



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

17 September 2020

To whom it may concern,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6a. Fish Effluent

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

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

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

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

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

6b. Fish Waste

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

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

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

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

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

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

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

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

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

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

6d. Discharge of antibiotics and medical effluent.

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

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

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

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

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

For example:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully,,



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

