

Emma Helverson

Hello,

Thank you for the opportunity to comment on and help inform the scope of Cooke Aquaculture's National Pollutant Discharge Elimination System (NPDES) permits. Based on the well-documented risks posed by this industry, Cooke Aquaculture should not be allowed to move forward with their new proposal to expand and extend net pen aquaculture in Puget Sound. It is my hope and recommendation, described in more detail below, that Ecology should not grant NPDES permits to Cooke until it is determined by State Court whether the Department of Fish and Wildlife violated the State Environmental Policy Act (SEPA). I am hopeful that the Court will recognize the breadth of data and evidence of risks not considered during the initial SEPA process and take the prudent action to order a full Environmental Impact Statement (EIS) to occur. I fully support the EIS and believe this must be completed before any new permitting occur to assure the public the State has fully considered all of the risks associated with Cooke's proposal to expand and extend net pen aquaculture in Puget Sound.

While the legislature moved to ban Atlantic salmon net pens, I believe it's clear what the legislature and public's intent was with the passage of this law-- to prevent the unacceptable risks associated with the only large-scale, commercial open water finfish aquaculture that existed at the time and respecting the few small-scale tribal operations that exist.

Furthermore, all of the risks posed by Atlantic salmon net pens-- significant discharge of untreated pollutants and chemicals, amplification and spread of pathogens, and various risks posed by escapes --remain the same for this new form of steelhead and may even be increased with native species, as acknowledged by WDFW's Dr. Kenneth Warheit in his testimony to the legislature in 2017-18. If the risks of Atlantic salmon were considered unacceptable by the legislature and the risks associated with steelhead are the same or heightened, it seems reckless and in direct opposition of the precautionary principle for Ecology and other state agencies to try to limit the scope or review of this new proposal to the change of species only.

With Southern Resident killer whales starving to death and the coastwide decline of our wild salmon and steelhead populations, it seems inconceivable that the State would continue to work to mitigate the significant risks of this industry, a feat I hold on the same level as other state's working to "green" their coal industries. Like coal, open water net pens pose too great a risk to our health and environment and I hope that Washington State agencies soon recognize that open water net pens fall into this category.

I urge Ecology not to grant these permits and recognize that this industry is far too risky for Puget Sound and in direct contrast to the recovery of wild salmonids and Southern Resident killer whales, and Washington's goals for improving water quality in Puget Sound. If the agency decides to move forward and consider this proposal, I hope you will make a concerted and rigorous effort to fully consider the risks associated with this proposal and specifically consider the following points:

1. While not a scientific argument, I think it's extremely relevant to consider Cooke's reputation as a company and past actions in order to determine if Ecology is capable of enforcing the rules set forth by the NPDES permits.

First, Cooke is an extremely litigious company that in the past four years alone has 1) threatened during legislative testimony to sue the state under NAFTA if a bill passed banning nonnative finfish aquaculture; 2) appealed government actions including lease terminations and fines; 3) used cease and desist letters to silence local environmental advocates, including during the public comment period that determined the future of their new proposal to expand aquaculture to steelhead. Engaging in business with a company that uses litigation to influence and intimidate legislators, government officials, and Washington citizens is not in the best interest of public and puts our State at risk of costly lawsuits.

Second, regulatory oversight of this industry largely relies on Cooke self-monitoring and self-reporting violations. Over the years, Cooke has proven themselves to be particularly unscrupulous when it comes to reporting problems or violations at their pens, violations that are often reported by landowners or environmental organizations. Under this system Cooke neglected to maintain their facilities as required, resulting in the Cypress Island collapse and afterward lied to government officials about the cause. Cooke never reported that they were importing, planting, and amplifying exotic Piscine Reovirus (PRV) in their Puget Sound net pens (a virus the state has still never tested for in stocked Puget Sound net pens). In October 2019, during the SEPA review of Cooke's proposal to expand to steelhead when one would expect the company to be on their best behavior, there was a partial failure of one of the Bainbridge net pens that was not immediately reported to the State. It's clear that Cooke cannot be trusted to self-monitor or report. Ecology must demonstrate clearly that any rules set forth in the NPDES permits will be fully enforced.

Third, this company has a history in Puget Sound and around the world of violating local and federal environmental laws. Cooke pleaded guilty to illegal pesticide use in Canada resulting in one of the largest fines ever levied under Canada's Fisheries Act. More recently, the federal government threatened a moratorium of the menhaden fishery in Chesapeake Bay after Cooke-owned Omega Protein, a single company, harvested 30% more menhaden allowed under a management plan adopted by the Atlantic States Marine Fisheries Commission. I bring these three points up to demonstrate Cooke's lack of regard for following laws, such as those set by NPDES permits which would require Ecology to develop clear strategies for enforcement of any regulations set by the NPDES permits.

Given the fragility of our wild salmonid and killer whale populations and Cooke's obvious disregard for laws that protect them, I believe our State agencies should give greater priority to the will of the public whose resources are at risk, instead of private companies who have demonstrated a failure to abide by local and federal environmental and water quality laws.

