC 173-204-412.

Table 8-3 NLAA Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA’s Approval of WAC 173-204-412 |
|--|--|---|
| Humpback Whale (<i>Megaptera novaeangliae</i>) | Pacific Coast, Mexico DPS and Central America DPS | NLAA |
| Killer Whale (<i>Orcinus orca</i>) | Southern Resident, DPS | NLAA |
| North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | NLAA |
| Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | NLAA |

NLAA – May affect, but is not likely to adversely affect

Table 8-4 summarizes the EPA’s determination of No Effect for ESA-listed species, under NOAA jurisdiction, analyzed for the EPA’s approval of Washington’s marine finfish rearing facility provision, WAC 173-204-412. These findings are unchanged from the 2010 BE.

Table 8-4 NE Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA’s Approval of WAC 173-204-412 |
|---|--|---|
| Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Snake River Fall Run Lower Columbia River Upper Columbia River Spring Run Snake River Spring/Summer Run | NE |
| Chum Salmon (<i>Oncorhynchus keta</i>) | Columbia River | NE |
| Coho Salmon (<i>Oncorhynchus kisutch</i>) | Lower Columbia River | NE |
| Sockeye Salmon (<i>Oncorhynchus nerka</i>) | Ozette Lake | NE |

| Species | ESU/DPS/Population | Effects Determination for the EPA's Approval of WAC 173-204-412 |
|---|--|---|
| Steelhead (<i>Oncorhynchus mykiss</i>) | Snake River Basin Lower Columbia River Upper Columbia River Basin Middle Columbia River | NE |
| Southern Sea Otter (<i>Enhydra lutris neries</i>) | | NE |
| Green Sea Turtle (<i>Chelonia mydas</i>) | | NE |
| Leatherback Sea Turtle (<i>Dermochelys coriacea</i>) | | NE |

NE – No effect

Table 8-5 summarizes the EPA's determinations, updated from the 2010 BE, for critical habitat, under NOAA jurisdiction, analyzed for the EPA's approval of Washington's marine finfish rearing facility provision, WAC 173-204-412.

Table 8-5 Critical Habitat Summary of Findings.

| Species | ESU/DPS/Population | Effects Determination for the EPA's Approval of WAC 173-204-412 |
|---|----------------------------------|---|
| Chinook Salmon (<i>Oncorhynchus tshawytscha</i>) | Puget Sound ESU | NLAA |
| Chum Salmon (<i>Oncorhynchus keta</i>) | Hood Canal summer-run ESU | NLAA |
| Steelhead (<i>Oncorhynchus mykiss</i>) | Puget Sound, DPS | NLAA |
| Killer Whale (<i>Orinus orca</i>) | Southern Resident, DPS | NLAA |
| Bocaccio (<i>Sebastes paucispinis</i>) | Puget Sound/Georgia Basin DPS | NLAA |
| Yelloweye Rockfish (<i>Sebastes ruberrimus</i>) | Puget Sound/Georgia Basin DPS | NLAA |
| North American Green Sturgeon (<i>Acipenser medirostris</i>) | Southern DPS | NLAA |
| Pacific Eulachon (<i>Thaleichthys pacificus</i>) | Southern DPS | NLAA |

NLAA – May affect, but is not likely to adversely affect

9. Sediment Testing Methodology Provisions

The EPA is not changing the results of the findings in the 2010 BE for these provisions and the listed species/critical habitat covered in the 2010 BE (with the exception of WAC 173-204-520(3)(d)(iv)). As noted above, *WAC 173-204-520(3)(d)(iv). Juvenile polychaete Puget Sound marine sediment cleanup screening levels and minimum cleanup level biological criteria*, is no longer included in this ESA consultation. The state deleted and substantively replaced this

provision as part of its revisions to the SMS in 2013. On December 18, 2015, the EPA rescinded its 2008 approval of this provision and no longer views Part V of the SMS to be WQS. Therefore, this provision is no longer part of the consultation and this Addendum.

See the 2010 BE for more information and details on the remaining sediment testing methodology provisions. Because these provisions that the EPA included in the 2010 BE are solely focused on the quality of the control and reference sediment samples for juvenile polychaete growth and larval bivalve survivorship that serve to improve the reliability of test results for benthic community protection, the EPA concludes this action **may affect, but is not likely to adversely affect** endangered or threatened species or designated critical habitat for the following new species and critical habitat listed since 2010:

- North American Green Sturgeon, Southern DPS
- Pacific Eulachon, Southern DPS
- Steelhead Puget Sound DPS Critical Habitat
- Bocaccio Puget Sound/Georgia Basin DPS Critical Habitat
- Yelloweye Rockfish Puget Sound/Georgia Basin DPS Critical Habitat

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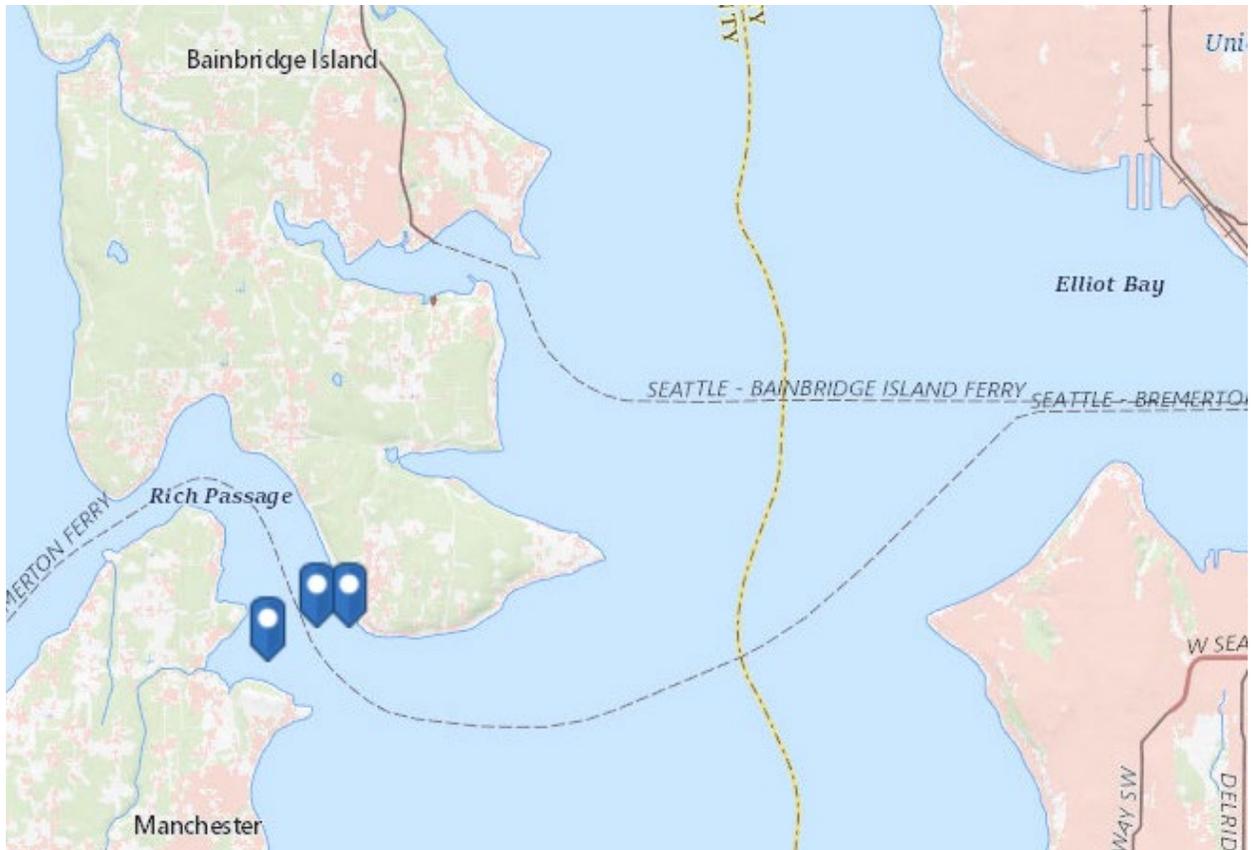
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11. Maps

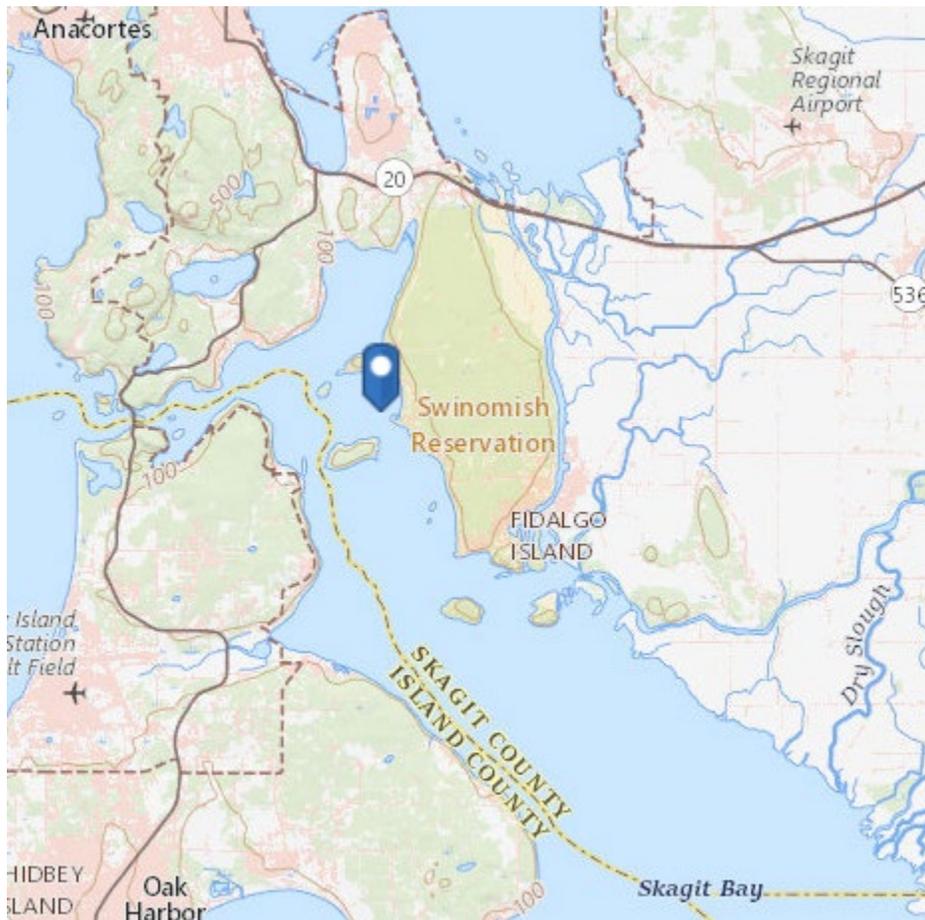
Figure 1. Rich Passage Atlantic Salmon Rearing Facilities



From Ecology (accessed May 26, 2020):

<https://ecology.wa.gov/DOE/media/Images/WATER-SHORELINES/Water%20quality/Regs%20Permits/3-netpens.PNG>

Figure 2. Hope Island (Skagit Bay) Atlantic Salmon Rearing Facility



From Ecology (accessed May 26, 2020): <https://ecology.wa.gov/DOE/media/Images/WATER-SHORELINES/Water%20quality/Regs%20Permits/skagit-netpen.PNG>

