Rich Passage Estates Homeowners' Association
PO Box 11683
Bainbridge Island, WA 98110

October 26, 2020

Laurie Niewolny, Water Quality Program
Washington State Department of Ecology

Dear Laurie Niewolny,

This letter and attachments provide public comment on the application to the Washington Department of Ecology by Cooke Aquaculture for the modification of National Pollutant Discharge Elimination System Permits (NPDES) associated with the proposed farming of steelhead in pens located in Rich Passage.

We are requesting that discussions to modify the NPDES permits be tabled until the Wild Fish Conservancy lawsuit challenging the Department of Fish and Wildlife is concluded. Both the science and net pen guidance that supports the proposed modification are based on a thirty-year-old Environmental Impact Statement for Atlantic salmon. Both should be revaluated with respect a species change to native fish and their impacts on threatened and endangered species. Additionally, the State of Science in Puget Sound, Washington was never completed and there has been no public comment on the latest draft version.

In May of this year, the Environmental Protection Agency made a determination that the marine net pens in Puget Sound "*are likely to adversely affect"* several ESA-listed species of fish. That document is attached. As a result, NOAA is charged with preparing a related Biological Opinion which, in part, addresses the NPDES permit modification relative to water quality standards. Ecology should delay any NPDES permits until this analysis is completed and NOAA issues its Biological Opinion.

Attached is a resubmission of our previous public comments for review and response recognizing that some items may have been mentioned in the revised draft. Also attached are the shoreline permits for reference that are listed on the application. These decades-old permits, under which the industry is grandfathered, are not aligned with many provisions of the current Shoreline Master Program and provide few water quality protections.

Ecology's one virtual meeting appears to have been effective in soliciting little more than a few responses primarily by the applicant. The general option of the public is that Net Pen Aquaculture should be phased out because of the pollution it causes and risk of escapements as well as impacts to our threatened and endangered species. Ecology should conduct appropriate comment through multiple meetings and not the "one and done" during unprecedented times. For example, the Draft Aquatic Plant and Algae Management General Permit and Padilla Bay Tributaries Bacteria TMDL Public Comment are each holding two public workshops and hearings. During the legislative

hearings for EHB 2957, the issue of net pens was **the** topic that legislators heard the most about that legislative session.

Net Pen Structural Integrity Assessment Report

Of particular concern is the timing of inspections related net pen structures "approximately every two years" when net pens are fallow as they are at this time. The last inspection, to our knowledge, occurred in December of 2017 nearly three years ago. These pens need to be in good working order to receive fish, but also to ensure structural integrity in the highly-trafficked waters of Rich Passage even if pens are fallow. Ecology should not delay this inspection process on the timing of Cooke's permit approvals.

From the draft permit S7. NET PEN STRUCTURAL INTEGRITY ASSESSMENT REPORT:

In accordance with RCW 77.125.060, the permittee must obtain a marine engineering firm to conduct inspections to assess structural integrity of the net pens. Inspections must occur within two years of the effective date of the permit if not completed and to be done routinely, approximately every two years, when net pens are fallow, and must mooring assessments related to escapement potential, structural integrity, permit compliance, and operations. The net pen structural integrity assessment reports must include current Doppler data, topside and be certified by a licensed professional engineer and submitted to Ecology within 60 days of the completion of the inspections.

S7	Net Pen Structural Integrity Assessment Report (includes Doppler current assessment)	Approximately every two years	Within 2 years of permit issuance

RCW 77.125.060 does not state that "inspections must occur within two years of the effective date of the permit..." which appears to be language that Ecology has added.

RCW 77.125.060

Facility operator must hire marine engineering firm to conduct inspections.

(1) For marine finfish aquaculture, the facility operator must hire, at their own expense, a marine engineering firm approved by the department to conduct inspections. Inspections must occur **approximately every two years, when net pens are fallow**, and must include topside and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations.

(2) Any net pen facility must be found to be in good working order to receive fish.