2. NPDES permits should not be granted before the ongoing SEPA litigation against the Department of Fish and Wildlife (WDFW) is concluded.

WDFW's State Environmental Policy Act (SEPA) mitigated determination of nonsignificance (MDNS) and the process used to come to that determination is currently being legally challenged in Washington State court. That determination was largely based off the 1990 Environmental

Impact Statement (EIS) and may be found to have violated SEPA. If WDFW is found in violation for failing to conduct appropriate environmental review, a State court could invalidate the current MDNS and initial permits granted to Cooke Aquaculture during SEPA, and instead require additional environmental review in the form of an EIS. If this is the case, it is likely that this additional review would reveal new, pertinent information regarding water quality and/or pollutants that is relevant to the NPDES permit process. For this reason, Ecology should not grant or finalize Cooke's NPDES permits until the Court makes it's ruling.

2. Ecology should not limit the scope of the permits to the change in species, and instead consider all risks associated with open water net pen aquaculture.

The last formal environmental review of the impact net pen aquaculture poses to the environment was the Environmental Impact Statement (EIS) completed in 1990. Since then there has been significant new research and study on the impacts of net pen aquaculture that has never been formally reviewed by the State. In addition to research, we've seen real examples of the risks this industry poses here in Puget Sound that also need to be considered:

- 2012 outbreak of IHN that spread to all three Bainbridge Island net pens while juvenile salmonids were outmigrating through Rich Passage
- 2017 Cypress Island net pen collapse that released over 300,000 nonnative Atlantic salmon into Puget sound, this later resulted in Cooke paying a \$2.75 million settlement in Clean Water Act violations
- 2018 discovery that Cooke had been importing and planting fish infected with exotic Piscine Reovirus (PRV) in their Puget Sound net pens and that nearly 100% of the fish that escaped from Cypress Island were infected
- a 2017 \$8,000 fine by Ecology for water quality violations which included among other charges "Failing to correct water quality violations when directed"
- 2019 partial sinking of Cooke's Bainbridge Island net pen, failed to properly report the incident to State agencies
- video footage taken by landowners near Rich Passage showing marine mammals both on and in Cooke Aquaculture's net pens, photos show 100 marine mammals on a single pen at one time (previously submitted to the State by landowners)
- video footage showing Cooke employees disposing of bycatch during harvest (already submitted to the State by Wild Fish Conservancy and landowners who took footage)

Much like our understanding of climate change, we have much more information in 2020 than we did in 1990 and for that reason I believe Ecology cannot rely on assumptions made over three decades ago while drafting these current NPDES comments. The law passed in 2018 by the Washington State legislature set a stricter regulatory regime for marine net pen aquaculture on the grounds that the practice placed too great a risk on the ecosystem. For this reason, it is not sufficient to assume 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.

What's more, as a result of our recent law, all of Cooke's Puget Sound net pens were to be removed by 2022 (or 2025 depending on the Port Angeles lease appeal process), and Cooke is currently in the process of harvesting the last Atlantic salmon from their net pens. This means all of the risks posed by Cooke's facilities would have been reduced to zero after their leases expire. As such, and

because new leases would not be considered a "renewal", this permit should not consider the pollution impacts in comparison to Cooke's Atlantic salmon net pens but the impact the extension and expansion of net pen aquaculture compared to zero commercial, non-tribal net pen finfish aquaculture.

Ecology should adhere to the new threshold for assessing risk set by the 2018 legislature and not the outdated 1990 EIS, and not limit the scope of the NPDES permits to only the change of species but to all risks associated with pollutants and with the potential to degrade water quality.

3. Ecology must consider the new and unknown risks posed by the change of species.

The steelhead Cooke will use are highly-domesticated and partially-sterile (due to the known failure rate of the triploidy process) and would be considered a pollutant if released. This species poses new and different risks in addition to those posed by the practice itself. Some policies which may have been permitted for Atlantic salmon under the pre-2017 status quo, pose additional risks with the proposal to introduce this new form of steelhead. The prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with this new form of steelhead and Puget Sound's federally-listed steelhead population, different risks apply, and standards laid out in the 1990 EIS, in addition to being outdated, have not been met for these purpose.

I would urge Ecology to consider the specific risks associated with this highly-domesticated and partially-sterile form of steelhead included in the Our Sound, Our Salmon NPDES comments submitted June 8, 2020 as well as the SEPA comments submitted as supporting document.

4. Permits should not be granted without permission from all local tribal nations.

During the 2019 SEPA process the Elwa, Lummi, Samish, Skokomish, Snoqualmie, and Swinomish nations submitted comments expressing serious concerns about Cooke's proposal to expand and extend large-scale commercial net pen aquaculture and calling for a comprehensive environmental impact statement.

No permits should be authorized to Cooke Aquaculture without the full support of Washington's tribal nations whose traditional areas are impacted by pollutants and other risks posed by Cooke's net pens.

Thank you for considering these comments.

Best,
Emma