Figure 3. Facilities Covered Under EPA's General Permit



Figure 4. Puget Sound Steelhead Critical Habitat



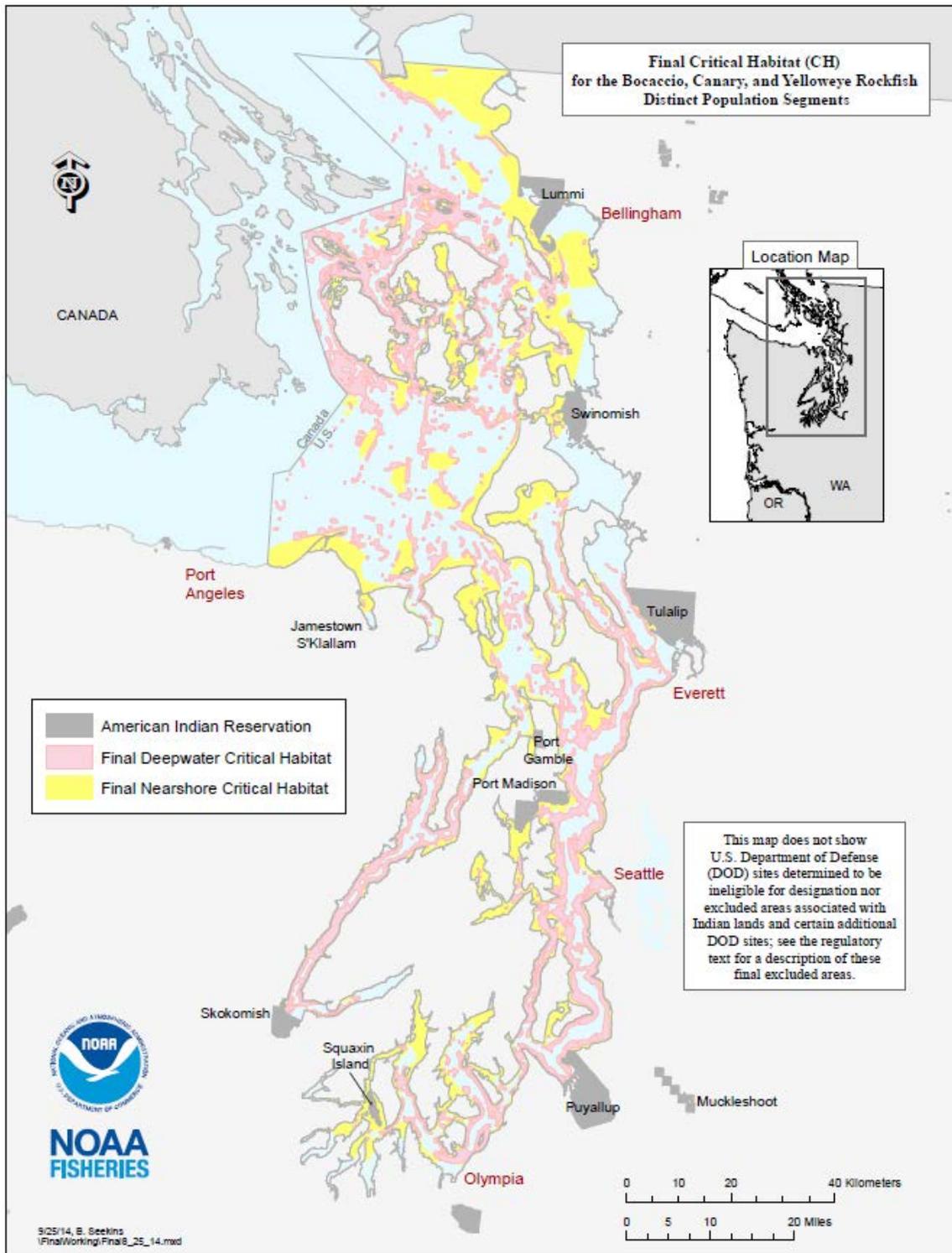
Final Critical Habitat
Puget Sound Steelhead



See Federal Register notice for detailed description of critical habitat (81 FR 9252, February 24, 2016)
DOC-NOAA Fisheries-West Coast Region

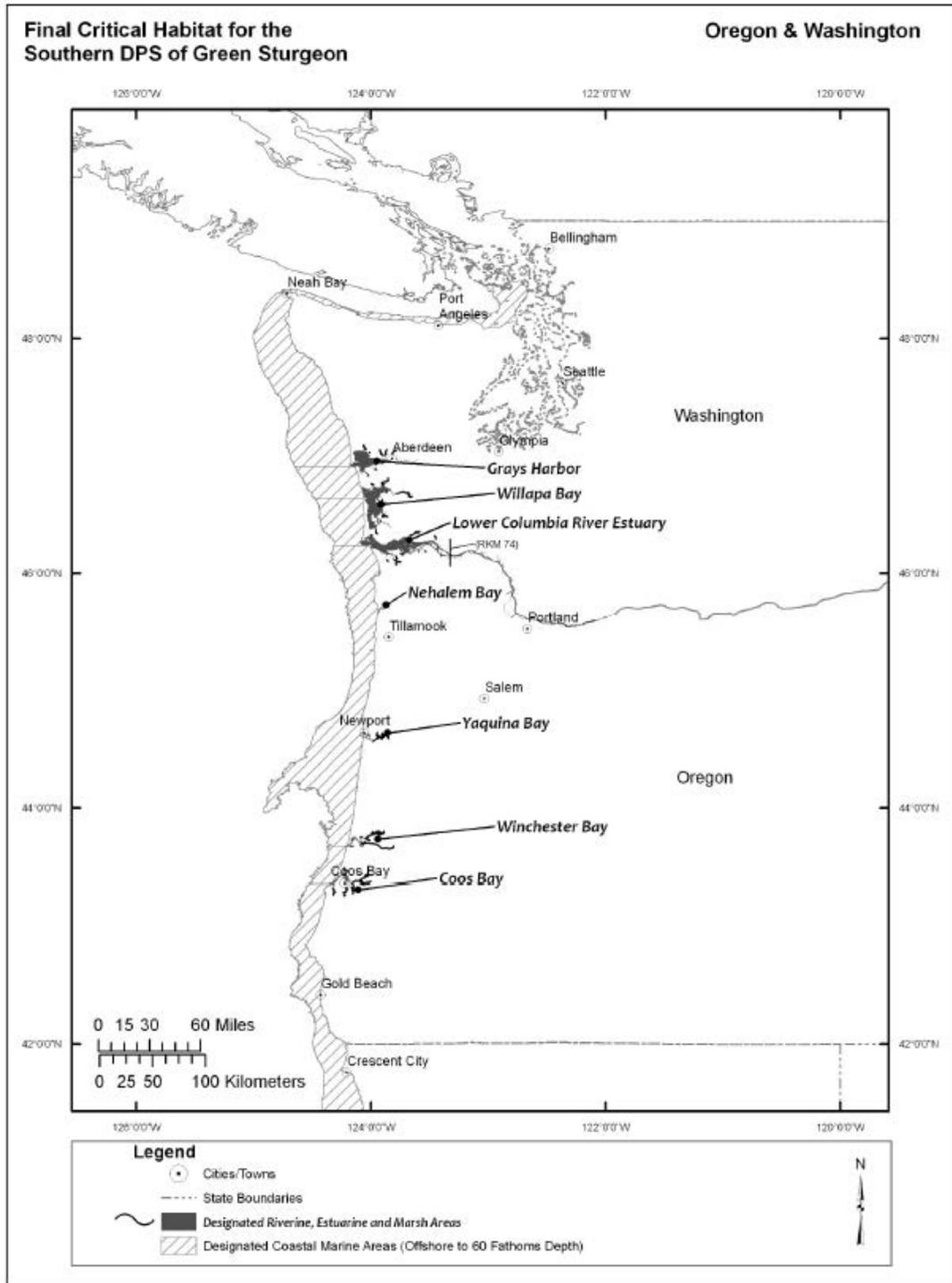
From NOAA Fisheries (accessed May 26, 2020):
https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/steelhead/steelhead_ps.pdf

Figure 5. Bocaccio and Yelloweye Rockfish Critical Habitat



From NOAA Fisheries (accessed May 26, 2020):
https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf **Note:** Effective March 24, 2017, Canary Rockfish were delisted.

Figure 6. Green Sturgeon Critical Habitat



See Federal Register Notice for detailed description of critical habitat (74 FR 52300)
DOC-NOAA Fisheries-West Coast Region

From NOAA Fisheries (accessed May 26, 2020):

https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/salmon_steelhead/critical_habitat/greensturgeon_ch_maps.pdf

Figure 7. Eulachon Critical Habitat

**Final Critical Habitat for
the Southern DPS of Eulachon Northern Oregon & Washington**



Legend

-  Designated Critical Habitat for Southern DPS of Eulachon
-  State Boundary
-  Cities and Towns

From NOAA Fisheries (accessed May 26, 2020):
https://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/eulachon/eulachon-ch-maps.pdf

ATTACHMENT 4

Estimated municipal equivalent daily Nitrogen and Phosphorus discharge from all 7 Puget Sound salmon farms at maximum production

Nick Gayeski, WFC June 17 2020

In 2017 we estimated the total discharge of nitrogen and phosphorus waste from all seven Atlantic salmon net pen aquaculture farms when each was at estimated maximum production based on recent monthly NPDES reports to Washington Department of Ecology. We estimated that the total production to be 2,111, 567 adult salmon each weighing 5.5 kilograms (~ 11 pounds). Over the course of the growing period (approximately 20 months) the estimated total discharge of Nitrogen (N) is 2,595,321 pounds and the total discharge of Phosphorus (P) is 554,244 pounds. These nutrient discharges were equivalent to daily discharges of 4326 pounds of N and 924 pounds of P.

We compared this to municipal the per-person daily discharge of N and P in Puget Sound based on conventional secondary treatment and under the new tertiary treatment of King County's Brightwater waste treatment facility. For conventional treatment, the estimated daily N and P discharge per person is 0.0363 and 0.0027 pounds, respectively. For new tertiary treatment, the values are 0.0195 and 0.0022 pounds per person per day, respectively.

Dividing the total daily discharge of N and P from all seven farms operating a maximum capacity by each of the per person daily municipal discharges yields an estimate of the size of an average Puget Sound municipality that would discharge the same daily total of N and P as all seven farms.

For conventional treatment, the daily discharge of N from all seven farms is equivalent to the daily discharge of a city of 119,173. The daily discharge of P from all seven farms is equivalent to the discharge from a city of 347,164. For cities with Brightwater level waste treatment, the daily discharge of N from all seven farms is equivalent to the discharge from a city of 222,120 and the daily discharge of P from all seven farms is equivalent to the discharge from a city of 426,001.



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October 19, 2020

Washington Department of Ecology

To Whom it May Concern:

This letter provides comments on the application by Cooke Aquaculture for Water Quality Discharge Permits associated with farming of steelhead in net pens located in Puget Sound. This is a duplicate of a letter I submitted on June 8, 2020. For the reasons set forth below, I urge the department at a minimum to delay acting on the applications until the department and other state agencies with jurisdiction conduct a comprehensive policy and scientific review of the impacts of finfish aquaculture in the state's marine waters, and not before related legal challenges are resolved. If the department feels compelled to act before these reviews are completed, I urge the department to consider all relevant scientific information regarding the potential impacts of discharges to Puget Sound waters, and to deny the permits unless specific conditions may be imposed to eliminate the adverse impacts from such discharges.

The department should not act upon the applications until related legal challenges are resolved

Cooke's steelhead aquatic farming activities in Puget Sound waters cannot be undertaken unless the permits from the state Department of Fish and Wildlife (DFW) are upheld following resolution of a legal challenge currently before the superior court. The plaintiffs in that challenge contend that DFW placed too much reliance on a 30-year old environmental analysis in determining that a full environmental impact statement was not necessary under the State Environmental Policy Act (SEPA). As explained more fully below, it is critical that a current programmatic analysis of the impacts of such aquatic finfish farming in these waters be undertaken, and any new operations be reviewed in light of this updated scientific information and assessments of the condition of threatened and endangered salmon and other aquatic life.

Additionally, the discharges from these proposed operations pose potentially significant adverse impacts to benthic life. With the US Environmental Protection Agency's approval of the state's sediment management standards also under legal challenge, a decision to authorize these additional discharges should not be made until this dispute over the applicable standards is resolved.

Permits for new finfish net pen rearing should be held in abeyance until a new programmatic EIS and scientific review is conducted

In determining that a full environmental impact statement (EIS) was not necessary and that a mitigated determination of nonsignificance (MDNS) was compliant with SEPA, the Department of

Fish and Wildlife's reliance on an EIS conducted in 1990 in issuing permits for these activities is currently being challenged in court. There has been extensive scientific information since that time regarding the impacts of finfish net pen rearing in marine waters, and all of the state agencies with regulatory jurisdiction over such activities -- Ecology, Fish and Wildlife, and the Department of Natural Resources -- should undertake a new comprehensive SEPA review before approving rearing of fish that may be the same species as our "native" fish but which are far different than our "wild" fish. Were an escapement to allow migration of the from these fish into the gene pool of our wild steelhead, the consequences could be deleterious to our wild fish recovery goals.

