



# 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

Office of the Commissioner of Public Lands  
Attn: Commissioner of Public Lands Hilary Franz  
MS 47001  
Olympia, Washington 98504

July 15, 2020

Commissioner Hilary Franz,

With this letter, I am submitting for your consideration four draft applications to lease Puget Sound aquatic land sites currently or previously leased for commercial marine net pen finfish aquaculture. I am requesting to lease these lands with Wild Fish Conservancy serving as the legal and fiscal agent, holding these lands in trust for the sole purposes of:

- 1) Restoring these industrialized aquatic lands to their natural state for the restoration and conservation of threatened and endangered species, water quality, and the overall health and function of Puget Sound's ecosystem.
- 2) Restoring full access of these aquatic lands to the public for their benefit, use and enjoyment

in accordance with existing public-use regulations and in concert with obligations to fulfill tribal treaty rights.

For over three decades, these four sites located in Washington's public waters and the traditional areas of several Tribal Nations have been leased to private industry and used for commercial marine net pen finfish aquaculture. Over this time, we have seen the well-documented risks inherent to open water net pens materialize, endangering the health of Washington's waters which support our culture, economy, wild salmon, and orcas.

The current leases for the project sites near Hope Island and in Rich Passage will expire in 2022. Leases for project sites located in Cypress Island's Deepwater Bay and Port Angeles Harbor were terminated by the Department of Natural Resources (DNR) in 2017 and 2018 respectively. We would like to work with DNR to lease all four sites at the conclusion of the existing leases or as soon as possible for the sites where leases do not currently exist.

While potentially unprecedented for the Joint Aquatic Resource Permit Application (JARPA) process, we've used the attached draft applications to compare and contrast our proposed use with the continuation of commercial marine net pen finfish aquaculture, and to explain in detail why our plan for ecological restoration and public access provides a much greater benefit to present and future generations of Washington citizens, and the health and productivity of Washington's waters.

DNR has discretion to select a preferred lessor, guided by criteria in WAC Chapter 332-30 which describes the State's goals, guidelines, and philosophy for managing state-owned aquatic lands. The WAC states:

These lands are managed as a public trust and provide a rich land base for a variety of recreational, economic and natural process activities. Management concepts, philosophies, and programs for state-owned aquatic lands should be consistent with this responsibility to the public. These lands are “a finite natural resource of great value and an irreplaceable public heritage” and will be managed to “provide a balance of public benefits for all citizens of the state.”

In order to provide this balance of public benefits, this law and RCW 79.105.030 direct DNR to strive for uses that will “ensure environmental protection”, “encourage direct public use and access”, and “foster water-dependent uses.” Leasing these sites for the restoration and conservation of the natural environment, and for the use, benefit, and enjoyment of present and future generations is in harmony with the management philosophy and goals for state-owned aquatic lands. It also respects statewide and national initiatives to restore Puget Sound and obligations to fulfill tribal treaty rights.

### **Ensuring environmental protection**

The ecological risks associated with commercial marine net pen finfish aquaculture are consistent with the poor environmental history of this industry throughout the world. These risks include rampant levels of untreated and unmitigated daily pollution; the amplification and spread of both endemic and exotic viruses, parasites, and diseases to wild fish populations; and escape events in which farmed salmonids endanger their wild counterparts through competition, genetic introgression, escapee-recovery efforts, and further amplification and spread of harmful pathogens by escaped fish.

These risks have manifested in Puget Sound over the past thirty years, most recently with the Cypress Island collapse that released over 300,000 nonnative Atlantic salmon into public waters. We now know nearly 100% of these escaped fish were infected with a rare and potentially harmful exotic virus that was amplified and spread by Washington’s net pens, and that these infected escaped fish traveled throughout Puget Sound and into our most important salmon producing rivers.<sup>1</sup> Following this catastrophic event that demonstrated the high risk net pens pose, the state legislature passed a law banning nonnative commercial marine net pen finfish aquaculture, declaring: “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.”