(3) If the facility is found to be in imminent danger of collapse or release of finfish, the director may require the operator to remove fish or deny a fish transfer permit.
[**2018 c 179 § 12**.]

https://app.leg.wa.gov/RCW/default.aspx?cite=77.125.060

From WDFW:

"WDFW SEPA 19-056 Determination Marine Aquaculture Permit Approval 24 • EHB 2957 requires that approximately every two-years, when net-pens are fallow, each of Cooke's facilities must be inspected by an independent marine engineering firm, approved by WDFW, and to receive fish the facility must be considered in good working order. In December 2019, a Consent Decree was reached between Cooke and Wild Fish Conservancy, where both parties agreed that before Cooke restocks any of their net-pen facilities, they are required to conduct a load analysis of the mooring and cage systems using environmental condition data that are consistent with the Norwegian aquaculture standard NS 9415. As part of the inspections mandated by EHB 2957, WDFW will require that Cooke provide an engineering analysis certifying that the net-pens conform to the parameters derived from the NS 9415 standard. Each net-pen facility will be evaluated independently as conformity to parameters derived from the NS 9415 standards require evaluation of the environmental conditions (e.g., currents, winds, waves, depth) specific to that netpen facility."

The net pens in Rich Passage have been fallow since the following dates:

- Fort Ward April 2018
- Clam Bay August 2019
- Orchard Rocks September 2020

In October 2019, the Orchard Rock South net pens were partially stocked. As you are aware, a hole in a pontoon caused the southern end to sink. The primary mitigation for fish escapements is prevention regardless of species. The Rich Passage Pens are beyond or near the end of their useful lives per the Department of Natural Resource lease agreement. Two years have passed without inspection and the pens here are fallow. There have been structural problems here and the applicant had previously submitted a permit for net pen replacement with the City of Bainbridge Island. The pens in Rich Passage have not been certified to receive fish regardless of species.

The permit should be denied generally, but denied until all inspections and repairs have taken place. Permit language allows the potential for the applicant to delay inspections until August of 2021 or later.

AKART

Similarly, AKART has been added and is not a condition of the permit modification, but with reapplication in 2024.

WAC 173-226-070

https://apps.leg.wa.gov/WAC/default.aspx?cite=173-226-070&pdf=true

Technology-based treatment requirements and standards reflecting all known, available, and reasonable methods of prevention, treatment, and control required under RCW **90.48.010**, **90.48.520**, **90.52.040**, and **90.54.020**

AKART

S10. AKART ANALYSIS REPORT contains the following language

In accordance with WAC 173-240-110, the permittee must conduct an analysis for all known, available,
and reasonable methods of treatment or AKART. The analysis must include an economic and treatment
analysis of the range of culturing techniques, including but not limited to all known in-water and uplands
systems for the purpose of improved water quality of the effluent, reduced discharge, and less feed waste. Analysis shall also include the evaluation of best management practices and technology improvements to in-water systems that will lead to improved water quality of the effluent, reduced discharge, and less feed waste. Report must be submitted with the application for the renewal of this permit as required in S6.

S10	AKART Analysis Report	Once	With reapplication: January 31, 2024

On September 18, 1996, Ecology issued NPDES permits including the three in Rich Passage. Eight of these permits were administratively extended, without modification (other than to reflect the change in ownership), in 2007 and again in 2012. When was the last AKART analysis?

The public has voiced repeated concerns regarding discharges of feces, uneaten food, antibiotics, nitrogen and metals and their impacts on water quality and threatened and endangered species.

AKART should be a condition of the permit modification not the potential renewal of the permit in 2024.

