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This letter provides comments on the application to the Washington Department of Ecology (department) by Cooke Aquaculture for Water Quality Discharge Permits (NPDES) associated with farming of steelhead in net pens located in Puget Sound. Specifically, these comments are directed to the facility located within the City of Bainbridge Island's shoreline jurisdiction.

Please note, while I am a current member of the City of Bainbridge Island City Council, I am submitting these comments as an individual.

As background, the City of Bainbridge Island submitted a Shoreline Master Program (SMP) limited amendment related to aquaculture regulations to the department in February 2017. This locally initiated amendment includes two proposed revisions relevant to the NPDES permit: (1) the requirement for a new permit for a change in species and (2) an outright prohibition of new commercial net pen aquaculture facilities. These revisions were proposed, in part, due to potential and known adverse water quality impacts of the existing net pen facilities. It is my understanding that City and department staff are discussing the consistency of the limited amendment with the Shoreline Management Act (SMA) and relevant SMP guidelines.

I urge the department to, at a minimum, delay acting on the application until (1) all related legal challenges are completed (2) the department and other state agencies with jurisdiction conduct a comprehensive policy and scientific review of the impacts of finfish aquaculture in the state's marine waters, and (3) compliance with WAC 173-27-100 is confirmed.

You no doubt have heard from many other commenters on the inadequacy of the scientific review of the impacts of finfish aquaculture in the state's marine waters. Please rectify this deficiency and review the current permit application only if supported by current scientific and technical information.

My comments focus on and reiterate that finfish aquaculture is inconsistent with SMA goals and policies and its implementing rules based on water quality parameters and that compliance with WAC 173-27-100 should be confirmed prior to department permit review.

Water Quality

Based on a review of scientific and technical information, the City's limited amendment proposes changes that are necessary to improve consistency with SMA goals and policies and its implementing rules, including the requirement to ensure the long-term protection of anadromous fish (e.g.; Puget Sound Chinook) habitats and WAC 173-26-241(3)(b)(i)(A) which provides that aquaculture is a preferred use only when consistent with control of pollution and prevention of damage to the environment.

The following review was provided in the City's limited amendment submittal package (February 2017):

The approach in Island County was to include a prohibition in their SMP and revisit anticipated net pen use based on updated state rules for addressing water-dependent uses during their 2020 periodic review. This is the same approach proposed by the City of Bainbridge Island (see, Policy 5.2.2.11), based on the strong evidence of adverse environmental effects of net pen aquaculture reviewed during the limited amendment process and the poor record of permit compliance, a recent (August 2016) permit violation, and a previous major outbreak of Infectious Hematopoietic Necrosis virus (IHNV) at the existing facilities within Bainbridge Island's waters. On September 18, 1996, Ecology issued National Pollutant Discharge Elimination Permit (NPDES) permits to 12 marine salmon net pen operators which had existing facilities located in Puget Sound, including the Orchard Rocks and Fort Ward Net Pen Facilities in Bainbridge Island. At that time, Ecology determined that those facilities did not have a reasonable potential to exceed state water quality standards for dissolved oxygen and turbidity. Eight of these permits were administratively extended, without modification (other than to reflect the change in ownership), in 2007 and again in 2012. Ecology conducted review under the State Environmental Policy Act (SEPA) and issued Determinations of NonSignificance for the net pen permits issued in 1996. Ecology also concluded that the previously permitted facility had complied with SEPA requirements at the local level. Subsequently, the Pollution Control Hearings Board ruled (which ruling was affirmed by the Thurston County Superior Court) that these marine salmon net pen facilities are categorically exempt from the SEPA alternatives analysis. Ecology has therefore determined that the reissuance of this permit is categorically exempt from SEPA pursuant to RCW 43.21C.0383.

The NPDES permits for these facilities have not been updated, including Ecology's reasonable potential analysis to exceed state water quality standards, since 1996, and the environmental impacts of these facilities have never been reviewed at the local (City) level. This is a critical lapse in regulatory oversight, particularly given the operator's poor record of permit compliance and its recent permit violation (see, Ecology ERTS number 666826). The permit violation was caused by the discharge of accumulated solids and marine growth into waters of the state without prior treatment resulting from high pressure washing of nets at the Fort Ward facility. Although the violation resulted in a warning letter from Ecology, it is reflective of the operator's poor record of permit compliance, particularly related to monitoring. Between 2011-2014, the operator failed to submit discharge monitoring reports (DMR) – a requirement of the NPDES permit – over a dozen times (see, Ecology's PARIS website, permit number WA0031534).

