

20-A12025

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands

AQUATIC LANDS NETPEN LEASE

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EXHIBIT A	Legal Description and Survey
EXHIBIT B	Plan of Development, Operation, and Maintenance
EXHIBIT C	Net Pen Baseline Survey and Annual Monitoring Requirements
EXHIBIT D	Sediment Investigation

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

AQUATIC LANDS NETPEN LEASE

AQUATIC LANDS NETPEN LEASE NO. 20-A12025

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, a Government Agency ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Peale Passage, which are bedlands located in Mason County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined. State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Mason County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes. Except to the extent specifically authorized in Subsection 2.1, below, this Lease does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

1.2 Survey Maps, and Plans. In executing this lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State. Before taking possession of the Property, Tenant shall have the Property surveyed by a registered land surveyor. The survey map shall be signed and certified by the surveyor. The survey shall be attached to this Lease as Exhibit A.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for Delayed Release Salmon Net Pens (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. If at any time the Property ceases to be used for the Permitted Use, this Lease shall terminate and State may reenter and take possession of the Property.

2.2 Restrictions on Use. Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, than State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

2.3 Biological Monitoring. A baseline survey and annual monitoring shall be performed in accordance with the "Salmon Net Pen Baseline Survey and Annual Monitoring Requirements" dated December 3, 1990, or as thereafter amended, and attached hereto as Exhibit C.

2.4 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

2.5 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property, unless authorized by State.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Fifteen (15) years (the "Term"), beginning on the 1st day of July, 2001 (the "Commencement Date"), and ending on the 30th day of June, 2016 (the "Termination Date") unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. Tenant shall have the option to renew this Lease for Zero (0) additional terms of Zero (0) years each. The initial Term of this Lease, and all renewal terms, shall not exceed Fifteen (12) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised or any time thereafter until the beginning of the next term. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

3.3 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.4 End of Term. Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

3.5 Hold Over. If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property prior to termination of this Lease or at any time thereafter and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe State all amounts due under RCW 79.01.760 or other applicable law.

SECTION 4 RENT

4.1 Fixed Minimum Annual Payment. Tenant shall pay State a Fixed Minimum Annual Payment of Zero Dollars and Zero Cents (\$ 0.00), which shall be due and payable in full on or before the Commencement Date, and on or before the same date of each year thereafter.

SECTION 5 OTHER EXPENSES

During the Term, Tenant shall pay the following additional expenses:

5.1 Utilities. Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), including Product Leasehold tax set by the Department of Revenue, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

5.4 Proof of Payment. Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with the provisions of Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State as a result of the delay.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed. If rent is not received by State within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes pursuant to Chapter 82.29A RCW, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

6.3 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or

remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

6.4 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Property: None. So long as this Lease remains in effect, no new improvements shall be placed on the Property without (a) State's prior written consent, which shall not be unreasonably withheld, and (b) Tenant's acquisition of a performance and payment bond, in an amount equal to 150% of the estimated cost of constructing and installing the new improvements.

7.3 Unauthorized Improvements. Improvements made on the Property without State's prior written consent or which are not in conformance with the plans submitted to and approved by the State ("Unauthorized Improvements") shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove and dispose of them, charge Tenant rent for the use of them, or both.

7.4 Removal of Improvements. All Tenant-owned improvements and all Unauthorized Improvements shall be removed by Tenant from the Property on or before the Termination Date unless State consents that the improvements may remain. If such improvements remain on the Property after the Termination Date without State's consent, State may elect to remove the improvements and Tenant shall, upon demand, pay the costs of removing and disposing of them.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.

(a) With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.

(b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:

(1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;

(2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;

(3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;

(4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and

(5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.

(c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

8.4 Notification and Reporting.

(a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;

(2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;

(3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;

(4) Any lien or action with respect to any of the foregoing; or,

(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.

(b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

8.5 Indemnification.

(a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;

(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:

(i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,

(ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

(b) In addition to the indemnifications provided in Subsection 8.5(a), Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

8.6 Cleanup. If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

8.7 Sampling by State, Reimbursement, and Split Samples.

(a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.

(b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.

(c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Tenant.

(d) Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

8.8 Sediment Investigation.

(a) As a part of the screening of Tenant's application to make use of state-owned aquatic lands, State has been provided with certain environmental information that relates to Hazardous Substances which may exist in, on, under, or above the Property as of the Commencement Date of this Lease. This information has been incorporated into Exhibit D (Sediment Investigation Report). State makes no representations or warranties of any kind or nature regarding the accuracy, completeness or any other matter relating to Exhibit D.

