WILDSTEELHEAD
COALITION

Comments on Draft Cooke Aquaculture permit modifications to raise steelhead

October 26, 2020

Ms. Niewolny,

On behalf of the board of the Wild Steelhead Coalition and the organization's thousands of members, we thank the Washington Department of Ecology (Ecology) for the opportunity to provide our comments on Cooke Aquaculture's National Pollution Discharge Elimination System (NPDES) application to modify their existing water quality permits so that they can commercially farm triploid rainbow trout in four of their Puget Sound net pen operations.

The Wild Steelhead Coalition has long been concerned about the negative impacts of net pens in Puget Sound, a concern that has been validated time and again by Cooke Aquaculture's negligent and destructive operations. Not only was the 2017 collapse of Cooke Aquacultures Cypress Island Net Pen operation, which released more than 250,000 farmed Atlantic salmon into Puget Sound, an environmental catastrophe, but Cooke's lies and lack of transparency in the aftermath of this crisis demonstrated that they have zero regard for Washington's environmental laws or regulatory agencies.

Recognizing the destructive nature of commercial salmonid production in Puget Sound and Cooke's propensity to operate with total disregard for environmental safety, the state legislature took the wise and judicious step of banning commercial finfish in Puget Sound by passing HB 2957. However, now Cooke is trying to take advantage of a loophole in this law to transition their existing fish farms into an even more dangerous operation that produces farmed steelhead.

While Cooke's farmed steelhead proposal does act in accordance with the letter of HB 2957, it is certainly a violation of its spirit, which intended to prevent companies such as Cooke from operating dangerous salmonid net pen operations in Washington's waters. Additionally, this proposed steelhead operation violates the will of Washingtonians who overwhelmingly supported HB 2957 and believed the threat of Cooke's disaster-prone fish farms was being removed from Puget Sound.

In the context of the clear intent of Washingtonians to ban net pens, and Cooke's deplorable record in our public waters, and the fact that HB 2957 created a more stringent regulatory regime for marine net pen aquaculture in Washington's waters, it is essential that Ecology utilize a standard of review which ensures it achieves the state's goal to "eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife." Unfortunately, that reasonable standard of review is not being met for Cooke's NPDES permit review process.

The following comments highlight our concerns with this ongoing process and provide guidance on how we believe this process should continue:

- **Ongoing SEPA review** – We believe it is premature to move forward with the authorization of Cooke's modified NDPES permits while the underlying SEPA review is being legally challenged in a Washington Superior Court, with a ruling pending from a Judge who held trial on September 24, 2020. Given the imminent nature of this ruling and the fact that Ecology is

a partner agency in this SEPA review, the Court's decision will directly impact whether or not the NPDES permits can move forward. As such, Ecology should not authorize NPDES permits or finalize the permitting process until the Court announces their final decision in this legal matter.

- **Ongoing federal ESA consultation** – We also believe it is premature to move forward with the authorization of Cooke's modified NDPES permits while the U.S. National Oceanic and Atmospheric Administration (NOAA) is developing a revised Biological Opinion that analyzes the impact of Puget Sound's marine finfish net pens have on ESA-listed populations. Since the ongoing federal consultation analyzes updates to the NPDES permits themselves and addresses water quality standards needed to issue the modified NPDES permits, it is clear Ecology should delay the permitting process until the Biological Opinion is completed. In order for the NPDES permits to hold Puget Sound net pens to standards that comply with the ESA, the findings of the federal consultation must be appropriately reviewed, analyzed, and incorporated into the NPDES permit requirements.

- **Failure to account for changes in risk assessment imposed by new law** – The passage of HB 2957 created a new and stricter regulatory regime for marine net pen aquaculture, and the law intended to eliminate net pen aquaculture and all the risks they pose to Puget Sound by December 2022. While the law does not explicitly prohibit native fish from being reared in open water net pens, the law does impose a series of other requirements and establishes the legislature's clear intent that future marine net pen aquaculture be subjected to greater scrutiny.

  The Wild Steelhead Coalition continues to urge Ecology to ensure that the NPDES permits conforms with this current law and share the policy's objective to eliminate – not just mitigate – commercial marine net pen escapement and the net pens' negative impacts on water quality, native fish, shellfish, and wildlife. We believe HB 2957's new standards require re-examining past decisions and holding Cooke to the new higher standard of eliminating risks.

  By considering Cooke's new project as an extension of past practices, Ecology is not only failing to meet the new standard set by HB2957, but it is also directly enabling Cooke to continue benefiting from environmental exemptions that for three decades have protected the commercial net pen industry from complying with local statutes, state conservation plans, and other environmental laws put in place to protect Puget Sound since the early 1990's.

  When Cooke's leases expire for these sites in 2022, the Department of Natural Resources (DNR) will not consider the applications as renewals of their previous leases but as brand-new lease agreements that will need to adhere to today's environmental standards. We encourage Ecology to take a similar approach as DNR to the NPDES permits and assess Cooke's applications as a new project and adhere to the risk assessment imposed by the new law.