An engineering study, conducted in 2019 and submitted for DNR’s review, suggested all of the existing net pens in Puget Sound are at risk of another partial or complete failure, and were not manufactured to meet the dynamic conditions of Puget Sound.<sup>2</sup> The consideration of future geologic hazards magnifies these existing concerns about the structural soundness of the net pens. Simulations by DNR predict that tsunami wave heights at the project sites could range from 10-20 feet high. The interval at which tsunami-related anomalies occur in the sediment record along the Cascadia Subduction Zone suggest tsunamis are highly likely to occur in the future and therefore must be considered in any risk analysis of Puget Sound net pens.

In May 2020, after reviewing new information presented following the Cypress Island collapse, the Environmental Protection Agency (EPA) determined that commercial marine net pen finfish aquaculture is “*likely to adversely affect*” threatened and endangered species including Puget Sound Chinook, steelhead, bocaccio rockfish, yelloweye rockfish, and Hood Canal summer-run chum salmon.<sup>3</sup> As a result, NOAA Fisheries is currently preparing a biological opinion to further analyze the risks posed to these fragile and iconic species and make management recommendations.

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<sup>1</sup> Kibenge et al (2019) Piscine orthoreovirus sequences in escaped farmed Atlantic salmon in Washington and British Columbia. *Virology J.* Apr 2;16(1)41. doi: 10.1186/s12985-019-1148-2. Available online at: <https://virologyj.biomedcentral.com/articles/10.1186/s12985-019-1148-2>

<sup>2</sup> Dewhurst (2019) “Expert Report of Dr. Tobias Dewhurst,” *Wild Fish Conservancy v. Cooke Aquaculture Pacific, LLC*. W.D. Wash. Case No. 2:17-cv-017080-JCC. Available online at <https://wildfishconservancy.org/TobiasDewhurstreport.pdf>

<sup>3</sup> EPA (2020) “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.” May 29, 2020. PDF attached.

Beyond these risks that are characteristic of all open-water net pens, a proposal by the current lessee to expand and extend their operations to commercially-propagate a highly-domesticated, partially-sterile form of steelhead presents additional new risks to native salmonids that have not been fully analyzed. This concern was raised by DNR to the Washington Department of Fish and Wildlife (WDFW) during the State Environmental Policy Act (SEPA) review process in which DNR concluded the SEPA materials “did not adequately address how the proposal from Cooke [Aquaculture] might impact the already declining population of Puget Sound steelhead.”

In addition to the present risks posed by net pen aquaculture in Puget Sound, future impacts associated with climate change effects are likely to magnify the impact of current risks and add additional stress to threatened and endangered species. The need for further analysis of climate change effects on both wild and net pen reared salmonids was another concern raised by DNR in comments to WDFW during the SEPA process. In their comments, DNR highlights that warmer waters caused by climate change “are associated with increased susceptibility to pathogens and parasites. Decreases in summer stream flows may temporarily increase the salinity in Puget Sound, making conditions more favorable for parasitic sea lice. Warmer sea surface temperatures coupled with other stressors could increase the frequency of some marine diseases, parasite abundances and bacterial incidences such as *Vibrio* in the marine environment.”

In the coastal waters of British Columbia, where salinity is already optimal for sea lice, the province is facing massive lice outbreaks at net pen facilities that began in April 2020 and persist today. Currently, 37% of the province’s net pens exceed government-mandated levels of sea lice, and preliminary reports investigating infection rates of wild juvenile salmonids migrating near the pens were as high as 97% in some areas.<sup>4</sup> The only region that did not exceed the limit for sea lice was the Broughton Archipelago, where five net pens were recently removed. Sea lice outbreaks have already occurred at half of the proposed project sites in Puget Sound and increases in salinity may increase the frequency of sea lice outbreaks at these Puget Sound net pens in the future.