(b) If State has reason to believe that a release or threatened release of Hazardous Substances has occurred on the Property during Tenant's occupancy, State may require Tenant to conduct a Closeout Environmental Assessment (Closeout Assessment) by providing Tenant with written notice of this requirement no later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of any valid notice to terminate the lease earlier than originally agreed. The purpose of the Closeout Assessment shall be to determine the existence, scope, or effects of any Hazardous Substances on the Property and any associated natural resources. If the initial results of the Closeout Assessment disclose the existence of Hazardous Substances that may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of any Hazardous Substances on adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or on any associated natural resources. The Closeout Assessment may include Sediment Sampling. Any Sediment Sampling must include those sample locations and parameters reported in Tenant's Sediment Investigation Report completed at the initiation of this Lease as well as any additional testing requirements State may require based on changes in scientific, statutory, or regulatory standards for information concerning the activities of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates.

(c) Prior to undertaking the Closeout Assessment, Tenant shall submit a proposed plan in writing for State's approval. The plan shall be provided to State within sixty (60) days of the State's notice requiring the Closeout Assessment. If State fails to respond in writing, either approving or disapproving of the proposed plan, within sixty (60) days of its receipt, the proposed plan shall be deemed approved. Tenant shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.

8.9 Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party

from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

(a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for hazardous substances on the Property or on other property owned or occupied by Tenant or the transferee.

(c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

9.2 Event of Assignment. If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

9.3 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

9.4 Terms of Subleases. All subleases shall be submitted to State for approval and shall meet the following requirements:

(a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;

(b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;

(c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;

(d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;

(e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;

- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,
- (j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity. Grantor and Grantee, as state agencies, are covered by the tort liability provisions of the state's self-insurance program. It is understood that each state agency that is a party to this Lease will be assigned and assume responsibility for, any damages to third parties that are attributable to the negligent acts or omission of the individual agency. Grantee agrees to assume financial responsibility for any and all physical damage to the Lease Property that is caused by Grantee, or that, with the exercise of reasonable care, could have been prevented by Grantee.

10.2 Financial Security.

(a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Zero Dollars (\$0), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as any change in the payment or payments required under Section 4;
- (2) As a condition of approval of assignment or sublease of this Lease; or,
- (3) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) days after adjustment of the amount of the Bond has been required by State.

(b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

10.3 Insurance. At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating

company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) **Types of Required Insurance.**

- (1) **Commercial General Liability Insurance.** Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description

Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

- (2) **Worker's Compensation/Employer's Liability Insurance.** Tenant shall procure and maintain:

- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements;
- (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

Each Employee	Policy Limit	
<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
\$1,000,000	\$1,000,000	\$1,000,000

- (iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements.

(b) **Terms of Insurance.** The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:

- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
- (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
- (3) All liability policies must provide coverage on an occurrence basis;
- (4) Liability policies shall not include exclusions for cross liability.

(c) Proof of Insurance. Tenant shall furnish evidence of insurance in the form of a

Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

10.4 State's Acquisition of Insurance. If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

10.5 Self Insurance. Licensee warrants that it has the capacity to self insure for the risks and coverages specified in Section 10. Licensee's obligations under Section 10 may be met by providing evidence of self insurance that is acceptable to State. Any acceptance of Licensee's proof of self insurance by State must be obtained in writing. The decision to accept, or reject, Licensee's proof of self insurance is within the sole discretion of the State. Licensee must provide State with proof of continuing ability to provide self insurance within thirty (30) days of any written request by State for such proof. Licensee shall also provide State with written notice within seven (7) days of any material change in its ability to self insure, or to its program of self insurance. If Licensee elects to discontinue its program of self insurance, or if State provides written notice withdrawing its acceptance of Licensee's proof of self insurance, Licensee shall be subjected to the requirements of Section 10. Licensee shall be in compliance with the requirements of Section 10 prior to exercising an election to terminate self insurance coverage and shall comply with those requirements within thirty (30) days of receipt of any notice from State withdrawing its consent to self insurance. All sublease agreements must comply with the provisions of section 10.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

(a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.

(b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority.

(c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

SECTION 12 DAMAGE OR DESTRUCTION

(a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.

(b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid.

(c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in rent during such reconstruction, repair, and replacement.