The applications should be held until the ongoing SEPA litigation is resolved

Even if a multi-agency new programmatic EIS is not undertaken, Ecology should defer any decision pending the outcome of the SEPA challenge to the WDFW permits. That challenge may generate additional information bearing on potential impacts to water quality standards (including fish and other aquatic life). Additionally, even if the MDNS is upheld, it requires Cooke to develop a "no-recovery response plan" that will have a bearing on the pollution prevention plan required in any Ecology water quality discharge permit for these activities.

The proposed net pen rearing poses a substantial risk that applicable water quality standards will be violated

Should Ecology choose to move forward now to make decisions on these applications in the absence of a comprehensive SEPA review, it must nevertheless ensure that relevant scientific information on potential water quality impacts from the proposed net pen rearing be considered. As other commenters will certainly outline in comments to the department in greater detail, there is substantial evidence that discharges from finfish net pens are harmful to benthic life as well as aquatic life throughout the water column. Even if these biologically altered fish do not escape the net pens, the discharges from fecal matter, dead fish, medicines, and feed will be harmful and cannot be mitigated. For example, the attraction of forage fish as well as endangered juvenile salmonids to the food dispersed in the pens could subject important species to predation within the pens.

For all of the foregoing reasons, I urge the department to deny the Cooke applications for discharge permits to raise triploid steelhead in net pens on state-owned aquatic lands. Thank you for considering these comments. I look forward to the department's decisions on this matter.

Sincerely,



Christine Rolfes

State Senator

23rd Legislative District

Matthew Baerwalde

Comments of Snoqualmie Indian Tribe are attached. Thank you for the opportunity to comment.



October 22, 2020

Laurie Niewolny
Aquaculture Specialist and Permit Coordinator
Water Quality Program
Washington State Department of Ecology

Submitted via email to: laurie.niewolny@ecy.wa.gov and eComments

RE: Cooke Aquaculture Draft NPDES Permit Modifications; Permit numbers WA0031534, WA0031593, WA0031526, and WA0031542

Dear Laurie,

This letter is submitted on behalf of the Snoqualmie Indian Tribe, a federally-recognized sovereign Indian Tribe with its governmental offices at 9571 Ethan Wade Way SE, Snoqualmie, WA 98065 ("Tribe"). See Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 82 Fed. Reg. 4235 (January 30, 2018). Please accept these comments on the Washington State Department of Ecology's (ECY's) draft pollution permit modifications in response to Cooke Aquaculture's request to continue farming captive salmonids in net pens within Puget Sound. The Snoqualmie Tribe requests that the draft permits not be issued as currently published, and instead, revised permits that significantly reduce the size and scope of the facilities as well as the harm caused by their pollution, and reduce some of the risks posed by these facilities. Net pen aquaculture of *O. mykiss* in Puget Sound has the potential to substantially and negatively affect the recovery of ESA Threatened Puget Sound steelhead, Puget Sound Chinook, and other imperiled salmonids, including those which originate from the Snoqualmie/Snohomish basin. As ECY is aware, in 2017 Cooke Aquaculture neglected their Cypress Island pen, and their previous permit requirements, such that the pen failed catastrophically. Since we know that net pens pollute Puget Sound and pose a serious ecological risk, and that Cooke Aquaculture's track record speaks for itself, it is absolutely justifiable for ECY to require significant further modifications to Cooke's NPDES permits.

The Snoqualmie Indian Tribe—*sduk^walbix^w* in our Native language—consists of a group of Coast Salish Native American peoples from the Puget Sound region of Washington State. We have been in the Puget Sound region and the Snoqualmie Valley since time immemorial. *sq^wed* (Snoqualmie Falls) is the birthplace of the *sduk^walbix^w*. We had more than 90 long houses along the Snoqualmie River and its tributaries. These rivers and streams were the highways used to travel from village to village and connected all the *?acitalbix^w* (Natives). The fish, game, trees and roots provided us with everything we need to live. All of this was given to



us by duk^wibet^w (Transformer) in the ancient times when all of the animals could talk and before things were what they are now.

We are the sduk^walbix^w, People of Moon. We are the descendants of sduk^walb tə duk^wibet^w. We have lived, hunted and fished this area for as long as the earth and rivers remember. Our people were one of the largest tribes in the Puget Sound region totaling around 4,000. We are still here today; caring for the land, water, fish and game that duk^wibet^w gave us.

The Tribe is a signatory to the Treaty of Point Elliott of 1855 in which it reserved to itself certain rights and privileges, and ceded certain lands to the United States. See Treaty of Point Elliot, art. V, 12 Stat. 928. Tribal treaty reserved rights are a property right which is protected by Article V of the United States Constitution, as applied through the Fourteenth Amendment, which cannot be deprived without due process of law and just compensation. Only Congress can abrogate the Tribe's treaty rights, which it has never done. See, e.g., *Menominee Tribe v. United States*, 391 U.S. 404, 412-13, (1968) (treaty rights may only be abrogated by Congress).

Net Pen Aquaculture in Puget Sound May Affect Salmon and Steelhead Recovery

Much has changed since the Final EIS for Fish Culture in Floating Net Pens was issued in 1990. Puget Sound Chinook salmon were listed as Threatened under the Federal Endangered Species Act in 2005, and Puget Sound steelhead officially achieved the same dubious distinction in 2007. These populations remain listed, and could even be downgraded to Endangered, due to a lack of substantial progress and many examples of losing ground. Additionally, years of study of the impacts of net pen aquaculture on local ecosystems have advanced our knowledge in this area. We now know that these operations can be massive sources of pollution, spreading dangerous and potentially deadly diseases and viruses to wild fish populations. Under the current proposal, this would occur in an already over-polluted Puget Sound, and these impacts can manifest from the cultivation of any species of finfish. In particular, because of their polluting effects, net pens should not be sited in bays or inlets where shellfish beds are located.

Some insufficiently evaluated impacts relate to the use of rainbow trout/steelhead in aquaculture. Since escaped *O. mykiss* can interbreed with native wild stocks, the proposal has the potential to negatively alter the remaining native gene pool of Puget Sound *O. mykiss*. Even though the proposal would use triploid *O. mykiss*, this sterilization procedure is not 100 percent successful. The potential impacts of using a struggling species native to Puget Sound in these net pen operations are a new consideration. The impacts would be unique and potentially distinct from the previous practice of using Atlantic salmon as the primary cultured species, and therefore they should have been fully evaluated in a new EIS. WDFW erred in issuing its MDNS for Cooke



Aquaculture's latest scheme to profit by imposing pollution on the rest of us who rely on Puget Sound, such as the Snoqualmie Tribe.

Additionally, the Salish Sea ecosystem (of which Puget Sound and the Strait of Juan de Fuca are a part) has changed significantly in recent decades, likely due to the interaction of a number of overlapping factors, many of which are anthropogenic and within our power to improve or eliminate as impacts. This includes contamination and disease, which we know net pens can contribute to. The effect of this change is that marine survival of Chinook, coho salmon, and steelhead populations in the Salish Sea have declined by up to 90%, and their abundance remains well below what it was 30 years ago. Snoqualmie fish must use these same migratory pathways where *O. mykiss* net pens would be located, and Snoqualmie fish are also in severe decline. Given the level of investment in recovery from tribes, their federal and state partners, and the citizens of Washington State, allowing increased impacts to struggling stocks, without giving them full evaluation based on the best available science and temporal context, and without making every attempt to minimize the impacts and risks that we know exist, seems downright irresponsible.

Cooke Aquaculture's Safety Record Calls for Additional Permit Modifications Beyond What Is Included in the Draft Permits

When Cooke Aquaculture's Cypress Island net pen operation breached in August 2017, over 250,000 farmed salmon dispersed into the waters of Puget Sound. Cooke responded extremely slowly, under-reported the number of spilled fish, and attempted to cover up their disregard for the Puget Sound ecosystem, claiming that a solar eclipse was responsible for the catastrophe. In reality, Cooke's negligence was responsible, and follow-up investigations at their other facilities revealed that some of those had also not been maintained properly, in violation of their existing permits, and the trust of the state and its citizens. Washington State's legislature responded by passing HB 2957 in 2018, which banned nonnative finfish farming in the waters of Washington State after 2022, and which seemed to be a potential reprieve for struggling stocks from the negative impacts of this harmful practice.

The Snoqualmie Tribe feels that Cooke Aquaculture has previously demonstrated that they do not take seriously their responsibility to help steward the Salish Sea, and therefore the proposed draft permits are not the appropriate course of action for ECY. ECY should not continue to allow Cooke Aquaculture to pollute Puget Sound. Cooke Aquaculture could not comply with previous permits, so it is justifiable for ECY to reduce risks to Puget Sound through additional permit conditions. The paltry mitigation measures in the draft permit are inadequate. Likewise, the Pollution Prevention Plan and the Fish Escape Prevention, Reporting, and Response Plan are also insufficient inasmuch as they merely ask for more information about the pollution that is acknowledged to assuredly occur, or for future investigation of new technologies that may not exist, and

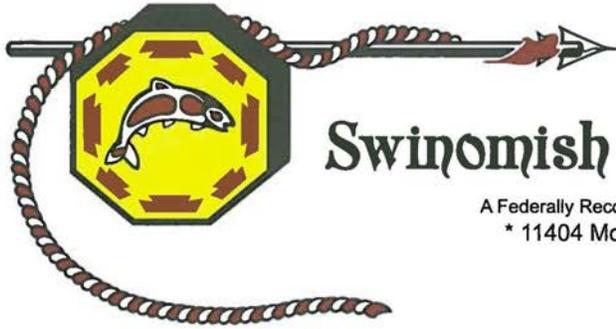


would be perhaps be implemented at an undetermined time. Hoping that Cooke Aquaculture will do better in the future is not enough. Ecology should use the authority it has to protect Puget Sound. **We request that ECY revise the draft permits to significantly reduce the size and scope of the facilities, which will correspondingly reduce their pollutant loads and other significant risks.** Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to be "Matt B.", followed by a long horizontal line.

Matthew J. Baerwalde
Environmental Policy Analyst
Environmental and Natural Resources Department
Snoqualmie Indian Tribe
mattb@snoqualmientribe.us



Main Office: 360.466.3163
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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

October 23, 2020

Ms. Laura Watson, Director
WA Department of Ecology
Via email: lnie461@ecy.wa.gov

Re: Cooke Aquaculture Pacific, LLC Draft NPDES Permit for Hope Island Net Pen

Dear Director Watson:

Thank you for the opportunity to review the request the draft NPDES permit for the Cooke Aquaculture Pacific, LLC (Cooke) for its proposal to rear domesticated native Rainbow trout/Steelhead at the Hope Island net pen facility. Cooke's proposal to rear 350,000 domesticated native Steelhead poses new and different risks than rearing non-native Atlantic salmon near the mouth of the Skagit River. After reviewing the draft NPDES permit that the Department of Ecology (Ecology) has prepared, we believe it inadequately addresses site-specific concerns for the Hope Island net pen facility, and thus it is necessary, if Ecology issues the permit, to include additional conditions for the protection of water quality as outlined below.

1. The Swinomish Tribe's Treaty Rights are Adversely Impacted by the Water Quality Permit Proposed for Cooke's Hope Island Net Pen.

The Swinomish Indian Tribal Community (Swinomish Tribe) is a present-day successor in interest to the tribes and bands that signed the 1855 Treaty of Point Elliott (Treaty) with the United States. One of the core rights reserved by the Treaty is the Tribe's right to fish in our adjudicated usual and accustomed fishing areas (U&As) in and around the Skagit River system, the Samish River system, and marine waters in northern Puget Sound. *United States v. Washington*, 459 F. Supp. 1020, 1049 (1975). The Swinomish Tribe and WDFW are co-

managers of fisheries and fisheries resources within western Washington and the Tribe's right to take fish under the Treaty of Point Elliott is a legally protected interest.