Discharges to Marine Waters

In response to the reporting of the discard of debris from the harvesting operations into the Puget Sound waters, we were informed via phone conversation that Ecology considers the reported activity de Minimis in terms of water quality, but “technically” not in compliance with the permit requirements which should have resulted in at least a warning letter. The industry should be held to the requirements of the permit. The permit does not nor should it specify a matter of degree which is subject to interpretation. The permit should include language that is consistent with WDFW*: The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit.*

WDFW:

10. Prior to harvest, Cooke must provide WDFW, DNR, and Ecology the approximate dates for harvest. Within one month after harvesting is completed Cooke must provide to WDFW, DNR, and Ecology a report documenting the facility harvested, dates in which harvesting occurred, the total number of fish harvested per day, and any complications that may have occurred during harvesting. Cooke must report immediately if any live fish escaped during harvesting, or if any fish carcass, parts, or offal were discarded into the Puget Sound waters. The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit. Cooke also must report the number and species of bycatch caught during harvesting. If requested by WDFW, DNR, or Ecology, Cooke must allow appropriately trained personnel from these agencies to monitor the harvesting activities.

From Ecology’s pollution prevention plan:

6.3 Carcass and Leachate Disposal During Harvesting

During harvesting operations, the harvest boat shall be tied securely to the net pens adjacent to the pen that is being harvested. The harvest fish are pumped from the pen and onto the harvest boat. Blood water from the harvesting operations (leachate) shall be contained within the fish harvesting machine that is located on the harvest boat. The harvested fish and blood water are contained and stored inside the fish holds of the harvest boat.

Upon completion of the harvesting operation by the harvest boat at the facility, the harvested fish and blood water are transported by the harvest boat to the upland fish processing plant. The harvested fish and the blood water are then pumped off the vessel at the fish processing plant and the blood water is disposed of into the sanitary sewer system located at the fish processing plant.

6.4 Solid Waste Storage and Disposal Practices

Solid wastes generated by the daily operation of the sites include feed bags, wooden pallets, used line, ordinary household wastes, and other non-hazardous items. Proper containment, handling and storage of these waste materials shall be the priority of all employees to ensure these materials do not enter the water. These items shall be stored in secured containers or bundles before transport to a land-based facility. Solid waste is collected and routinely removed from the facilities and transported to the land-based support facilities for proper disposal and/or recycling.

Earlier, Ecology had indicated via email that:

Pollution prevention plan must include
9. How solid and biological wastes are collected, stored, and ultimately disposed of at an upland facility. Among the solid wastes of concern are:
a. Any fish mortalities under normal operations.
b. Fish mortalities due to a fish kill involving more than five percent of the fish within one week.
c. Blood and waste from harvesting operations

Again, the language in the NPDES should be consistent with WDFW:

The discard of carcasses, fish parts, or offal is also a violation of Cooke's NPDES permit.

Training

A key component of preventing fish escapes and pollution is appropriate training. From the Fish Escape Prevention Plan, the applicant states that:

Cooke will train all staff on the requirements and procedures of the Operations and Maintenance Manual, Pollution Prevention Plan, Fish Escape Prevention Plan, and Fish Escape Reporting and Response Plan annually by March 30 of each calendar year. New employees will be trained during their three-month probationary period. Additional training will be provided if plans are updated or changed. An employee training log will be maintained by the Site Manager at each location and will be updated as needed. Updated training logs are sent to the General Manager, Permit Coordinator and Business Support Analyst.

While Ecology reserves the right to inspect records with regard to training, actual inspections have only been recorded in PARIS three to four times in the past fourteen years. Given the poor record of the applicant, Ecology should consider more frequent site visits or request of records. Ecology should consider a response simulation exercise to verify the operator's ability to execute the plan.