Almost all of the sites are located within or directly adjacent to aquatic preserves, priority habitat and species locations, and other conservation areas protected by DNR and other local authorities for the unique and sensitive habitats and ecosystem functions they provide. In many cases, due to the existing leases, net pen aquaculture has been exempt from complying with conservation management statutes while perpetuating the harm that these laws were meant to prevent.

In contrast, our proposal to lease these lands for ecological restoration and approved public use would be consistent with and contribute to the state’s management commitments to the public and significant efforts to restore water quality and recover wild salmonids. All the current and future risks associated with net pens described above would eventually be eliminated, returning these sensitive, unique, and ecologically significant aquatic lands to their natural state for the benefit and enjoyment of all present and future generations.

### **Providing a balance of benefits for all citizens of the state and encouraging direct use and access**

The use of these lands for commercial net pen aquaculture does not provide a balance of benefits for all citizens of our state. For thirty years, these facilities have prevented the public from accessing and enjoying 130 acres of public waters located in or adjacent to areas of great interest to the public, including state and local parks, aquatic preserves, unique conservation areas, tribal lands, and areas popular for commercial and recreational fishing, boating, and wildlife viewing. Local landowners and the public recreating on lands near these facilities frequently report foul odors, loud noises, commercial debris, and light pollution that interfere with their ability to use and enjoy these outdoor spaces and likely compromise the economic value of the properties. More significantly, some Tribal Nations have reported net pens restrict their access to traditional hunting, fishing, and gathering areas.

In addition to restricting access, the various harms and risks posed by net pens endanger water quality, wildlife, and vegetation with high cultural, social, and economic value to a wide variety of stakeholders. In particular, adverse effects to threatened and endangered salmon, steelhead, and killer whales undermine hundreds of billions of public

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<sup>4</sup> Morton (2020) “Sea Lice Survey Four Regions of BC Coast 2020” Preliminary report issued June 16, 2020. PDF attached.

dollars invested in their recovery, the cultural identity of many Tribal Nations, and the viability of a robust local economy that depends on these species and the overall health and productivity of Puget Sound.

This economy includes commercial fishing and related industries in Puget Sound which support 16,000 jobs and \$9.5 billion in economic output. Washington residents and visitors to our region participating in recreational fishing and crabbing opportunities in Puget Sound generate nearly 5,000 jobs and add \$340 million to the state's economy. Puget Sound's stunning landscapes, iconic wildlife, and outdoor recreation opportunities support a \$21.4 billion tourism industry, and Washington's reputation for protecting wild places and keeping them accessible makes the Puget Sound region an attractive place for new industries. Not only do these jobs and profits stay in Washington, they support rural communities and traditional ways of life. In comparison, the current lessee has reported their four project sites employ around 80 jobs with majority of the profits leaving Washington.

For these very reasons, the public has consistently opposed the use of these four sites for commercial marine net pen Atlantic salmon aquaculture and continue to advocate for large-scale industrial net pens to be banned in public waters regardless of the species. In 2018, a law to ban Atlantic salmon or nonnative marine finfish net pen aquaculture in Puget Sound passed the legislature with bipartisan support and was widely celebrated by a range of stakeholders impacted by net pen aquaculture, including conservation groups, Tribal Nations, businesses, recreational and commercial fishing groups, land owner associations, chefs, government officials, and the public at large.

During the SEPA review of a proposal that would extend and expand commercial marine net pen finfish aquaculture, the public comment period was extended twice to accommodate unprecedented public participation. At the conclusion, 3,500 comments were submitted, overwhelmingly opposing the continuation of commercial marine net pen finfish aquaculture and calling for a full environmental impact statement, including comments from at least six Tribal Nations.

To date, Washington remains the only state on the Pacific Coast to authorize this industry in our public waters. At the request of First Nations, British Columbia has already begun decommissioning some of their open water net pens and Canadian Prime Minister Justin Trudeau has committed to transitioning all open water net pens in the province to land-based facilities by 2025.