Since time immemorial, the Tribe has lived, hunted, fished, and gathered in and around the Skagit River basin, the Samish River basin, and marine waters in northern Puget Sound. Anadromous fish, and particularly salmon, have played a central role in the Tribe's subsistence, economy, culture, spiritual life, and day-to-day existence. For thousands of years, the Tribe's homeland contained no impediments to the Tribe's ability to fish and gather shellfish throughout its adjudicated U&As.

Skagit Bay is historically and currently an important fishing place, both because it is where the mouth of the Skagit River meets Puget Sound, and because of its extremely close proximity to the Swinomish Reservation, making for ease of access by the Swinomish Tribe's fishing fleet. Tribal fishers have traditionally fished Skagit Bay for a variety of fish or shellfish species, including Chinook, coho, steelhead, halibut and Dungeness crab. The Hope Island net pen facility sits in the heart of the Tribe's most accessible treaty fishing area, and in the heart of the tribe's usual and accustomed fishing grounds. Cooke's proposed net pen operation – facilitated and enabled by this Draft Permit – interferes with the Tribe's traditional and cultural practices and Treaty Rights. Tribal fishermen have lots multiple crabs pots that got entangled in the net pen's guy wires and other infrastructure, and most no longer use gill nets in the area for the same reason.

The Tribe's reservation is located on Fidalgo Island in Skagit County, Washington. The reservation's southern boundary is the north fork of the Skagit River, which is the only river in Washington that still supports all six species of Pacific wild salmon. The DNR aquatic lands lease for Cooke's Hope Island net pen contains an official survey showing the lease area to be approximately 1,010-feet wide and 1,358- feet long, covering approximately 31.5 acres, and over one-third of that area contains the net pen cages, anchors, guy wires. The Hope Island net pen boundary is approximately 1,000 feet west of Lone Tree Point, which has historically been a place for tribal members to gather in the summer on the Swinomish Reservation. The beach at Lone Tree Point has historically served as a fishing village with fishing shacks lining the beach with unimpeded views, quiet solitude and access. Unfortunately, the net pen operation and its generators interrupt the once peaceful culturally-important area, and the workers foul language can be heard from shore by families gathered at Lone Tree Point.

The Swinomish Tribe's Treaty-protected fish already face innumerable challenges

including habitat degradation and loss from development and agricultural conversion, too-warm stream temperatures, poor water quality from nutrients, lack of riparian habitat, insufficient water quantity, inhospitable ocean conditions and acidification. The addition to Skagit Bay of unknown quantities of antibiotics, fish feces, fish feed, and other pollution from the net pens and potential adverse impacts to native wild salmon must be taken seriously and viewed in light of the imperiled status of Skagit River ESA-listed salmon and steelhead.

Tribal leaders want to ensure that their grandchildren and seven generations from now have the opportunity to fish in the same way that they have for decades and to restore the cultural import, experience and use of Lone Tree Point. The Swinomish Tribe's Treaty Rights, and the cultural, historic and subsistence significance of Lone Tree Point depends, are adversely impacted by the net pen as a result of its interference with fishing, harm to water quality, and man-made noise. The Tribe requests that Ecology decline to issue the NPDES permit.

2. Cooke's Net Pen Does Not Belong in ESA Critical Habitat for Chinook and Steelhead Because it Discharges Unknown Amounts of Animal Waste, Antibiotics and Fish Feed into Public Trust Waters.

It is Ecology's duty to ensure that discharges into state waters will not endanger human health or the environment.¹ Ecology's interpretation of safeguarding the State's waters in Skagit Bay is apparently to allow an open-water concentrated animal feeding operations in the middle of tribal culturally important area and ESA-listed salmon critical habitat, essentially under the theory that "dilution is the solution to pollution." This cannot stand. Ecology's regulatory authority requires it to consider how the proposed rearing of a new species effects the discharges from the operation and what is required to protect water quality as a result. The State offers no quantification of the amount of concentrated animal feces that would be allowed to freely flow into our public trust waters in Skagit Bay for the 15-18 months that these artificially reared fish are in the net pens. Ecology requires sediment to be tested, but that is not a substitute for quantifying, limiting and treating what is certainly a substantial amount of animal waste. It defies logic that measuring sediment in such a high flushing area – near Deception Pass – will accurately or adequately account for the adverse impacts to water quality from massive amount of concentrated animal waste that this permit would facilitate.

¹ WAC 173-220-150(d)(iv).

Further, all indications are that Cooke’s net pen is an attractive nuisance to wild Skagit River salmon, spilling out unknown large amounts of fish feed daily thereby attracting ESA-listed salmon to be subject to predation by birds and pinnipeds. Demographically Independent Populations (DIPs) of both Skagit River Steelhead and Chinook are listed under the Endangered Species Act and regularly migrate past the Hope Island net pen. Cooke’s net pen proposal potential adverse impacts include antibiotic treatments for diseases like Rainbow trout fry syndrome, which has no vaccine but is pervasive. Adverse impacts also include the potential for increased spilled fish food, which acts as chum for native wild fish, attracting predatorial pinnipeds and birds, caused by an overall higher number of individual fish in the net pen facility. Blob), acidification, and predation by pinnipeds. Cooke's net pens would magnify some of these existing challenges for the already struggling, ESA-listed salmon.

a. The Draft Permit Allows Unlimited Pollution in ESA Critical Habitat

The draft NPDES permit for the Hope Island net pen does not provide a quantification or limit for the amount of concentrated animal waste, fish feed or anti-biotic laced fish feed regularly spilling into Skagit Bay from 350,000 fish being artificially reared hundreds of feet off the shore of the Swinomish Tribe Reservation. Wastewater from a land-based aquaculture operation requires filtration and treatment before it could be returned to state waters. The Upland Finfish Hatching & Rearing General Permits, for example, contained quantified discharge limitations. Ecology could not allow concentrated animal waste from a land-based facility to be discharged into state waters without treatment or effluent limits, so it is unacceptable that this draft NPDES permit purports to allow concentrated waste to be discharged into Skagit Bay and the Tribe’s Treaty-protected fishing waters without similar requirements to protect water quality.

In passing HB 2957, the state legislature tasked state agencies “to eliminate negative impacts to water quality and native fish, shellfish, and wildlife.” Allowing these pens to continue emitting this pollution without limitation fails to comply with that statutory language and the high standard that the legislature and the people of Washington demanded of the marine aquaculture industry.

b. Cooke’s Net Pen Does Is Not a Water-dependent Use and the Unnecessarily Poses Risks to the water-quality of the Vulnerable Skagit River Salmonids.

Finfish aquaculture as practiced in Washington is no longer water dependent under the terms of RCW 79.105.060.² The technology exists, and it is commercially viable, to grow fish in land-based, environmentally sustainable farms.³ Land based facilities are being built throughout the U.S. and world and represent a steadily growing industry and an environmentally responsible farming practice. By endangering the health and productivity of Skagit Bay ecosystem services, the Hope Island net pen has the potential to harm actual water-based uses that cannot exist without access to healthy and productive marine and freshwater environments.

It is necessary, timely and appropriate for Ecology to embrace the availability of land-based, environment-controlled aquaculture systems to avoid conflicts with tribal fishing and ESA-listed salmon. Land-based aquaculture using closed containment systems eliminates all of the risks open water net pens pose to the natural ecosystem, offering the industry an ecologically safe opportunity to produce farmed fish that can be marketed as a truly sustainable and responsible product. Examples of successful land-based aquaculture companies, such as Nova Scotia's Sustainable Blue which has been in operation since 2015, further demonstrate that commercial marine net pen finfish aquaculture is no longer water dependent. Ecology's stated role is to consider how the proposed new species effects the discharges from the operation and what is required to protect water quality as a result. It is Ecology's duty to ensure that discharges will not endanger human health or the environment.⁴ The reality is that the technology exists, and it is commercially viable, to grow fish in land-based, environmentally sustainable farms.

For these reasons, Ecology should decline to issue the draft NPDES permit for the Hope Island net pen because it is a concentrated animal feeding operations that act as attractive nuisances to wild fish by emitting hundreds of thousands of pounds of fish feces, fish food, dead fish, and antibiotic-laced food into ecologically sensitive marine areas and designated critical habitat at the mouth of the Skagit River and in the heart of the Swinomish Tribe's historically and currently important cultural area.

² Defining "water-dependent use" as means a use that cannot logically exist in any location but on the water.

³ For example, AquaCare Environment is a company based in Bellingham, WA that "was established in 1987 dedicated to developing and marketing cost-effective equipment and systems for modern, intensive land-based fish farming." www.aquacare.com

⁴ WAC 173-220-150(d)(iv).

3. Cooke’s History of Negligent Net Pen Operation in State Waters Preclude Allowing it to Self-Report and Self-Monitor; Ecology Should Require Independent, Third-Party Monitoring and Reporting.

Cooke has a deeply troubling history of non-compliance with the Clean Water Act and violations of its NPDES permit, including –

- the 2017 catastrophic net pen collapse at Cypress Island that released over 200,000 non-native Atlantic salmon,
- the summary judgment ruling against Cooke on April 26, 2019 for Clean Water Act and NPDES permit violations, and
- the Orchard Rocks net pen facility partial sinking incident in late October 2019.

The state agency report on the investigation into Cooke’s August 19, 2017 catastrophic net pen failure is damning. The report highlights outright lies and misinformation that Cooke told state agency officials and tribal governments. The 2018 investigation report found, among other things, that:

- The “probable cause of both the July incident and the August failure was the failure of Cooke to adequately clean the nets containing the fish.”⁵
- “Cooke did not provide accurate and complete information to the state about the July incident. Consequently, the state agencies did not investigate further.”⁶
- “In August and September, Cooke reported harvesting/extracting 145,000 fish from the collapsed net pen. The Panel (of state agency investigators) concluded that Cooke could only have extracted 42,000 to 62,000 fish, 43% of what Cooke reported.”⁷
- “The Panel estimates that between 243,000 and 263,000 fish actually escaped. Previous estimates, based on Cooke’s reports, put that number at 160,000 fish.”⁸
- “Of the escaped fish, 57,000 have been caught (recovered). Between 186,000 and 206,000 Atlantic salmon remain unaccounted for.”⁹
- “Cooke removed the surface portions of the net pen by September 24. Although Cooke stated by letter that it had removed all debris from the bottom of Deepwater Bay, an

⁵ 2017 Cypress Island Atlantic Salmon Net Pen Failure: An Investigation and Review. WA Departments of Ecology, Fish & Wildlife, and Natural Resources. January 30, 2018. P. 6.

⁶ Id. At p. 8.

⁷ Id.

⁸ Id.

⁹ Id.

inspection by DNR on October 27 showed that substantial debris remained. DNR required further cleanup that lasted into January 2018.”¹⁰

On October 20, 2019, there was an incident at Cooke’s Rich Passage net pen facility where a corner of the facility became partially submerged as a result of Cooke’s inaction. Cooke failed to adhere to regulatory provisions in its fish escape prevention plan that were specifically enacted in response to Cooke’s net pen failure in 2017. While the investigation was ongoing, Ecology issued a letter dated October 25, 2019 that directed Cooke to review the provisions of its escape plan, and in particular, pointed out “that one technology to minimize fish escapement is the routine repair and maintenance of cage structures and mooring equipment, individual actions of which you (Cooke) outlined in the plan. From the lesson learned in the boat collision at Clam Bay in November 2018, Cooke was expected to use the Emergency and “Unusual Events” Call Down List to phone agency staff of an unusual event.”

Apparently neither of these things occurred as they were supposed to. In the end, no action was taken against Cooke despite the determination that the Cooke’s Orchard Rocks facility did experience an “unusual event”¹¹ and that there was significant repair work needed to fix two of the net pen facility pontoons that keep the cages and structure afloat.¹² The reality is, Cooke waited and watched the Orchard Rocks facility slowly sink for multiple days before it took any action, and when it did act, it sent emails rather than making a simple phone call.

Cooke has repeatedly shown that it cannot be trusted to do the right thing and act in the best interest of our water quality or public trust resources. The company has lost any benefit of the doubt that it may have once enjoyed as a result of its own failures to follow basic procedural safeguards in prior NPDES permits. Ecology cannot, and should not, ignore Cooke’s history of permit violations and misinformation, and must take them into account as it considers how to best uphold its duty “to maintain the highest possible standards to insure the purity of all waters of the state.”¹³ Because Cooke has shown repeatedly that it is not capable of being a trustworthy,

¹⁰ Id.