Given the operator's history of insufficient monitoring and permit violations related to water quality and the absence of any environmental review of the facilities in over two decades, there is limited evidence that the use is "consistent with control of pollution and prevention to the environment," and the use is therefore not a preferred use in accordance with WAC 173-26-241(3)(b)(i)(A).

In addition to serious concerns over documented water quality degradation and monitoring deficiencies, a major outbreak of IHNV occurred at the net pen facilities in 2012 during prime juvenile salmon and steelhead outmigration. During the outbreak, the operator refused to allow access to the facility to monitor the effects of the outbreak, resulting in limited knowledge on the effects of the outbreak. The net pens and presence of this virus pose a serious threat to ESA-listed anadromous fish in Puget Sound because the crowded pens create an environment in which diseases, pathogens, and parasites can multiply rapidly and spread to wild fish (Wild Fish Conservancy, <http://wildfishconservancy.org>).

As noted earlier, water-dependent uses – including commercial aquaculture facilities – can be permitted only when they are consistent with the SMA's requirements to ensure the long-term protection of anadromous fish habitats. Given the wide range of scientific evidence documenting the adverse environmental impacts of commercial net pen facilities, and the known harmful effects of the IHNV on anadromous fish, it is most likely that the existing facilities are not meeting the SMA requirements.

In part, Ecology publication 15-06-006 states: Ecology is committed to ensuring that commercial salmon net pens do not put Pacific salmon recovery at risk. Based on the current regulatory and permitting structure and our review of the science, Ecology has found that when commercial net pens are properly sited, operated and monitored to include all necessary safeguards, they are compatible with objectives of the state Shoreline Management Act.

Through the limited amendment process, the City determined that the existing net pen facilities within its jurisdiction are not properly operated and monitored to include all necessary safeguards with regard to water quality protection and the outbreak of the IHNV virus. As such, the City finds that any new commercial net pen facilities, particularly if proposed by the same operator, would likely not be compatible with the SMA's objectives and requirements related to control of pollution and prevention to the environment and long-term protection of anadromous fish habitats. As such, the City proposes to prohibit any new commercial net pen operations and revisit the issue during its periodic review.

While some of the above review is outdated, the department should note that the current net pens are not likely properly sited and have a questionable operational track record and may lack necessary safeguards with regard to water quality protection.

WAC 173-27-100: Revisions to permits

The City of Bainbridge Island's limited amendment includes a revision requiring a new permit when, "The applicant proposes to cultivate a species not included in the original permit." The department, in its informal response to the City's limited amendment, noted this revision is inconsistent with WAC 173-27-100, which states, in part:

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.

The department's informal response stated, "This provision is inconsistent with the permit revision criteria of WAC 173-27-100 which applies to all shoreline permit approvals."

The local jurisdiction; in this case, the City, should be notified of the proposed change of species and provided with detailed plans and text describing proposed changes from the original permit in order to determine, per WAC 173-27-100, that the proposed changes are within the scope and intent of the original permit and are consistent with the applicable SMP and SMA. Per WAC 173-27-100, "Within the scope and intent of the original permit" includes, but is not limited to:

- No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
- The use authorized pursuant to the original permit is not changed; and
- No adverse environmental impact will be caused by the project revision.

Local jurisdiction review is needed to confirm that a change in species is within the scope and intent of the original permit as defined in WAC 173-27-100. The department should delay its review of the permit until compliance with WAC 173-27-100 is confirmed – or, at a minimum – the local jurisdiction's compliance review should be incorporated into the department's review of the NPDES permit.

In summary, please do what the department requires of local jurisdictions and citizens when reviewing and submitting permits for activities within our marine waters: ensure consistency with current scientific and technical information and applicable state laws and guidelines.

Thank you for considering my comments.