Compliance Inspection Without Sampling

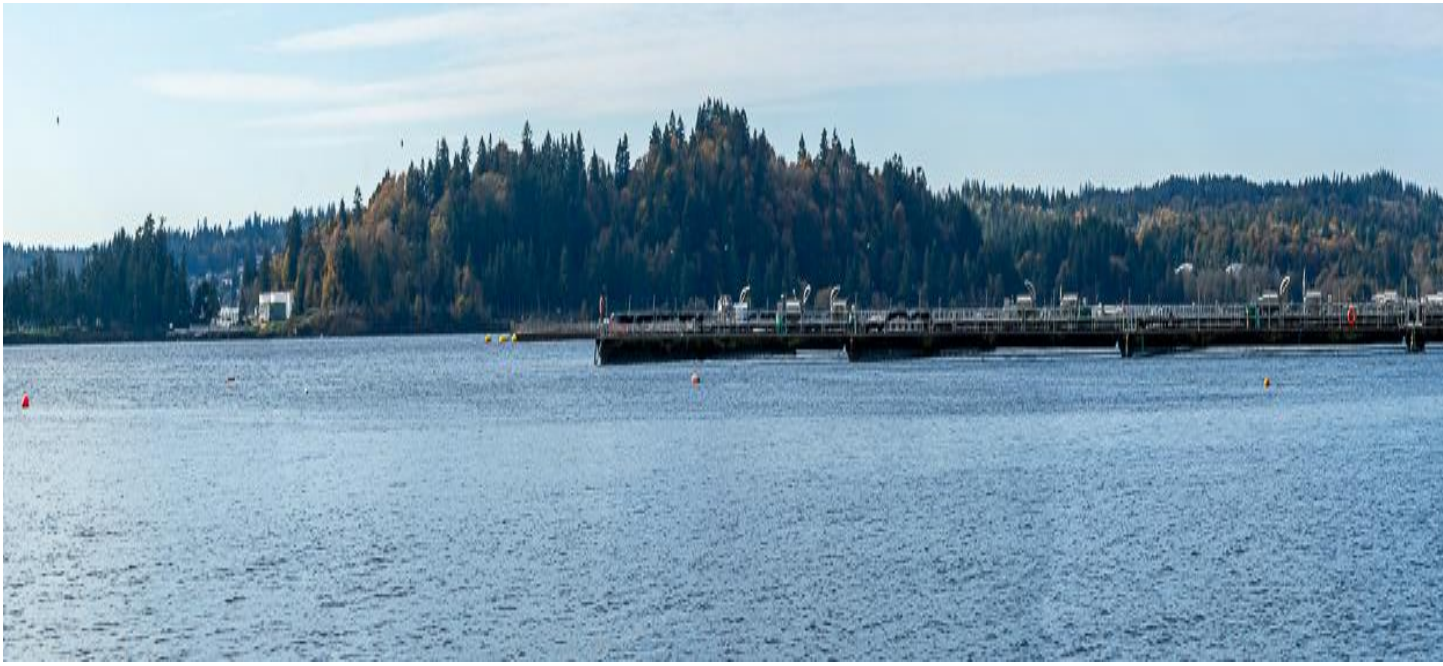
Date	Fort Ward	Orchard Rock	Clam Bay
December 2017	X	X	X
September 2015	X	X	X
November 2011		X	
October 2006	X	X	X

The fact that Ecology felt compelled to create an entire section related to *unusual events*, points to training deficiencies and/or inability of the operator to respond to potential emergency events.