¹¹ October 2019 Unusual Event Summary, Orchard Rocks South, Rich Passage Atlantic Salmon Farm Operated by Cooke Aquaculture Pacific, Version 10/301/19.

¹² Assessment of Orchard Rocks SE pontoon repair, DSA, by Colin Wilson, Peng, Nov. 21, 2019.

¹³ See 90.48.010 RCW.

reliable net pen operator, Ecology must require independent, third-party monitoring and reporting.

The Draft Permit contains extensive “reporting and recording requirements” in Special Condition 3 that proposes allowing the permittee – Cooke – to self-monitor and self-report. The many water pollutants that Ecology proposes to entrust Cooke to self-monitor and self-report include:

- fish biomass
- fish feed
- percentage of nitrogen in feed
- disease control chemical use, including frequency, duration and amount
- feed conversion rates
- estimated number of live individual fish
- number of dead fish collected or observed
- dissolved oxygen at net pen corners
- sea lice monitoring and occurrence

These are serious pollutants, the discharge of which into Skagit Bay could have individual and cumulative impacts on water quality, Treaty resources like Dungeness crab, and ESA-listed salmon. Ecology’s approach of “dilution is the solution to pollution” is no longer appropriate given the imperiled status of Puget Sound and all of its inhabitants, from Pacific herring to ESA-listed salmon and the Southern Resident Killer Whales that depend on them.¹⁴

During the 6:00pm, October 14, 2020 public hearing on the Cooke NPDES permits, Ecology was asked why they were relying on Cooke to self-report, particularly given their past legal violations and known misstatements of fact. Ecology staff replied that self-monitoring and self-reporting were the “traditional way” that the agency has operated for NPDES permits. That answer, respectfully, is insufficient because it fails to account for or justify how Ecology can consider Cooke to be “traditional” permittee unless the agency wholly ignores the past serious violations of water quality permits. There is simply no reasonable basis to believe that Cooke will adhere to the full letter and spirit of the law when they have repeatedly shown themselves to be an untrustworthy and dishonest permit holder. As a result, in order to fully safeguard water

¹⁴ See Puget Sound Partnership’s 2018-2022 Action Agenda, found at: https://www.psp.wa.gov/action_agenda_supporting_materials

quality in Skagit Bay and protect ESA-listed salmon, Ecology must require independent, third-party monitoring and reporting for this permit modification.

4. Ecology Has No Quantitative Limits For Numerous Pollutants in the Permit.

In Section S3, Ecology requires the permittee to self-monitor and self-report on a variety of pollutants but has no established water quality limits on many of them. Because the Hope Island net pen is located in an area of high tidal exchange near Deception Pass, the significant volume of animal waste from 350,000 fish in a net pen and other pollutants emitted from Cooke's operation are flushed into surrounding waters. Rather than regulating the amount of actual waste openly spilled into public trust marine waters, Ecology only regulates whether the sediment reaches threshold levels.

Some of the more troubling provisions that lack adequate pollution limits include:

- S2.B.3. The process of going from exceedance monitoring to enhanced monitoring and then to additional monitoring seems very long, given the monitoring takes place during one window each year, stretching out the process over years. Ecology should require mandatory notification to the Tribe if and when Cooke enters enhanced monitoring and is required to have an action plan in place.
- S2.J. Ecology should require Cooke to conduct dissolved oxygen (DO) sampling at slack tide.
- S2.L. Sediment antibiotic resistance monitoring is required for “unusually high usage levels of antibiotics” but gives no guidance and sets no standard as to what “high usage levels of antibiotics” or “unusually high usage levels of antibiotics.”
- S3.A.3.a. Requires reporting “the use of any disease control chemicals” including the “name and amount of any chemicals and/or medicated feed used.” But no standards or limits are set for the use of the disease control chemicals.
- S3.A.3.b. Indicates that the “estimated number of dead fish collected or observed” must be monitored, but the heading of that section states that and not the text within that section. Additionally, there is no threshold below the 5% of overall amount of dead fish in one week – which triggers notification to State Dept. of Health – that requires any specific action by Cooke or notification to the Tribe.

- S3.B.3.b. Requires sea lice monitoring showing an increase in incidence “above normal observations” to be reported up to seven (7) days after observation to WDFW and Ecology. “Normal observations” remains undefined or quantified.
- S3.F.1.b. Requires “disease control chemicals which are used routinely” to be recorded based on “the frequency of application” instead of “each individual application date.”
- S3.G. Requires the “permittee” to “take the following actions when it violates or is unable to comply with any permit condition.” Presumably Cooke self-determines that it is out of compliance and is entrusted to self-report and self-enforce by taking corrective action.
- S3.G.2.b. Requires the permittee to report any “noncompliance that may endanger health or the environment” within 24 hours. There is no rationale or justification for why a purported emergency that threatens public health or our public trust waters is allowed an entire day to provide notice instead of “immediately” as the preceding sub-section. If chemicals are spilled, does that require “immediate” notification and compliance? Yet if fish are discovered to have escaped, or are spilled at any time, the Permittee is allowed 24 hours to notify the State and Tribes – far too long a timeframe.
- S3.G.2.d. Allows waiver of written reports for an incident that triggers “immediate” or “24-hour” reporting at the discretion of the Agency if the Permittee “has submitted a timely oral report.” No, we strongly object to this allowance; any permit violation must be fully and completely documented in writing, both by the Agency and Permittee, in a timely manner.
- S4.A.2.a. Requires immediate corrective action for “any noncompliance with water quality or sediment management standards” and presumably the Permittee decides this, not the regulatory agency.
- S4.A.3.d. Requires Permittee to “routinely collect” data on fish numbers in net pens, their size, growth and food conversion rates, but includes no express definition of, or quantitative interpretation of “routinely.”
- S4.A.3.e. Requires Permittee to remove dead fish carcasses “on a frequent basis.” Again, there is no express definition of, or quantitative interpretation of “on a frequent basis.”

Individually, each of these is troubling. Cumulatively, they represent a failure to protect and maintain the highest water quality standards possible for the health of our marine environment and all those dependent upon it. Ecology should not issue the Hope Island net pen permit unless and until it establishes and includes as permit requirements quantitative limits on each of the above reporting requirements.

5. Hope Island Net Pen is at the End of Life Expectancy and Must Be Inspected Prior to Permit Issuance.

According to DNR Aquatic Lands Net Pen Lease for Hope Island, Cooke’s net pen cages were replaced in 2010 and have “an average expected service life of approximately 15 years.”¹⁵ Given that the Hope Island net pen cages are entering the last one-third of their life expectancy, and that corrosion and metal fatigue was a contributing factor to the 2017 net pen disaster, we believe it is necessary for Ecology to impose more stringent below-surface inspection requirements for this cage if the Permit modification is granted.

The DNR aquatic lands lease for Cooke’s Hope Island net pen contains an official survey showing the lease area to be approximately 1,010-feet wide and 1,358- feet long, or approximately 31.5 acres. According to a January 2018 engineering inspection report of the Hope Island net pen facility, that structure is currently comprised of ten (10) 26-meter square net pen cages, as well as a feeding shack, walk ways and other infrastructure around the periphery of the facility. These cages were installed in September 2010, and have a lifespan of 10-15 years.

Draft Permit section S7 states that an engineering inspection must be done “within two years of the effective date of the permit if not completed and to be done routinely . . .” Because this is a permit modification, the date of the original permit issuance determines the timeline for inspection. The original permit was issued in July 2019. The last time the Hope Island net pen was inspected was in January 2018, nearly three years ago. That inspection report’s Attachment A contains plans and drawings of the net pen structure showing that the net pen cages, facility, anchors and anchor lines expand across an area approximately 787- feet long 700-feet wide, or extending coverage over 12.65 acres. That is a significant amount of infrastructure in Skagit Bay, and all of it must receive a comprehensive, third-party engineering report on the structural

¹⁵ DNR Aquatic Lands Net Pen Lease 20-B12356, Exhibit B, p. 2.

integrity of the facility *prior to* issuance of any new permit. The clock should not be reset here simply because Cooke is applying for a permit modification. The Draft Permit should make this requirement expressly clear.

6. Incomplete and Deficient Pollution Prevention, Report & Response Plan

In our June 8th comments on Cooke’s NPDES permit modification application, the Tribe expressed a number of concerns about deficiencies in Cooke’s Pollution Prevention, Reporting & Response Plan. Because we do not believe that our comments were adequately addressed or reflected as conditions in the draft permit, we include them again below.

A Permittee is required to develop and implement a pollution prevention plan under WAC 173-221A-110(4)(c).¹⁶ The plan must contain operating, spill prevention, spill response, solid waste, and stormwater discharge practices to prevent or minimize the release of pollutants from the facility to the waters of the state.¹⁷ A Permittee is required to submit the plan within six months of permit issuance, and review the plan at least annually. If changes occur, the permittee must update the plan and inform Ecology.

The pollution prevention plan must address how solid and biological wastes are collected, stored, and ultimately disposed of at an upland facility. Solid wastes of concern for marine salmon net pens include fish mortalities under normal operations, fish mortalities due to a fish kill involving more than five percent of the fish, blood and waste from harvesting operations, and sanitary waste and operational debris.

The draft pollution prevention plan submitted by Cooke in the 2020 application does not address changes in procedure related to raising native domesticated trout/steelhead. Therefore, it is likely the pollution prevention plan does not take into consideration any differences involved in native steelhead versus Atlantic salmon. None of the drafts submitted in the permit modification application mention steelhead or address differences in steelhead versus Atlantic salmon, and Ecology should not grant the permit until it closely examines the differences.

a. Increased Numbers of Fish Equals More Fish Food, Antibiotics and Fish Feces

Cooke states that growth projections for the triploid steelhead stock and the smaller targeted average harvest size may shorten the saltwater growth cycle by several months in

¹⁶ The Permittee is also required to review, update, and maintain a fish escape prevention plan and a Fish Escape Reporting and Response Plan in compliance with WAC 220-370.

¹⁷ WAC 173-221A-110(4)(c)(i).

comparison to Atlantic salmon. Yet when comparing the 2020 NPDES permit modification application to the 2017 NPDES permit application, the pounds of fish and pounds of food is estimated to be the same or greater in the 2020 application compared to the 2017 application. If steelhead are harvested at a smaller size than that of Atlantic salmon, then to achieve the same poundage rate, more fish would need to be in the net pen. If that is true, then more feed and antibiotics will be required. This, in turn, will result in more discharge of fish feces. Given harvest size for steelhead is different from that of Atlantic salmon, Ecology should expect discharges to be different for raising steelhead versus Atlantic salmon. Therefore the modified permit should include increased monitoring or limits to reflect this difference.

The information provided by Cooke about fish feed consumption rates and the amount of excess feed spilling out of the net pen facility is indeterminate. Section 4 of the pollution prevention plan states that:

4. "... The feeding strategies prioritize the minimization of uneaten food, thus minimizing the amount of food that falls through the cages and onto the ocean floor below. Cooke has developed Feeding Strategies to provide standards for the initial startup feeding of new smolts when they arrive on site, the size of the feed pellets, the duration time of the feeding process and the types of feed diets. As the fish grow, the Site Managers will adjust the feeding schedules ..."

This language is well-intentioned but insufficient for purposes of a NPDES permit. Cooke provided an estimate of the monthly fish feed at maximum production.¹⁸ It should be required to provide an estimate of the amount of feed that is uneaten. This uneaten fish food that falls through the net pen into surrounding waters is a recurring discharge that also serves as chum to attract native fish, as well as predatorial birds and pinnipeds. Until Ecology establishes with reasonable certainty the amount of fish feed released from the net pen facility, it cannot perform an adequate assessment of the adverse impacts to water quality, human health, ESA-listed Chinook and steelhead, or the environment.

Further, there is no mention in Cooke's application materials about the differing feed conversion rates between domesticated Atlantic salmon and rainbow trout. Generally speaking, science has shown Atlantic salmon to be generally more efficient at converting feed to biomass than trout, the latter being more variable in feed conversion rates and more susceptible to environmental controls (temperature and salinity) on growth.¹⁹ As such, more feed is likely to be

¹⁸ Cooke January 2020 NPDES permit application, p. 9.