(d) Any insurance proceeds payable by reason of damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

(e) In the event Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

(a) **Taking.** The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A total taking occurs when the entire Property is taken. A partial taking occurs when the taking does not constitute a total taking as defined above.

(b) **Voluntary Conveyance.** The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.

(c) **Date of Taking.** The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

13.2 Effect of Taking. If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

13.3 Allocation of Award. State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-owned improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-owned improvements, and (c) in State-owned improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

(a) Tenant shall be in default of this Lease on the occurrence of any of the following:

- (1) Failure to make any payment or pay any expense when due;
- (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (3) Failure to comply with any other provision of this Lease; or,
- (4) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.

(b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within the applicable cure period after State provides Tenant with written notice of default, which specifies the nature of the default.

(c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rentals received by it shall be applied: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and, (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.

State's reentry or repossession of the Property under this Subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.

SECTION 15 ENTRY BY STATE

~~State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.~~

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

SECTION 17 NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics Region
950 Farman Avenue North
Enumclaw, WA 98022-9282

Tenant: WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
600 Capital Way North
Olympia WA 98501-1091

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant ~~represent that Tenant is qualified to do business in the state of Washington, that Tenant has full~~ right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapter 79.90 RCW and the Constitution of the state of Washington.

18.2 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

18.5 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

18.9 Invalidity. If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease shall be interpreted and construed in accordance with the laws of the state of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

18.11 Recordation. Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense.

The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this Subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.12 Modification. Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE**

Dated: 9-24, 2002

By:


MARK QUINN

Title: WDFW Lands Division Manager

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES**

Dated: 10/4, 2002

By:


MARK MAUREN

Title: Assistant Region Manager

Approval as to form this 1st day of June, 1998
Michael S. Grossmann, Assistant Attorney General

 PROOFED

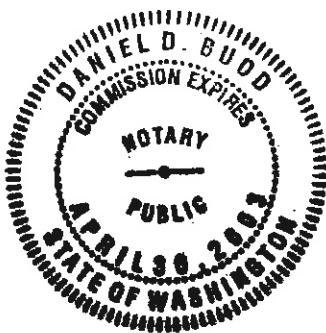
STATE OF WASHINGTON)

ss.

COUNTY OF)

I certify that I know or have satisfactory evidence that MARK QUINN is the person who appeared before me, and is the WDFW Lands Division Manager of WASHINGTON DEPARTMENT OF FISH AND WILDLIFE ("Tenant"). I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Tenant for the uses and purposes mentioned in the instrument, and on oath state that he is duly authorized to execute and acknowledge said instrument.

DATED: 9/24/2002



Daniel D. Budd
Daniel D. Budd
(Type/Print Name)

Notary Public in and for the State of Washington
residing at: Olympia

My Commission Expires: Apr. 30, 2003

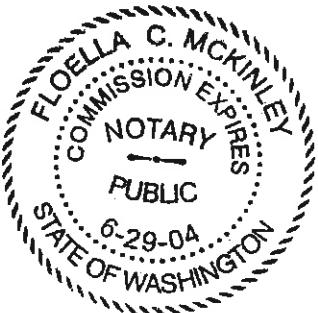
STATE OF WASHINGTON)

ss.

COUNTY OF King)

I certify that I know or have satisfactory evidence that MARK MAUREN is the person who appeared before me, and is the Assistant Region Manager of the STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES. I further certify that said person acknowledged the foregoing to be the free and voluntary act of the STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES for the uses and purposes mentioned in the instrument, and on oath stated that he is duly authorized to execute and acknowledge said instrument.

DATED: October 4, 2002



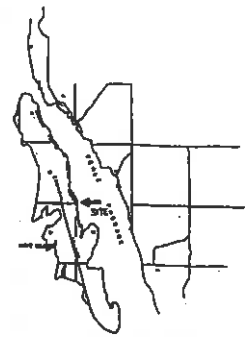
Floella C. McKinley
Floella C. McKinley
(Type/Print Name)

Notary Public in and for the State of Washington
residing at: Buckley

My Commission Expires: 6/29/04



BEGINNING AT A CONCRETE MONUMENT WITH BRASS CAP MARKING THE CORNER TO SECTIONS 21, 22, 31 & 32
TOWNSHIP 30 NORTH, RANGE 3 WEST, 36M; THENCE NORTH 11°25'30" EAST 89.61 FEET TO THE TRUE POINT OF
BEGINNING; THENCE SOUTH 89°15'00" EAST 30.00 FEET; THENCE SOUTH 1°44'30" WEST 10.00 FEET; THENCE
NORTH 89°15'00" WEST 30.00 FEET; THENCE SOUTH 1°44'30" WEST 400.00 FEET; THENCE NORTH 89°15'00" WEST
400.00 FEET; THENCE NORTH 1°44'30" EAST 1400.00 FEET TO THE TRUE POINT OF BEGINNING.
CONTAINING 2.69 ACRES MORE OR LESS.