Pollution and Threats to the Marine Environment

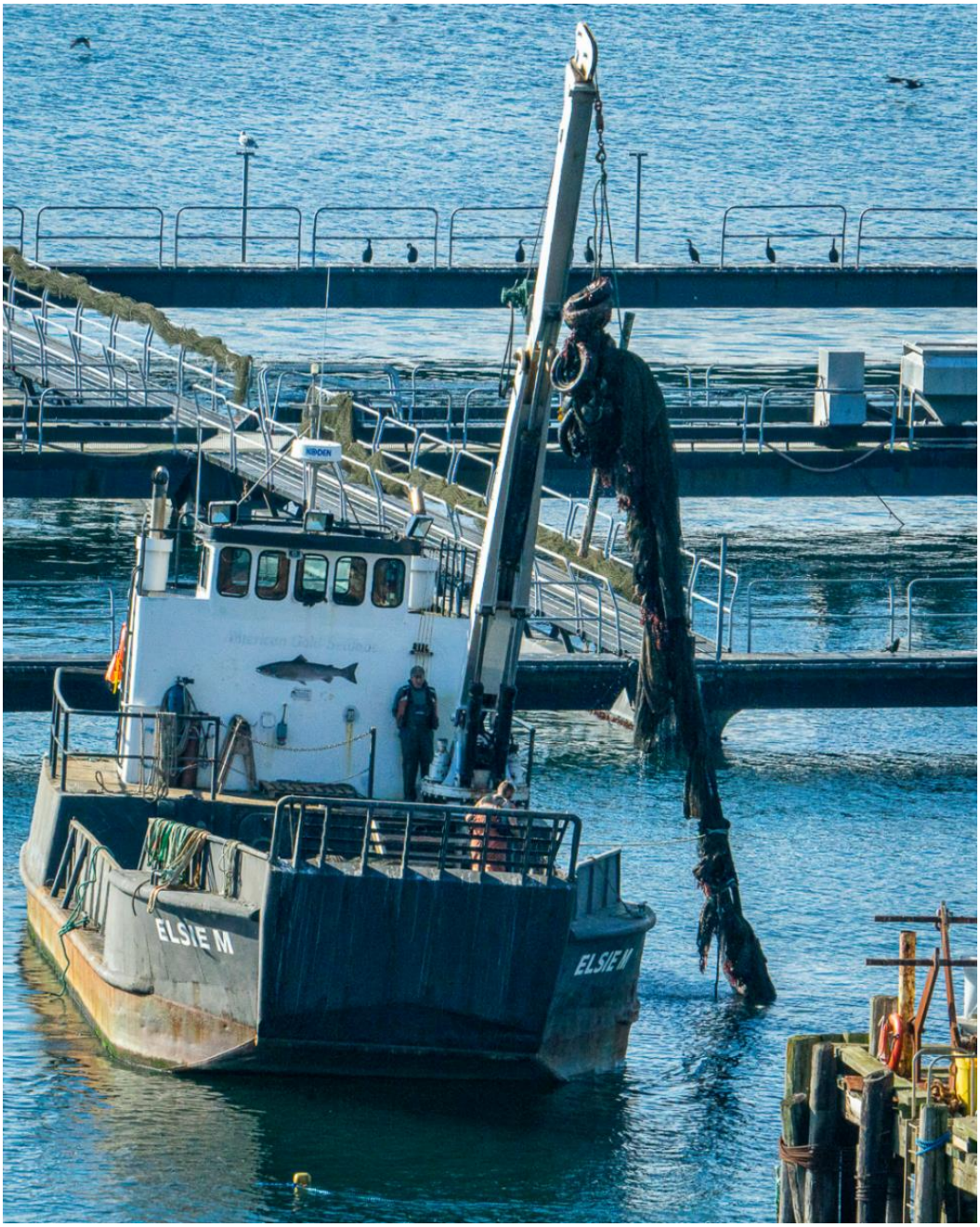
For two weeks now neighbors are watching with disgust as decades of industrial waste from marine finfish operations is being lifted from the seafloor in what we understand is from the 70's and 80's. The location is marked by the six or more orange buoys shown in the photos below.

October 25, 2020



Buoy adjacent to protected Orchard Rocks Conservation area October 26, 2020

See the photo below of a net entangled in tires which was removed from the seafloor.
October 24, 2020



Every NPDES permit disallows this type of dumping. Even our decades-old, two-paged, shoreline permit conditions that discarded net must be removed.

From the NPDES **draft** Operations and Maintenance Manual 7.4.4.