¹⁹ Jillian P Fry *et al* 2018 *Environ. Res. Lett.* 13 024017. <https://iopscience.iop.org/article/10.1088/1748-9326/aaa273/meta>

needed for trout/steelhead, which would produce more waste into the marine environment. The draft NPDES permit mentions a differing conversion rate between 1.1 and 1.7, without acknowledging that this could represent a significant difference in the amount of feed wasted and thus spilling out of the net pen. Ecology should address this issue in a quantitative manner and impose limitations for the Hope Island net pen.

b. Antibiotic Harms to Aquatic Life and Human Health

Ecology determined discharges may contain chemicals of concern for human health, specifically federally-approved antibiotics for fish.²⁰ Antibiotics have the potential to create antibiotic resistant bacteria in the sediment, and that resistance could be transmitted to human bacteria. Antibiotics are widely found in surface waters across the country,²¹ and they cause known, antimicrobial-related adverse effects on both wildlife and human health at the pollution levels currently found in our waterways. A NPDES permit should include limitations ensure these chemicals of concern for human and wildlife health do not cause said harm.

1. Harm to Aquatic Wildlife

In a recent nationwide study of stream sites, maximum antibiotics concentrations ranged from 12 nanograms per liter up to 1.8 micrograms per liter (parts per billion), with many sites hosting multiple antibiotics.²² Concentrations of just 0.5 micrograms per liter have been shown to change aquatic microbial communities.²³ One risk of these microbial changes is that the antibiotics suppress beneficial bacteria in the water, thereby harming aquatic organisms that rely on healthy levels of “good” bacteria.²⁴

Furthermore, the presence of antibiotics in the water has led to increases in the growth of antibiotic resistant bacteria in surface waters. Studies have found that aquatic organisms also contain these antibiotic resistant bacteria. For example, studies of orcas in the Salish Sea have found antibiotic resistant bacteria in orca blow (respiratory exhalation) and feces.²⁵ In the orca

²⁰ Hope Island Net Pen Fact Sheet 08-10-19

²¹ Bradley, Paul M et al. “Expanded Target-Chemical Analysis Reveals Extensive Mixed-Organic-Contaminant Exposure in U.S. Streams.” *Environmental science & technology* vol. 51,9 (2017): 4792-4802, at 4799.

²² *Id.*

²³ *Id.*

²⁴ James P. Meador et al., *Contaminants of Emerging Concern in a Large Temperate Estuary*, ENVIRONMENTAL POLLUTION 264 (2016), at 263.

²⁵ Sara L. Potter, *Antimicrobial Resistance in Orcinus Orca Scat: Using Marine Sentinels as Indicators of Pharmaceutical Pollution in the Salish Sea*, Thesis for The Evergreen State College at 78 (Dec. 2013).

feces study, 100% of samples showed resistance to at least one antibiotic, and over 70% of samples showed resistance to multiple antibiotics.²⁶

There is a commonly occurring disease in farmed rainbow trout at the fry, fingerling and juvenile life stages requiring the use of anti-biotics because there is no vaccine.²⁷ *Flavobacterium psychrophilum* is the causative agent of Rainbow Trout Fry Syndrome (RTFS).²⁸ Both living and dead fish can be a source for the bacterium but “dead fish show a higher rate of bacterial release into the surrounding water.”²⁹ The principal infection control measure is to administer the anti-biotic florfenicol, which is one of the three anti-biotics listed for use by Cooke.³⁰

Despite the legal framework of Washington’s water pollution control laws, dilution of point source pollution emanating from a marine-based concentrated animal feeding operation is still seen as the solution to pollution, regardless of the impacts on known ESA-listed fish. Ecology must consider a worst-case scenario for the use of antibiotic medicated feed and extra-precautions taken to find diseased fish, treat diseased fish, and regularly dispose of dead fish at the Hope Island net pen.

2. Harm to Human Health

Aside from potential concerns about humans consuming low levels of antibiotics in their drinking water, aquatic antibiotic pollution poses the most substantial health threat to humans because it increases the rate of antibiotic resistance. At least two million people are infected with antibiotic-resistant bacteria in the U.S. each year, and 23,000 of those individuals die from the infection.³¹ Studies have linked pharmaceutical water pollution to the growth of antibiotic resistance, including a recent EPA study which found that current antibiotic levels in water could inhibit some naturally occurring and potentially beneficial bacteria and trigger some antibiotic resistance.³² One example of this link is provided by the common antibiotic ciprofloxacin, a

²⁶ *Id.* at 78.

²⁷ Nejdet Gultepe and T. Tansel Tanrikul, 2006. Treatment Methods of *Flavobacterium psychrophilum*: Cause of Rainbow Trout Fry Syndrome (RTFS) and Bacterial Cold-water Disease (BCWD) in Turkey. *Journal of Fisheries International*, 1: 102-105.

²⁸ Bebak JA, Welch TJ, Starliper CE, Baya AM, Garner MM. Improved husbandry to control an outbreak of rainbow trout fry syndrome caused by infection with *Flavobacterium psychrophilum*. *J Am Vet Med Assoc*. 2007;231(1):114-116. doi:10.2460/javma.231.1.114.

²⁹ Robert Fletcher, *Rainbow trout fry syndrome (RTFS) explained*, The Fish Site (October 18, 2017), <https://thefishsite.com/articles/rainbow-trout-fry-syndrome-rtfs-explained-1>

³⁰ Cooke Aquaculture Pacific, LLC NPDES Permit Modification Application, pdf p. 10.

³¹ Centers for Disease Control and Prevention, Antibiotic/Antimicrobial Resistance, <https://www.cdc.gov/drugresistance/>.

³² *See, e.g.*, Meador et al., *supra* note 16.

drug that was recently found at about a quarter of studied stream sites across the country at concentrations up to 400 nanograms per liter.³³ Ciprofloxacin has been found to select for resistant bacteria at levels of only 100 nanograms per liter (parts per trillion) – well below the levels actually found in the recent nationwide stream site study.³⁴ Therefore, studies have already demonstrated that the current levels of aquatic antibiotic pollution are contributing to increasing levels of antimicrobial resistance.

3. *Bioaccumulation of Pharmaceuticals*

Pharmaceuticals have a high potential to bioaccumulate through the aquatic food chain, with corresponding adverse impacts for aquatic and non-aquatic species alike. Even non-aquatic species that eat fish or insects can be harmed by the bioaccumulation of pharmaceutical pollution in water.

The concern that scientists have been underestimating levels of contamination in fish was reinforced in a more recent study of 150 contaminants of emerging concern in three estuaries in Puget Sound, two of which receive effluent from waste water treatment plants (WWTPs).³⁵ The study analyzed the levels of these emerging contaminants (including pharmaceuticals) found in wastewater effluent, estuarine water, and two species of fish: Pacific Staghorn Sculpin and juvenile Chinook.³⁶ The fish in this study had higher levels of contamination than would be expected based solely on the levels of contamination present in the estuarine waters, suggesting there were either upriver sources of contamination in addition to the wastewater effluent or bioaccumulation impacts through the food web, or both.³⁷ Additionally, the authors noted that there is a larger potential for bioaccumulation in water with a higher than neutral pH, such as marine waters.³⁸ In all, forty-two contaminants were found in fish tissues, including nine contaminants which were absent from both the wastewater effluent and estuarine water samples.³⁹ Importantly, juvenile Chinook had significantly higher levels of contamination than the Pacific Staghorn Sculpin, perhaps because of their high rates of ingestion and gill ventilation.⁴⁰ Therefore, some species such as Chinook may be especially vulnerable to

³³ Bradley et al., *infra* note 6 at 4799.

³⁴ *Id.*

³⁵ Meador et al., *infra* note 16.

³⁶ *Id.*

³⁷ *Id.* at 263.

³⁸ *Id.* at 263.

³⁹ *Id.* at 258.

⁴⁰ *Id.* at 263.

pharmaceutical bioaccumulation. This variability in bioaccumulation rates between species, as well as the variability in bioaccumulation rates between specific contaminants, underscores the need to protect aquatic wildlife from food web magnification of pharmaceutical pollution.

In sum, bioaccumulation is likely occurring from the existing discharges and with the anticipated increase in fish and feed involved in raising steelhead bioaccumulation is likely to increase. The true amount of pharmaceutical pollution in our public trust waters is relatively unknown, and during a time when disease is causing a national pandemic, Ecology must set a limit on the allowable discharge of antibiotics for the Hope Island net pen, and this should be reflected in the NPDES permit.

c. New Fish Mortality Information

Cooke’s pollution prevention plan includes new quantitative fish mortality information that was not provided by Cooke to WDFW in its SEPA materials. It is unclear whether this significant new information is based on Atlantic salmon mortality. The new fish mortality information includes the following.

- i. Expected average monthly fish mortality at the Hope Island net pen is 5,000 pounds of fish biomass, or 0.17% of the total 2,800,000 lbs of annual fish biomass that Cooke expects to rear at Hope Island.
- ii. These dead fish are collected three times per week by divers, except in the event of adverse weather conditions, and disposed of in landfills or compost facilities.
 1. It is unclear from Cooke’s application what happens when divers are not able to retrieve the dead fish – if are they left to decay at the bottom of the net pen, what is the maximum threshold for this type of pollution discharge?
- iii. Divers make what amounts to an educated guess by noting the “presumed cause of death” in their weekly reports as to the cause of the fish mortality, yet no specimens are required to be sent to a lab facility for testing.
 1. Is this what Cooke considers as having a “licensed veterinarian monitor the health of fish stocks raised at the facilities” as referenced in the plan’s section 5.2?
 2. Why are these fish not regularly tested at a lab for diseases, pathogens and parasites?

3. What exact training to staff have to diagnose the cause of death for several thousand pounds of fish mortality each week?
- iv. The WA Department of Health (DOH) is only notified when a “large mortality event” occurs, defined as 5% mortality (140,000 pounds of fish biomass) in a one-week period. This is 28-times more than the “average” expected weekly mortality rate, but there is no information or explanation provided for why DOH notification is not required until an event of such magnitude occurs.
- Stated another way, why does an event that is 5- or 10-times the normal mortality not require DOH notification?
 - Is a lower threshold for DOH engagement appropriate given the potential for disease in a net pen to infect native wild Steelhead?
 - What is the plan for handling a medium-sized or large mortality event when inclement weather prevents divers from retrieving the dead fish?
 - There do not appear to be notice requirements to the Tribes – why not?
- v. With respect to section 5.2, it is unclear from the plan under exactly what circumstances Cooke would engage a licensed veterinarian. Section 5.2 reads:
- A licensed veterinarian monitors the health of the fish stocks raised at the facilities. The veterinarian is used to identify the type of pathogen causing disease and the effective course of management to control the pathogen.

The claim that a licensed veterinarian “monitors the health of fish stocks” was contradicted by other statements in Cooke’s permit application. If Cooke is not required to regularly test the weekly batches of dead fish then it seems that a veterinarian is not “monitoring” the health of the fish stock, particularly if a veterinarian does not engage until a massive fish mortality event. All indications are that it is up to technicians with completely unknown or unquantified technical training to make judgment calls about fish mortality. If veterinarians actually do “monitor” the health of fish stocks at a net pen facility, what specifically does this entail, how often do they consult with local staff, what tests are run and under what circumstances? Additionally, the draft permit requires Cook submit monthly discharge monitoring reports monthly however there is no measure of quantification that of dead fish that would prevent harm to water quality.

- vi. With respect to section 5.3, the words in Section 5.3 are phrased more as a goal rather than permit conditions. It fails to state specific steps that Cooke will take to ensure the minimization of medicated feed into the environment. Section 5.3 reads:

5.3 Site Managers are responsible for the administration and keeping records of disease control chemicals used at the facilities. Site Managers work closely with the attending veterinarian to ensure that medicated feed is administered appropriately and used in a manner that minimizes the discharge of uneaten medicated feed into the environment.