- WORTH MAP, NO SCALE

DRAFT

SECTION CORNER CALCULATED
FROM PLAN PLAT

SQUAXIN ISLAND

APPROXIMATE LINE OF ORIGINARY HIGH TIDE,
AS MAPPED ON 3/05/2002

• APPROXIMATED LINE OF EXTREME LOW TIDE
SHOWN AS A GRAPHICAL REFERENCE ONLY.

PEALE PASSAGE

Verdict

WFOB WASHINGTON DEPARTMENT OF FISH & WILDLIFE
● FOUND CORNER AS NOTED

WORK LEASE AREA

◆ EXISTING NET-PEN ANCHOR LOCATION

REFERENCE SURVEYS
BLM PLAT 20-20-4, DEFENDANT RESURVEY AND SUBDIVISION OF
SECTIONS ON SAGUINAW ISLAND, APPROVED APRIL 27, 1984.
RGS VOLUME 20 PAGE 200. MASON COUNTY RECORDS.
SHORT PLAT FOR MMS PARTNERSHIP BY HOLMAN & ASSOCIATES.
OF SECTION MASON COUNTY RECORDS.

BASE OF READING
HAD 61, WASHINGTON STATE PLANE SOUTH ZONE, FROM THE
TO WOODS CFS STATIONS "WARTSWE" AND CP23023-1100 1000)

SCALE FACTOR 0.9997277
MAPPING ANGLE -1°4'35"
BEARINGS AND DISTANCES SHOWN ARE GRID. TO OBTAIN GROUND
DISTANCES DIVIDE GRID DISTANCES BY 0.9997277

EQUIPMENT USED
SC800A SET 20 TOTAL STATION THEODOLITE
TRIMBLE MODEL 4700 GPS RECEIVERS

SURVEY METHOD
THE MEASUREMENTS SHOWN ON THIS MAP WERE OBTAINED FROM COORDINATED FIELD TRANSVERSE POINTS AND/OR FROM STARS OF OBSERVATIONS. THE ACCURACY OF THE MEASUREMENTS MET OR EXCEEDED THE MINIMUM STANDARDS FOR LAND BOUNDARY SURVEYS AS PRESCRIBED IN R.L.C. 332-130-090

SURVEY FOR AQUATIC LEASE No: 20-A 12025

AUDITOR'S CERTIFICATE

Filed for record this _____th day of _____, 20____
at _____ M. in book _____ of _____ at page _____ of the
request of the Washington State Department of Fish
and Wildlife

County Auditor

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act for the Washington State Department of Fish and Wildlife in _____, 200__.

B.I. SHINCKE, PLS 13518

DATE _____



AUDITOR'S INDEXING DATA

IN FRONT OF SECTIONS 23 & 26
TOWNSHIP 23 NORTH RANGE 3 WEST, W.T.

WASHINGTON STATE DEPARTMENT
OF FISH AND WILDLIFE
600 CAPITOL WAY N OLYMPIA, WA 98501

DRAWN BY
J. HOLT

DATE
3/2002

JOB NO: .
FLD BK: LOOSE

CHECKED BY
B.J. SHUCK

SCALE
1" = 200'

SHEET
1 OF 1

EXHIBIT A
20-A12025

EXHIBIT B

**PLAN OF DEVELOPMENT,
OPERATION & MAINTENANCE**

Lease No. 20-A12025

**Washington Department of Fish and Wildlife
South Sound Net Pen Site - Peale Passage**

**600 Capitol Way N.
Olympia WA, 98501**

SITE DESCRIPTION AND PRESENT USE

The site is located on the bed of Peale Passage in front of Squaxin Island in the area commonly known as Seafarm Cove. Currently the site is used in a delayed release program designed to enhance native salmon stocks. The delayed release program has been located at this site since 1984. The Department of Fish and Wildlife (WDFW) program calls for the release of 1,000,000 Coho salmon (*Oncorhynchus kisutch*) which is approximately 100,000 pounds of fish (10 fish-per-pound). The stocks are Minter Creek or Wallace River. Fish are received in January at 25 fish-per-pound and released in May and June.