- **NPDES Permits Must Consider Toxic Pollutants** – The modified NPDES permits must consider and address the risk of toxic pollutants like viruses and diseases. Ecology continues to exclude this significant environmental risk factor from the NPDES permits, despite the fact

that pathogens like viruses and bacteria should fall under Ecology's regulatory oversight considering that disease-causing agents are defined by the EPA as toxic pollutants.
Like any high-density confined animal feeding operations, commercial net pens amplify and spread endemic and exotic viruses, bacteria, diseases, and parasites into the marine environment in large numbers. This reality was highlighted by a study published in Virology Journal in 2019 that revealed that nearly 100% of the 250,000 Atlantic salmon that escaped the Cypress Island collapse were infected with an exotic virus originating in Iceland where Cooke purchases their Atlantic salmon eggs.

It is both reckless and unacceptable for WDFW and Ecology to issue permits that allow for steelhead to be planted in Puget Sound while this fundamental regulatory inadequacy exists. Ecology must rectify this gap in regulatory oversight in its permits. If Ecology does not feel they have the regulatory authority to test for and monitor disease-causing agents, Ecology and WDFW must work together to incorporate monitoring and reporting requirements for disease-causing agents in net pen aquaculture regulatory permits.

- **Change in Species** - Without an EIS, Ecology's analysis that transitioning from Atlantic salmon to steelhead "is not likely to change the effect to water quality" is only an assumption. This issue was a major concern raised by DNR, a partner agency to the SEPA review, in their comments to WDFW which concluded the SEPA materials "did not adequately address how the proposal from Cooke [Aquaculture] might impact the already declining population of Puget Sound steelhead."

  The escape of partially sterile (triploid) steelhead from any of the Puget Sound aquaculture facilities, whether from small scale leakage or catastrophic facility failure, constitute pollutants under the CWA. These escaped fish may pose significant environmental impacts to native salmonids rearing in nearshore marine habitats and rivers due to competition for food and foraging space. This threat will be particularly pernicious given that triploid individuals, as noted in Cooke's materials, will 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. As a result, escapees may outcompete wild steelhead or indeed predate upon them.

  We are also concerned about the genetic integrity of threatened Puget Sound steelhead stocks in the event of an escape. While the limited data from Troutlodge indicates an average triploidy failure rate of 0.17%, the true rate may be substantially different, and higher. In the event of an escape on the scale of Cypress Island, that could mean thousands of fertile females entering Puget Sound, potentially diluting the genetics of threatened wild populations, and competing with wild females for redds.

  An additional related concern is the absence of specific details regarding how the replacement steelhead stock is to be marked so as to distinguish an aquaculture-raised steelhead from conventional hatchery-raised steelhead and from wild, natural-origin, steelhead. It is critical that aquaculture-raised steelhead be provided with an externally visible mark that is distinct from the adipose clip used to identify conventional hatchery-reared steelhead. This is necessary in order that recovered escaped aquaculture-raised fish can be distinguished from hatchery and wild steelhead in order to assure that these farmed fish are removed from public waters

and that native steelhead (with an intact adipose fin) not be killed due to suspicion that such a fish captured following an escape is one of the escapees.

Additionally, the prior permitting for these pens and their operations all addressed risks associated with a non-native species. In dealing with partially sterile (triploid), domesticated O. mykiss 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.

In particular, "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 other nations). Since escapes, and their risks to threatened conspecifics, 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. Furthermore, the behavioral response of wild steelhead to a large aggregation of conspecifics 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 threatened wild Puget Sound steelhead.

In closing, we strongly believe the current NPDES process must be delayed until the Court issues a ruling in the lawsuit challenging the underlying SEPA review and the federal ESA consultation on the impacts Puget Sound net pens pose to ESA-listed species is complete. Issuing Cooke an NPDES beforehand is nothing short of negligent. Additionally, given the new legal standard established by HB 2957 and the substantial concerns that arise from raising a native species in net pens, we believe it is imperative that Ecology hold Cooke Aquaculture to the highest standards of environmental protection, something it fails to do in the current NPDES permit process.

On behalf of the Wild Steelhead Coalition, we encourage the Department to hold off on issuing any permits until all of these aforementioned issues are resolved as well as until after the lawsuit and Biological Opinion are finalized. Simply put, Puget Sound and its wild steelhead, which are in such dire shape that they are protected under the Endangered Species Act, are far too important to Washington's people, economy, and ecosystem to risk by dangerously rushing through this important environmental review process.

Thank you for your consideration,

Greg Topf
Board of Directors
Wild Steelhead Coalition

The Wild Steelhead Coalition is a non-profit 501c(3) organization representing more than 3,000 members in Washington state and beyond. We were founded in 2000 by a group of conscientious steelhead anglers and advocates, determined to make lasting change for this iconic species. For nearly 20 years, the WSC has worked to build partnerships, educate stakeholders, and change policy on behalf of the fish.