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.

### **Fostering water dependent uses**

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. As described previously, 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.

By denying new leases for net pen aquaculture on these project sites, DNR would 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.

### **Generating revenue from state-owned lands**

Generating revenue through state-owned aquatic land leases is considered an added public benefit, but is secondary to the state's primary goal to strive for uses that provide a balance of benefits to all citizens of the state. RCW 79.105.010 states:

The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state.

For the reasons described in this letter and in our attached applications we believe commercial marine net pen finfish aquaculture and revenue generated by this purpose is inconsistent with the high standard described in Washington's laws. At the same time, using these lands for ecological restoration and public access directly mirrors the RCW priorities. We are prepared to pay fair market value for all four sites to further increase the benefit of this proposal to the public.

In a public statement in March 2020, you aptly stated "it is a privilege, not a right, to do business in our public waters." While leasing public lands, the current lessee has demonstrated a pattern of unscrupulous behavior and has violated both local and federal statutes. The same lessee has failed on numerous occasions to self-regulate, passing the burden of reporting violations onto local landowners, environmental organizations, Tribal Nations, and other members of the public. The current regulatory framework which relies largely on the industry to self-report and self-monitor their own violations demands a lessee with proven integrity and commitment to adhering to environmental laws.

The lessee has also proven themselves to be litigious at the expense of Washington's citizens. While leasing public waters, Cooke Aquaculture threatened during legislative testimony to sue Washington state under NAFTA if a bill passed banning nonnative commercial marine net pen finfish aquaculture, appealed government actions including lease terminations and fines, and used cease and desist letters to attempt to silence local environmental advocates, including during the public comment period that determined the future of their new proposal. A lessee that habitually uses litigation to avoid accountability for violating environmental laws and to influence the decision-making process of legislators, government officials, and Washington citizens is not acting in the best interest of the public or in concert with Washington's management philosophy.

Beyond costly lawsuits and appeals, this industry places a substantial financial burden on Washington citizens through inherent public costs required to manage and regulate this industry. These costs include, but are not limited to, general monitoring, oversight, enforcement, development of management criteria, compliance monitoring of water quality sediment accumulation, and emergency responses to diseases, viral, and parasitic outbreaks and escape events. These costs would be significantly reduced and, in many cases, eliminated entirely by granting our four lease applications and transitioning to closed containment land-based facilities.

## Conclusion

In conclusion, it's clear that continuing to lease these lands for use by the commercial marine net pen finfish aquaculture industry is inconsistent with the state's management goals and DNR's mission to manage, sustain, and protect the health and productivity of Washington's lands and waters to meet the needs of present and future generations. The attached lease proposals provide a viable and responsible alternative.

Our public waters and the ecosystems they support represent a finite resource of great social, cultural, and economic value and irreplaceable public heritage. If selected to lease these aquatic lands, our proposal would return these industrialized aquatic lands to their natural state to contribute to the restoration and conservation of threatened and endangered species, water quality, and the overall health and function of the Puget Sound ecosystem, and return full access of 130 acres of aquatic lands to the public for their benefit and enjoyment (in accordance with existing public-use regulations and in concert with obligations to fulfill tribal treaty rights). This use will not only support DNR and the state's objectives for state-owned aquatic lands, but will work in concert with recovery efforts throughout the region in which local governments, Tribal Nations, non-profit organizations, local landowners, public utilities, and the public at large have invested significant time and resources.

To date, DNR, under your management, has been a leader in holding this industry accountable to our state's laws and protecting the public's resources from further harm by this industry. We look forward to discussing how our proposal may support these efforts.

Thank you for time and reviewing Wild Fish Conservancy's draft applications. I look forward to the opportunity to work with DNR and move forward in the leasing process.

Sincerely,



Kurt Beardslee  
Executive Director  
Wild Fish Conservancy

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