The fish are released in increments of 300 to 400,000 over a four-week period beginning in May and ending in June. Feed to the fish totals an average of 66,000 pounds per year. The feed is dry diet and fish are hand fed. Feed is stored in bulk bags in container cars at the Squaxin Island Oyster plant on Hartstene Island. The feed is poured into covered plastic totes, transported to the barge, unloaded by pellet jack and located throughout the complex. The maximum weight of feed stored at the site is 2,000 pounds.

Twenty-two 40-foot by 18-foot pens with a volume of 15,360 cubic feet each, and five 40 foot square pens with a volume of 25,600 cubic feet each are located at the site. The structural members of the net pen system are composed of high strength, hot dip galvanized steel. The hinge systems are nylotron bushings. The main walkways are 2 ½ meters wide and the outside walkways are 1 meter wide. Floats are molded in one piece of medium density, ultraviolet stabilized polyethylene and are filled with polystyrene, which is expanded within the unit to form a single block. Positive floatation is maintained even in the event of a punctured float.

The total surface area covered by structures is 32,775 square feet. The bottom area encumbered varies with anchor placement. The maximum bottom area encumbered is 86,775 square feet (1.99 acres). The nets are 18-foot nets. The maximum depth of the pens is 16 feet. The average depth at the site is 18 feet. As a result, the nets touch bottom on some extreme low tides. The maximum distance between the bottom of the net-pens and the sea floor is 13.5 feet. Details of the net-pen and anchoring system are located in Exhibit D.

The work force at the site consists of 2 personnel July through December and 4 personnel January through June. There may be 10 people intermittently at the site during fish hauls and fish releases. A 20-foot aluminum and a 19-foot fiberglass boat are used for transferring workers to net-pens from the Squaxin Oyster Company. An Almar 22-foot aluminum boat is used to transfer workers to the net-pens from Boston Harbor Marina. During fish transfer a 34 by 14-foot tug and a 36 by 14-foot barge with mounted tanks are used. A barge is also used for transferring fish feed to net-pens from the oyster company. The WDFW boat is moored at Boston Harbor Marina located in Olympia. Tribal boats are kept at the oyster company owned by the Squaxin tribe located on Hartstene Island.

Limited predator control is used at the site. The pens are covered to keep birds and otter out. If otter chew on nets a live trap is set.

FUTURE USE and CONDITIONS

WDFW will continue to use the site for the production of native salmon stocks. No substantive changes to the structures will be made, although nets and anchoring systems will be subject to continual maintenance. The nets will be shortened from 16 feet to 12 feet so that the nets do not touch the bottom at extreme low tides. Two feet of net will be out of the water; ten feet of net will be in the water.

SECTION 2 USE

2.1 Permitted Use

The use of this facility is for delayed release enhancement of native salmon stocks. There will be no permanent moorage of vessels, other commercial businesses, non water-dependent uses, or any other activities allowed in the lease area.

2.4 Conformance with Laws

It is the responsibility of WDFW to know and comply with the terms of all permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and standards that apply to its use of the Property. Tenant shall immediately notify State if Tenant becomes aware of any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Tenant's activities on the Property. In addition to reviewing any plans associated with remedying the violation, State may attach additional requirements for state-owned aquatic lands.

Tenant will insure that the DNR has a copy of the most recent Pollution Prevention and Emergency Response Plans approved by Ecology.

Tenant agrees to provide State with a copy of all regulatory permits or certificates which apply to its activities on the Property and to notify State in writing of the renewal, modification, rescission or appeal of any such regulatory permits or certificates.

The operation of the facility will meet or exceed all state and federal minimum requirements related to safety standards. Tenant agrees to implement suggestions or recommendations related to worker and public safety made by relevant authorities.

SECTION 4 RENT

4.1 Fixed Minimum Annual Payment

Payment to the State has been waived per WAC 332-30-131 Public Use and Access. To comply with the public use and access clause WDFW will provide:

- 1) Signs at the net-pen facilities designed to educate the boating public about the facilities; and
- 2) Hatchery tours when workers are at the site.
 - a. Public access should be restricted during inclement conditions, fish transfers, fish releases, or maintenance operations where there is an increased risk to workers or the public.