Ecology needs to include some measure of quantification to direct this, rather than granting Cooke this vague, discretionary decision-making authority. Why aren't there additional requirements imposed to protect water quality from medicated feed, like an additional net, or pumping out each net pen cage of fish to treat them on land? The prevalence of antibiotics and potential adverse impacts to native wild Steelhead must be taken seriously. These are basic questions that are not answered in Cooke's pollution prevent plan or the draft permit. For that, we request an in-depth analysis and full permit modification process to ensure the net pens do not cause negatively affect the ESA-listed salmonids that rely on the health of these waters.

d. **Fish Escape Prevention Plan**

Cooke's escape prevention plan must be reviewed in the context of Cooke's previous Clean Water Act and NPDES violations. The draft permit requires the escape prevention plan have a "[p]rocedure for notification of Ecology and other state agencies of events that have the potential to lead to or include major repairs or mechanical or structural issues that may produce fish escape."⁴¹ However, Cooke's draft escape prevention plan relies on a deficient threshold for notification to state agencies and tribal governments, and there are no procedures listed for monitoring the implementation of the plan components as required in WAC 220-370-110 (1)(e). The "Responding to Structural Integrity Emergencies" of Cooke's escape prevention plan states in Section 2.1 that:

⁴¹ Draft Plan at 25

Cooke facility staff who observe an actual or potential structural integrity issue that poses an imminent risk of structural collapse and the release of fish into the environment shall implement the following procedure:

This section sets out the threshold for when Cooke’s staff must invoke the internal chain of emergency calls and then calls to state agencies and tribal governments, but the threshold is far too high. It is unacceptable to allow Cooke - particularly given the recent partial sinking of the net pens at Cooke’s Orchard Rocks facility – to make a unilateral judgment call about when and whether it believes there is an “imminent risk of structural collapse” before invoking the notification provisions of the Prevention Plan. Cooke’s judgment cannot be relied upon or trusted.

The specific trigger for invoking notification to state agencies – Ecology, WDFW and DNR – should be much lower; in order to meet Ecology’s duty to protect water quality and prevent ecological harm, Cooke cannot be trusted to self-regulate any longer. There is simply no basis for that given its past behavior. There must be unequivocal language that would require Cooke staff to initiate emergency notification procedures at the outset of any potential emergency or unusual situation, regardless of whether Cooke believes it poses an imminent risk of structural collapse. This is particularly important in light of Cooke’s failure to follow procedures last October with the Orchard Rocks net pen incident, as documented by Ecology in its October 25, 2019 letter.

e. **Fish Escape Reporting and Recapture Plan**

Cooke’s Recapture Plan contains multiple sections that raise concerns, including fish recapture procedures that purport to rely extensively on tribal fishermen and tribal fishing vessels despite a complete lack of communication from Cooke on this matter.

The recapture procedures in Cooke’s recapture plan apparently conflict with statutory requirements. WAC 220-37-120 unequivocally states, “[i]t is the responsibility of aquatic farmers to report an escape of marine finfish and to attempt to recapture escaped fish.” However, Cooke’s recapture plan grants Cooke’s Emergency Management Team full discretion regarding the order in which it proceeds to secure the net pen site, all the while feral fish are escaping. Section 4.1 on the recapture procedures states that:

4.1 Recapture Procedures In the event of a catastrophic structural failure of the equipment, securing the net pen structure may be necessary in order make the site safe for employees and subsequent fish recapture actions. The safety of Cooke employees and contractors takes priority over fish recapture. This determination is made at the discretion of Cooke EMT.

While the safety of human life is undoubtedly a priority, securing the net pen should happen *simultaneously* with the emergency notification and recovery of feral fish, not afterward, and not at the discretion of Cooke.

Section 4.1 goes on to state that:

The next priority is to determine and attempt to correct the cause of the accidental fish release by repairing the breach or implementing some form of secondary containment, if possible.

Cooke EMT maintains an Emergency Work Vessel Contact List. The contact list is provided in Appendix B. The Permit Coordinator will update this list annually. The operators of emergency work vessels will keep Cooke apprised of changes in personnel or contact information.

This last provision is problematic both procedurally and substantively. Cooke should be required to keep a list of willing vessel owners who have agreed ahead of time to be on call to come under contract at a pre-arranged and agreed upon rate and terms. In the event of another net pen failure, there is no time for contract negotiations. Further, Cooke should not be allowed to require work vessels to have to update their information to Cooke – this responsibility should rest solely with Cooke.

Section 4.1 Recapture Procedures continue as follows:

Upon receiving authorization from WDFW, the Cooke EMT will commence recovery of escaped fish through one or more of the following actions:

- a. Deploying Cooke skiffs and seine nets to recapture escaped fish.
- b. Contacting the Northwest Indians Fishery Commission and nearby tribal Natural Resource managers to help facilitate the recapture of escaped fish.
- c. Contacting and engaging the services of local vessels of opportunity to facilitate the recapture of escaped fish.

We believe it would be imperative that Cooke engage in all three of those actions simultaneously, and that WDFW, Ecology, DNR and the affected tribal governments work together in making these decisions. Cooke should have no discretion in making these types of important decisions that would impact fishery resources.

Section 4.2 addresses recapture vessels, gear, and methods, and includes that:

Cooke will work with nearby tribes to review appropriate fisheries and gear types and identify the key natural resource contacts in the areas near each of the marine net pen farming locations. The tribal contact list is presented in Section 2.

This is a huge assumption on the part of Cooke. In essence, they are relying on tribal fishery expertise, boats and gear, yet have not approached anyone at the Swinomish Tribe about this potential. Thus, we are a cornerstone of Cooke's recapture plan yet they do not believe it is important to start by asking whether and how we may want to engage with them in these efforts.

Section 4.2.2 discusses potential contractor equipment, yet contains a fundamental error.

Commercial fishing contractors can employ the following methods of capturing and removing fish:

1. Purse seining - These vessels allow the nets to be gathered and the captured fish to be pumped onto a harvest vessel using the vacuum pump.
2. Gill netting – These vessels capture fish by encircling them with nets that the fish become tangled in. This method is effective if the fish are within the size range that gill-net vessels target. Target fish size for most gillnets is between three pounds and 15 pounds.

According to Swinomish Tribe fishermen, only gill netting, and not purse seining, would work to try and recover escaped fish in Skagit Bay. This further highlight Cooke's failure to work with nearby tribes to review appropriate fisheries and gear types, although it claims that it will.

Section 7.1 discusses the reliance upon a Unified Command system in the event of an emergency. We find the provisions in this plan particularly inadequate and believe this plan is fundamentally flawed and incomplete. Cooke must ensure that Swinomish Tribe representatives are included in the Unified Command system as an equal partner and decision maker.

Finally, we respectfully request that Ecology refrains from issuing the NPDES permit for Hope Island unless and until Cooke has initiated, and has reached agreement with all parties on, the requirement in the January 21, 2020 WDFW permit to develop a "no-recovery option" for escaped fish with numerous state agencies, tribes and NOAA. The WDFW permit requirement states:

"3. It is conceivable that an attempt to recover fish after an escape event might negatively affect native Pacific salmonids more than no attempt to recover fish. Cooke is required to work with WDFW, Ecology, DNR, effected treaty tribes, and NOAA to include a no-recovery option in the 2021 Fish Escape Prevention, Response, and Reporting Plan, to be finalized December 2020. This option should include when, where, and under what conditions a recovery effort should not be attempted. A no-recovery option would be triggered by the state, in consultation with co- managers and federal agencies for the purpose of protecting native Pacific salmonids."

We believe it is incumbent upon Ecology in its duty to enforce water quality standards to require that Cooke initiate this process and reach agreement with all appropriate state and federal agencies and tribal governments on the “no-recovery option” *prior to* any steelhead being placed in the Hope Island net pen.

7. New Tier II Analysis Required

The Clean Water Act requires that water quality standards protect existing designated uses by establishing the maximum level of pollutants allowed in surface water. Washington requires extra protections for water that is already cleaner than the standards. The Washington State Antidegradation Policy⁴² functions to restore and maintain the highest possible quality of the surface waters of Washington. The policy applies to human activities that are likely to have an impact on the water quality of the surface water.⁴³

The Policy applies three tiers of protection for surface waters of the state and the proposed facilities are under Tier I. Tier I requires dischargers maintain and protect existing and designated uses.⁴⁴ Ecology must not allow any degradation that will interfere with, or become injurious to, existing or designated uses, except as provided for in chapter 173-201A WAC. Tier II review is required when a physical expansion of the facility (production or wastewater system expansions with a potential to allow an increase the volume of wastewater or the amount of pollution) or activity. New or expanded actions that are expected to cause a measurable change in the quality of the water may not be allowed unless the department determines that the lowering of water quality is necessary and in the overriding public interest.⁴⁵

In 2017 Ecology made a determination that Tier II analysis was not required because the receiving water quality constituents had not been demonstrated to be higher than the criterion designated by state water quality standards. Now that Cooke is planning to raise an increased number of fish, which is likely to lead to an increase in discharge, Ecology should make a new determination as to whether Tier II analysis is required to protect existing and designated uses of the receiving water.

⁴² WAC 173-201A-300 - 173-201A-330.

⁴³ *Id.*

⁴⁴ WAC 173-201A-310.

⁴⁵ WAC 173-201A-320(1).

8. Ecology should not authorize Cooke's modified NPDES permits while federal ESA consultation on the impacts of Puget Sound net pens is ongoing.

NOAA Fisheries is currently preparing a biological opinion of Puget Sound net pens in response to the Environmental Protection Agency's initial determination in May 2020 that Puget Sound net pens "are likely to adversely impact" ESA-listed Puget Sound salmon, steelhead, and rockfish populations. This consultation is addressing water quality standards needed to issue the permits and therefore it would be premature and inappropriate for Ecology to finalize the NPDES permit review and issue permits while this federal ESA consultation is ongoing and without fully reviewing NOAA Fisheries' findings and incorporating them into the Hope Island net pen.

Conclusion

For the foregoing reasons, we believe that Ecology should deny the NPDES permit to Cooke for the Hope Island net pen in order ensure the health and safety of Washington state waters and people. If it does issue a NPDES permit to Cooke, Ecology must take into full account Cooke's pattern of violations of the Clean Water Act and requirements of its prior NPDES permits as highlighted above and include more stringent requirements for the Hope Island net pen, including but not limited requiring independent, third-party monitoring and reporting.

Thank you for your consideration of our comments and concerns.

Sincerely,

A handwritten signature in black ink that reads "Amy Trainer". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Amy Trainer, Environmental Policy Director
Swinomish Indian Tribal Community



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THE SUQUAMISH TRIBE

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Filed at electronically

October 23, 2020

Laurie Niewolny
Aquaculture Specialist and Permit Coordinator
Washington State Department of Ecology
Laurie.niewolny@ecy.wa.gov

RE: Salmon Net Pen Water Quality Individual Permits for Cooke Aquaculture

Dear Ms. Niewolny:

In October, the Suquamish Tribe (Tribe) provided comments to Washington State Department of Ecology on Cooke Aquaculture Pacific's (Cooke) National Pollutant Discharge Elimination System (NPDES) permit applications to modify existing water quality permits for four Puget Sound net pens. Cooke requested modification is to raise all-female, triploid rainbow trout, also known as steelhead (*Oncorhynchus mykiss*), in its net pen facilities in Rich Passage and at Hope Island, instead of Atlantic salmon. Ecology has moved forward with modifying Cooke's permits to allow it to raise steelhead instead of Atlantic salmon despite the Tribe's opposition and objection based on the potential escapement and the genetic introgression of farmed steelhead with the distinct and independent native Puget Sound steelhead population.

The Tribe has been consistent in its opposition to all farming operations of native and non-native finfish within the Tribe's U&A. To reiterate, many problems that are associated with the farming of Atlantic salmon in net pens are also problematic with the farming of steelhead. Problems and impacts include:

- Marine net pens are open and any chemicals, medicines, food, or metabolic wastes that result from their operation are released directly to the waters of Puget Sound. Farming practices have longer term and greater impacts (from longer residence time and greater biomass to support) than a native delayed release or conservation-based captive brood recovery programs;
- Excessive densities from farming also results in changes in the benthic environment (more fines, changes in species assemblages);
- There is the potential for disease to be passed to native fish;
- Increase in the loading of exogenous nutrients to local waters (there are multiple low dissolved oxygen 303(d) listings in proximity to Cooke's Rich Passage facilities);

- Large aquaculture facilities and operations like those in Rich Passage attract nuisance species like seals and sea lions which may increase predation on local native populations of salmon and steelhead;
- Large aquaculture facilities attract native finfish species (including salmon and steelhead) subjecting them to numerous risks including predation, disease, and entrapment within net pens;
- Large aquaculture facilities, sited in the U&A of the Tribe, interfere with the Tribe's ability to exercise its treaty-reserved rights to fish in those locations.