Dropped or Lost Nets

> *Any net accidentally dropped or lost during a storm event and not recovered immediately will be marked by GPS coordinates, a buoy, and reported to Ecology within 24 hours. The net will be recovered within 30 days and Ecology will be notified on the date it is recovered. Additional information on dropped or lost nets, major repair, or structural issues, can be found in the Fish Escape Prevention Plan, Sections 3 and 4. For more information on Emergency Structural Problems, notifications, and reporting, see the Fish Escape Prevention Plan, Section 2*

From previous permits that were administratively approved in later versions … *Permit No. WA-003153-4 Issuance Date: October 26, 2007 Expiration Date: October 26, 2012 Minor Modification Date: May 30, 2008.*

17. When in use, predator nets shall be maintained above the sea floor at all times. Nets may not impede the current flow or tidal exchange so as to contribute to the deposition of solids that would impair water quality standards. The storage of predator control or containment nets on the sea floor is prohibited. Any net accidentally dropped or lost during a storm event that is not recovered immediately shall be tagged with a float, positioned using differential GPS, and reported to Ecology within 24 hours. The net shall be recovered within 30 days from the date lost, unless Ecology allows a longer time in an individual case. Ecology shall be notified on the date the net is recovered.

From the current NPDES permit. No surprises here…the exact same language.

3. Operating Requirements

r. When in use, predator nets shall be maintained above the sea floor at all times. Nets may not impede the current flow or tidal exchange so as to contribute to the deposition of solids that would impair water quality or sediment standards. The storage of predator control nets on the sea flooris prohibited. Any net accidentally dropped or lost during a storm event that is not recovered immediately shall be tagged with a float, positioned using differential GPS, and reported to Ecology within 24 hours. The net shall be recovered within 30 days from the date lost, unless Ecology allows a longer time in an individual case. Ecology shall be notified on the date the net is recovered.

Net recovered from the sea floor October 26, 2020

Chains recovered from the sea floor as well as recovered nets onboard the vessel.

October 26, 2020

Tires recovered from the industrial operation. Photo taken October 24, 2020

The Department of Ecology says on its homepage, *We're proud to protect, preserve, and enhance Washington's environment for current and future generations.*
Who's watching here? Ecology? The Industry? Not even Cooke apparently for the last four years until now with respect to issue mentioned in the above section regardless of the fact that the same permit coordinator has been in place through several industry owners. The public is watching here and paying the price with threats that the industry has created to our public waters and endangered species.

On April 29, 2019 Cooke agreed to pay the State the full $332.000 penalty for the Cypress Island disaster in Puget Sound. A little over two months later on July 11, 2019, Ecology issued the current NPDES permit.

https://ecology.wa.gov/About-us/Get-to-know-us/News/2019/April-29-Cooke-Aquaculture-will-pay-full-penalty

> Elsewhere, in October of 2019, just weeks after Cooke Aquaculture agreed to pay the state more than $150,000 to settle numerous violations at several of its salmon net pen sites in eastern Maine, the Department of Marine Resources is asking for public comment on the company's application for a 20-year lease renewal.
> https://www.mdislander.com/maine-news/cooke-aquaculture-seeks-renewal-of-salmon-pen-lease

It all appears somewhat familiar and an NPDES permit modification is yet to be decided.

Cooke has proven to be an unreliable applicant as evidenced by their abysmal record in Washington during their short tenure. It is difficult to believe that the company who was responsible here for repeated water quality violations, structural failures and the Cypress Island disaster is capable of self-monitoring and self-reporting. Additional layers of requirements are not a guarantee of compliance. While the changes to the NPDES permit seem appropriate in theory, we seriously question the industry's ability to execute. Locally, the City of Bainbridge Island has pledged their support for an alternate Department of Natural Resources lease application submitted by the Wild Fish Conservancy to lease the waters now leased by the industry with the creation of Resolution 2020-18. We support the Conservancy's plan to restore polluted and industrialized waters to their natural state for the conservation of Puget Sound's ecosystem, and for the use, benefit, and enjoyment of present and future generations.

We strongly urge the Department of Ecology to deny the NPDES permit modifications.

Sincerely,

Kathleen D. Hansen
Director
Rich Passage Estates HOA