- b. A sign should be posted which states access times and clarifies that public access to the netpen system is allowed only when an appropriate representative is present.
- c. A sign should be located at each landing area outlining the hazards of traversing a net pen structure with recommendations for appropriate safety measures.

SECTION 7 IMPROVEMENTS

7.1 Existing Improvements

At this time, there are no improvements on the Property, nor does the Tenant plan to install any improvements.

Trade Fixtures are those fixtures that are necessary to the Tenant's Use of the Property and can be removed without damage to the Property. At this time the following Tenant-owned trade fixtures are located on the site: twenty-two 40' x 18' pens; five 40' x 40' pens; 12 buoys; and 12 anchors.

7.2 New Improvements

So long as this Lease remains in effect, no additional surface area shall be encumbered by improvements or trade fixtures without State's prior written consent.

7.4 Removal of Improvements

All Tenant-owned trade fixtures shall be removed by Tenant from the Property on or before the Termination Date of this lease unless State gives its consent in writing for the trade fixtures to remain. If the Tenant reapplies for a lease at this site prior to the termination of this lease, all terms and currently in effect will remain in place until such time as either the application is rejected or a new lease is executed. If trade fixtures remain on the Property after the Termination Date without State's consent, State may elect to remove the trade fixtures and Tenant shall, upon demand, pay the costs of removing and disposing of them.

SECTION 8 ENVIRONMENTAL LIABILITY/ RISK ALLOCATION

8.1 Definition

A partial list of hazardous substances, which are used in conjunction with this aquaculture operation, includes:

- Anesthetics – MS-222 is used in small amounts (less than one gram per use) to subdue fish for sampling. This material is not stored at the pens.
- Hydrocarbons - Operation of the boats and gas in the pumps used to fill sampling drums with water may result in release of petroleum products.

8.2 Use of Hazardous Substances

WDFW agrees that there will be no hazardous materials except gas stored on the premises. Less than 10 gallons of gas will be stored on site at any given time. Gas will be stored in accordance with the Department of Ecology's BMPs for gasoline.

WDFW agrees that no chemicals will be used to control the fouling of nets without receiving prior consent from the Department of Natural Resources. No therapeutic medications will be used on the fish at the site. All vessels will be maintained in a manner that minimizes release of hazardous substances and operated in accordance with Ecology's BMPs for boats.

SECTION 11 MAINTENANCE AND REPAIR

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement

~~The trade fixtures will be maintained in such a manner as to ensure that the nets do not drag on~~
the bottom; preclude any exposed Styrofoam; guarantee employee and visitor safety; and prevent the sea cage system from dragging anchor.

SECTION 15 ENTRY BY STATE

During site inspections Tenant shall provide proof of conformance with permit requirements, as well as the results of the "Salmon Netpen Baseline Survey and Annual Monitoring Requirements".

SECTION 17 NOTICE

Tenant shall designate a contact person for the Department of Natural Resources and has the responsibility of notifying the department of any changes. Assuming such change does occur, the new designee will meet with the Land Manager assigned to the agreement to discuss departmental requirements and expectations. The current contact person for WDFW is:

Rich Eltrich
600 Capitol Way N.
Olympia WA, 98501
Phone: (253) 589-7233

EXHIBIT C

SALMON NET-PEN SURVEY and ANNUAL MONITORING REQUIREMENTS

Lease No. 20-A12025

I. Baseline Survey

A baseline survey is required for all operations with an anticipated annual production of over 100,000 pounds. The baseline survey is intended to characterize bottom conditions at the net-pen site before they may be altered by culture activities.

The baseline benthic survey shall be conducted after emplacement of the net-pens, but before stocking the pens with fish. This survey shall include sediment chemistry and benthic infauna sampling and also shall include a diver survey if required by state resource management agencies or the county shoreline administrator.

A. Transect Stations

1. Establish a transect on the "down current" side of the pens as determined by the prevailing currents and measured at the mid-depth station in the site characterization survey. If ebb and flood currents are equal, use either one or one specified by state or local agencies.
2. Establish stations along this transect beginning directly under the perimeter of the net-pens and extending away from the net-pens at distances of 0, 20, 50, 100, and 200 feet in the direction of prevailing currents.