Also of serious concern to the Tribe is that Cooke's proposal introduces the additional risk that fertile steelhead raised within Cooke's facilities could escape and interact with native, natural origin steelhead occurring in local streams. The Tribe's main concern with this proposal is the risk posed to the genetic integrity of our local demographically independent population of Puget Sound steelhead from genetic introgression of farmed steelhead. If there were a release of similar size to Cypress Island, the number of farmed steelhead in local waters would greatly outnumber steelhead of local and natural origin. The effect of genetic introgression of these farmed steelhead with the locally adapted natural origin steelhead could reduce fitness, survivability, and ultimately push natural origin stocks past the point of recovery.

Following review of the Ecology's draft permits and statements of basis modifying Cooke's NPDES permits to raise steelhead the Tribe recommends that Ecology require Cooke to have an updated Fish Escapement and Prevention Plan, Fish Escapement Reporting and Response Plan, and Pollution Control Plan as part of the draft permit for review. As it stands now, those plans will be updated and submitted within thirty (30) days of the final permit approval (S8, S9, and S10 in the draft permit). This does not give the Tribe and/or others the opportunity to review and comment on any proposed changes or updates in those plans. Given the Tribe's concern about escapement from Cooke's facilities, based on our actual experience with Cypress Island, it is critical that the Tribe has a chance to review and comment on these plans due to the potential risk of escapement and interaction with natural origin steelhead.

Sincerely,



Leonard Forsman
Chairman

Jamestown S'Klallam Tribe

On behalf of Jamestown S'Klallam Tribe, I am submitting this letter from Tribal Chair/CEO Ron Allen regarding the NPDES permit modifications for Cooke Aquaculture's net pen facilities in marine WA waters. Thank you, Hansi Hals

October 23, 2020

Laurie Niewolny
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(submitted via the eComments form)

Re: WA waters – marine net pen modified NPDES permits

Dear Ms. Niewolny,

I write regarding the NPDES permit modification decision by Washington Department of Ecology (ECY) for four Puget Sound net pens – three in Rich Passage in Kitsap County and one near Hope Island in Skagit County, to revise the National Pollution Discharge Elimination permit for these facilities to raise native steelhead trout instead of non-native Atlantic Salmon.

Our Tribe has an interest in this matter because modern aquaculture could enable Tribes to continue our traditions, feed our families, and provide fish and shellfish to others. Even as we maintain and rebuild our wild fisheries, we cannot meet increasing domestic demand for seafood through wild-caught fisheries alone. As you may know, Jamestown is exploring modern net pen aquaculture opportunities in Port Angeles Harbor, Clallam County. Permit decisions made for the four facilities under current ECY review will have direct bearing on Port Angeles rearing as well.

Jamestown concurs with Ecology's decision that changing reared species is unlikely to effect water quality. While raising a native species reduces potential ecological impact, the water effect is substantially unchanged because the operations, including biomass and feeding will be similar. Of course, ecological impact has already been evaluated and addressed in the related WDFW Marine Aquaculture Permit issued January, 2020.

Jamestown appreciates Ecology's requirement to improve each facility's notification process for an unusual event; as well as increased monitoring and reporting, including fish food composition (specifically nitrogen %). We further agree that remaining abreast of technological updates is useful to assure best overall operations and production.

As we are confident you understand that fin and shellfish have always been an integral part of S'Klallam culture, as sustenance as well as for the traditions associated with harvest, preparation and celebration. For millennia, S'Klallam people fed their families with fin and shellfish, and traded their abundant harvest with other Tribes, devising methods for holding fresh catch, and preserving the harvest for future consumption.

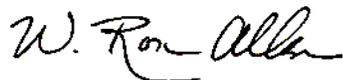
When explorers, and then settlers arrived on this land, S’Klallam people bartered and sold their familiar harvests to them. Market demand grew with the increasing European population, and S’Klallam fishermen discovered a new market for their traditional foods.

As a sovereign nation, our Tribe has always cherished and protected our treaty rights as well as our right to pursue economic development, both of which contribute to our self-reliance and our ability to thrive as a people and a culture. The 21st century has brought new challenges to exercising our treaty rights - if there are no fish to harvest, how can we access our treaty resources?

We acknowledge there is still skepticism regarding saltwater fish pen operations since the 2017 collapse of a net pen containing Atlantic salmon near Cypress Island in Skagit County. We firmly believe that confidence will be restored. The NPDES permit materials modified by ECY demonstrate clear environmental protection practices and increased monitoring, inspections and reporting; as well as clear preparedness for accidents.

An ongoing cultural identity of Jamestown Tribe includes stewardship of our seafood resources. Further, JST strives for excellence and environmental integrity in all of its endeavors. The Port Angeles Harbor net pen aquaculture opportunity will enable JST to continue our traditions, feed our families, and provide jobs, fish and shellfish to our neighboring communities.

Sincerely,



W. Ron Allen
Chair/ CEO

Cc: Tyson Hawk Oreiro, ECY Tribal Affairs

Gregg Dunphy

Please see the attached file sent on behalf of the Lummi Natural Resources Department Director



Lummi Indian Business Council

2665 Kwina Road · Bellingham, Washington 98226 · (360) 312-2000

'Working together as one to Preserve, Promote and Protect our Sche Lang en'

October 26, 2020

Ms. Laura Watson, Director
WA Dept. of Ecology
Via e-mail lnie641@ecy.wa.gov

Re: Cooke Aquaculture Pacific, LLC application for NPDES permit modification

Dear Director Watson:

Thank you for the opportunity to review the request for modification to the NPDES permit submitted by Cooke Aquaculture Pacific, LLC (Cooke). We understand that the modification proposed by Cooke involves changing from rearing Atlantic salmon to rearing domesticated native Rainbow trout/Steelhead at their net pen facilities.

We are deeply concerned about the possible impacts of net pen-based fish farms in our Usual and Accustomed treaty fishing areas (U & A) and the adverse consequences that such operations have on our Sche Lang en' (way of life) through infringement and even in the absence of impacts including escapes and cross-stock contamination.

I want to be clear that we stand firm in our opposition to the modification of the NPDES permit. Moreover, our position remains that no permits for net pen operations should have been granted to Cooke in the first place. Our concerns and opposition are due to two closely related reasons:

First, net pen operations in general and Cooke's operations specifically, continue to infringe on our treaty-reserved fishing rights in our U & A. These rights were secured for us in perpetuity by our ancestors and those of the other signatory tribes in the Point Elliott Treaty of 1855. To be clear, continuing or new takes of our fishing rights and resources remain unacceptable to us as the infringements they represent incrementally diminish our Sche Lang en'.

Second, the recent the lessons of history stemming specifically from Cooke's operations clearly demonstrate the unfortunate consequences of Cooke's negligence in maintaining the structural integrity of their infrastructure and commitment to abide by permit terms.

In conclusion, it is for these reasons and others elaborated in great detail by the Swinomish Indian Tribal Community, in their letter to you dated June 8, 2020, that we join with them and the other treaty tribes in firm opposition to the issuance or modification of any permits to Cooke for its dangerous net pen operations. We adopt the comments of the Swinomish Indian Tribal Community by reference. Thank you for your consideration of our concerns and comments.

Sincerely,

A handwritten signature in blue ink that reads "Merle Jefferson". The signature is written in a cursive style and is positioned above the typed name.

Merle Jefferson, Director,
Lummi Natural Resources Department

Kurt Grinnell

Okay, good evening and thank you again. Kurt Grinnell from the Jamestown S'Klallam tribe again. I'm a councilman and a natural resource policy rep. I'm also head of our seafood aquaculture programs and on behalf of the tribe, I'd like to say, hello to everybody tonight and Karen and Allen.

So, the Jamestown tribe's a sovereign nation, but we're really not truly sovereign unless we can feed our people and with the state of affairs, with our wild salmon, as much as we've worked on the habitat, all the issues out there surrounding the survival rates of our needed populations and fish out there, generally our seafood, Jamestown has decided to begin an aquaculture program. They actually tried to start in the 80's, were unable to do so with their fish production.

Well, we do have two hatcheries. We do have two shellfish hatcheries currently raising geoduck and oysters and we also have a pretty large nursery system here in Sequim Bay.

We also are in a partnership with NOAA and the University of Washington growing all female, native sablefish. We hope to bring these two viable commercial interest in the future, which also looks good and again we talked about native species - when the Atlantic's were on their way out we had decided and I testified whether tribal leaders that we would be okay with the native species to farm these fish, and we were already in the businesses. Other tribes in the business as tribes with over two million coho and net-pens and they release them and they come back and they catch them and so the sport fisheries and other people in the community, and we don't have a big problem with that. We haven't had three fish that are released, and without these hatchery fish, these net-pen fish that are released, we really wouldn't have any fish with catch.

But really, our sovereignty in our tribe is food sovereignty. If we are unable to feed ourselves and history shows that with tribes there have been periods of times that we have not been able to feed our own people, and we're just start to fail as a culture and as a society, and so we are very, very supportive of the decision by Ecology to, you know, to okay these permits. Same with WDFW. We believe in their science. We're very science based in Jamestown. That's all we have. We do believe in science. It's what we do, and we feel that that done properly using best practices, best science, that aquaculture, whether it's shellfish or fish, they should be done sustainably, and we look seven generations down the road.

A lot of people know that's how we, the Indian tribes, look. We look at our futures. We look out seven generations. We want to know that we are going to be able to feed our people and create jobs

and teach our people how to grow their own food into the future when we're here and when we are all long gone.

We, and also we do, we realize there's been a release of fish and shortly after Cooke purchased the operations from Icicle, had Icicle held on to the operations for another six or eight months, it would have collapsed on them, so we realize in every kind of industry, there's accidents, there's mistakes that happen or in this case, maybe pens were in disrepair, and so we realize that after spending a lot of time with Cooke, looking at all their operations throughout Canada and down here in Washington state, we think that there that their heads up in their operations and they're good folks.

We have partnered with Cooke and we hope to begin operations to raise these sterile, native steelhead and our sablefish and, you know, in possibly Port Angeles Harbor.

So I just want to reiterate our support for these decisions to allow us, not just Cooke, but other tribes that like us-- there are other tribes in Washington state, I know, that are that are raising steelhead trout to adulthood to maybe 2 million pounds in a month, so this is not new to Washington state. Steelhead are being raised already. There are other tribes out to the raising [inaudible] and releasing them, so I think this is kind of semantics in some way. There's a lot of fish rearing going on between net-pens and hatcheries, and then they're splitting hairs on how long to raise them and whether you release them or do you just harvest them right out of the net.

And so, yeah, so anyway, this does give Jamestown somewhat of a guarantee into the future for food, sovereignty, food security jobs for our people and also helps our tax base, so I thank you. Appreciate your time.

Laurie Newolney
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
October 20, 2020

RECEIVED

OCT 22 2020

WA State Department
of Ecology (SWRO)

Dear Washington State Dept. of Ecology,

I am writing in reference to the Cooke Aquaculture for Water Quality Discharge Permits. Cooke Aquaculture has all ready shown that they are not reliable with their previous fish pen breakdown and escape and the impact it had in our Puget Sound Waters. We have enough existing threats to our waters here and to the marine life that inhabits them.

Fish farming is a cruel environment for any species. It's like raising 50 gold fish in a six inch bowl. Our waters and the quality of them are paramount to the survival of marine life in Puget Sound. There are no benefits to sacrificing our remaining marine environment to anyone.

You hold the state-owned aquatic lands future. I ask that you deny these permits.

Sincerely,

Annabelle House Fox
2014 27th Place
Anacortes, WA 98221
bjfox1@msn.com