B. Physical / Chemical Sampling

1. At each station, take three replicate diver cores or three replicate van Veen, grab or box corer samples from which sub-cores are removed. If a grab or box corer sampler is used, it should be vented to minimize the bow wave effect. The sampler should be lowered at one foot per second and raised no faster than one foot per second. The sampler should not free-fall to the bottom as this disturbs the sediments. Insert corer to a depth of 4 to 5 cm. into the sediment. Take care to ensure that cores are representative of the undisturbed sediment column. Use transparent cores so that the Redox Potential Discontinuity (RPD) depth can be noted and recorded. (The position of the RPD is reflected by change in sediment color from brown to black)
2. After the sampler is secured on deck, the sediment sample should be inspected carefully before being accepted. The following acceptability criteria should be satisfied:
 - i. The sampler is not over-filled with sample so that the sediment surface is pressed against the top of the sampler;
 - ii. Overlying water is present (indicates minimal leakage);
 - iii. The overlying water is not excessively turbid (indicates minimal disturbance);
 - iv. The sediment surface is relatively flat (indicates minimal disturbance or winnowing);
 - v. The desired penetration depth is achieved (4 to 5 cm).If a sample does not meet all criteria, it should be rejected.

3. Homogenize the top 2 cm of each core for analysis, but treat the replicates as distinct samples (don't pool prior to analysis). Analyze cores for total organic carbon, total nitrogen, and grain size distribution (median phi, percent gravel, sand, silt and clay). Procedures are to be those found in the 1985-1986 Puget Sound Estuary Program publication Recommended Protocols for Measuring Selected Environmental Variables in Puget Sound.

C Biological Sampling

1. Collect benthic infauna samples either by a diver using a core sampler having an area of at least 0.01m² or a by a grab or box corer having an area of at least 0.1 m². Use the same stations sampled for sediment chemistry (0, 20, 50, 100, and 200 feet from the net-pens). Collect three replicate samples at each site. The same grab/box corer samples used for sediment chemistry may be used for benthic infaunal analysis provided no more than one-quarter of the surface of each sample has been removed for sediment chemistry sampling.
2. After the sampler has been secured on deck, the sediment sample should be inspected carefully before being accepted. The following acceptability criteria should be satisfied:
 - i. Sediment is not extruded from the upper face of the sampler such that organisms may have been lost;
 - ii. Overlying water is present (indicates minimal leakage);
 - iii. The sediment surface is relatively flat (indicates minimal disturbance or winnowing);
 - iv. The entire surface of the sample is included in the sampler;
 - v. The following penetration depths (i.e., the maximum depth of sediment sampled) should be achieved as a minimum:
 1. 4 to 5 cm for medium to coarse sand
 2. 6 to 7 cm for fine sand
 3. 10 cm or greater for muddy sediment

If a sample does not meet any one of these criteria, it should be rejected.

3. Sieve each benthic infauna sample on a 1.0 mm screen. Identify all macrofaunal organisms retained on the screen to the lowest practical taxonomic level, generally species. Procedures are to be those found in the 1985-1986 Puget Sound Estuary Program publication Recommended Protocols for Measuring Selected Environmental Variables in Puget Sound.

II. Annual Monitoring

Annual monitoring monitors potential changes in water and sediment quality resulting from culture activities. Monitoring at some culture sites may be curtailed or eliminated if little or no measurable effect on environmental quality is found after several years of operation. The determination to curtail or eliminate monitoring at

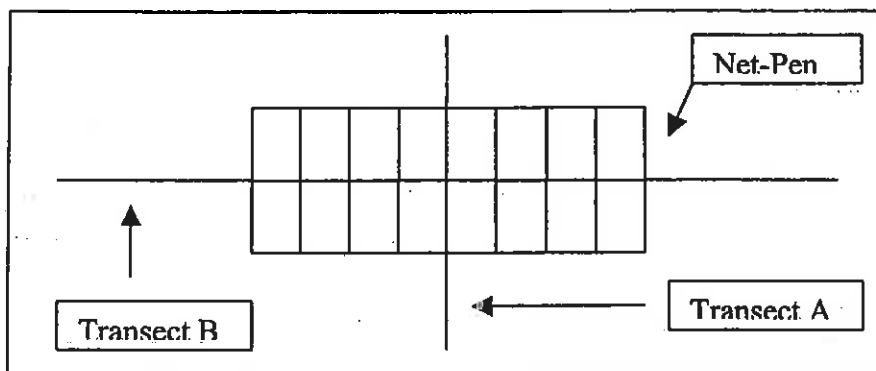
any site will be made after agency review of survey results. The sampling requirements will be expanded to include monitoring for anti-foulants if they are used on the nets. The annual monitoring program consists of three elements: a benthic survey; water quality sampling; and a hydrographic survey. While facilities raising less than 20,000 pounds per year are exempted from annual monitoring, and those raising 20,000 to 100,000 pounds per year are required to conduct only the diver portion of the benthic survey, this facility anticipates raising in excess of 100,000 pounds of fish per year and as a result must conduct all three annual monitoring elements.

A. Benthic Survey

The benthic survey assesses the extent of solids accumulating on the bottom in the vicinity of the culture operation and the biological effect of this accumulation. The survey consists of diver observations along with sediment chemistry and benthic infauna sampling. Benthic sampling conducted during the baseline survey will replace the first year's annual monitoring benthic survey. Thereafter, the benthic survey as described below shall be conducted annually.

- a. Establish four transects, each at least 200 feet in length, as illustrated in figure 1. Extend the transects 60 feet beyond the last sample station where feed or feces accumulation is observed. Additional transects may be required to survey habitats or resources of special concern. Some transects may be shortened or eliminated entirely if they would require the diver to operate in depths greater than 75 feet.

Figure 1



- b. Make diver observations if the net-pen or any portion of the bottom within 300 feet of the pens is at a water depth of 75 feet or less. The diver shall:
 - i. Measure the depth of feed and feces accumulation at 20-foot intervals along each transect;
 - ii. Note the greatest distance from the net-pens with visible accumulation present;
 - iii. Note the presence or absence of Beggiatoa mats;
 - iv. Estimate densities of demersal fish, crabs, and other invertebrates;

- v. Take video of the transect surveys;
 - vi. Determine the distance from the bottom of the net to the sediments.
- c. For facilities rearing over 100,000 pounds per year, collect sediment chemistry and benthic infauna samples. Use the station location and sampling protocols described in the baseline benthic survey.

B. Water Quality Survey

Annual water quality sampling is required for facilities raising over 100,000 pounds per year. Sampling is intended to document the effect of culture activity on dissolved oxygen and nutrients in the water passing through the culture structure.

- a. Conduct the survey in July, August or September of each year that the facility is in operation;
- b. Sample three stations: 100 feet up-current of the net pens; 20 feet down-current; and 100 feet down-current;
- c. Locate stations so as to monitor the water passing through the greatest possible number of net-pens;
- d. Take three replicates at each station at a depth mid-way between the water surface and the bottom of the net-pens;
- e. Sample within one hour of slack tide;
- f. Analyze samples for the following parameters: dissolved oxygen, temperature, salinity, pH, ammonia, nitrate/nitrite, and un-ionized (available) ammonia.

C. Hydrographic Survey

- a. Measure current velocity and direction at the depth which the water quality samples are taken.
- b. Take a single measurement 20 feet down-current of the net-pens concurrently with collection of the water quality sample from this station.
- c. Calculate loading estimates (g/kg fish/day) for ammonia and nitrite/nitrate based on:
 - i. The net increase in concentration between the up-current station and the 20 foot down-current station;
 - ii. The current velocity 20 feet down-current
 - iii. The cross-sectional area of the net-pen complex;
 - iv. The weight of fish on-hand at the time of the water quality survey.

III. Reporting Guidelines

Field surveys and reports are to be conducted and prepared by, or under the direct supervision of, competent professionals. A statement of the preparer's professional qualifications must be submitted with each report.

- Baseline and annual monitoring reports are to be submitted to the department within two months of field survey completion.
 - Reports are to be submitted typed on white 8 1/2 x 11 inch bond paper and electronically.
 - Reports shall describe survey and analysis methods, as well as analyze and interpret (not merely present) data. Raw data must be included as appendices.
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- The annual monitoring report shall include a dive video and the following information on operational practices during the previous year:
 - a. General description of facility (species cultured, size at which fish are marketed, etc.);
 - b. Size, number, and configuration of net-pens at time of sampling;
 - c. Significant changes in size, number, and configuration of net-pens over the previous year;
 - d. Types of anti-foulants used and frequency of net treatment;
 - e. Annual production (pounds);
 - f. Estimated weight of fish on hand during survey (pounds);
 - g. Type of feed used and feeding method employed;
 - h. Stocking density (average and range) (pounds per square feet);
 - i. Types of therapeutics used and frequency of usage over the past year;
 - j. Interactions with birds and marine mammals, along with a summary of the types and frequency of predator control measures used.