



October 22, 2020

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Water Quality Program  
Washington State Department of Ecology

Submitted via email to: [laurie.niewolny@ecy.wa.gov](mailto:laurie.niewolny@ecy.wa.gov) and eComments

RE: Cooke Aquaculture Draft NPDES Permit Modifications; Permit numbers WA0031534, WA0031593, WA0031526, and WA0031542

Dear Laurie,

This letter is submitted on behalf of the Snoqualmie Indian Tribe, a federally-recognized sovereign Indian Tribe with its governmental offices at 9571 Ethan Wade Way SE, Snoqualmie, WA 98065 ("Tribe"). See Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 82 Fed. Reg. 4235 (January 30, 2018). Please accept these comments on the Washington State Department of Ecology's (ECY's) draft pollution permit modifications in response to Cooke Aquaculture's request to continue farming captive salmonids in net pens within Puget Sound. The Snoqualmie Tribe requests that the draft permits not be issued as currently published, and instead, revised permits that significantly reduce the size and scope of the facilities as well as the harm caused by their pollution, and reduce some of the risks posed by these facilities. Net pen aquaculture of *O. mykiss* in Puget Sound has the potential to substantially and negatively affect the recovery of ESA Threatened Puget Sound steelhead, Puget Sound Chinook, and other imperiled salmonids, including those which originate from the Snoqualmie/Snohomish basin. As ECY is aware, in 2017 Cooke Aquaculture neglected their Cypress Island pen, and their previous permit requirements, such that the pen failed catastrophically. Since we know that net pens pollute Puget Sound and pose a serious ecological risk, and that Cooke Aquaculture's track record speaks for itself, it is absolutely justifiable for ECY to require significant further modifications to Cooke's NPDES permits.

The Snoqualmie Indian Tribe—*sduk<sup>w</sup>albix<sup>w</sup>* in our Native language—consists of a group of Coast Salish Native American peoples from the Puget Sound region of Washington State. We have been in the Puget Sound region and the Snoqualmie Valley since time immemorial. *sq<sup>w</sup>ed* (Snoqualmie Falls) is the birthplace of the *sduk<sup>w</sup>albix<sup>w</sup>*. We had more than 90 long houses along the Snoqualmie River and its tributaries. These rivers and streams were the highways used to travel from village to village and connected all the *?acitalbix<sup>w</sup>* (Natives). The fish, game, trees and roots provided us with everything we need to live. All of this was given to



us by duk<sup>w</sup>ibet<sup>w</sup> (Transformer) in the ancient times when all of the animals could talk and before things were what they are now.

We are the sduk<sup>w</sup>albix<sup>w</sup>, People of Moon. We are the descendants of s<sup>l</sup>uk<sup>w</sup>alb t<sup>a</sup> duk<sup>w</sup>ibet<sup>w</sup>. We have lived, hunted and fished this area for as long as the earth and rivers remember. Our people were one of the largest tribes in the Puget Sound region totaling around 4,000. We are still here today; caring for the land, water, fish and game that duk<sup>w</sup>ibet<sup>w</sup> gave us.

The Tribe is a signatory to the Treaty of Point Elliott of 1855 in which it reserved to itself certain rights and privileges, and ceded certain lands to the United States. See Treaty of Point Elliot, art. V, 12 Stat. 928. Tribal treaty reserved rights are a property right which is protected by Article V of the United States Constitution, as applied through the Fourteenth Amendment, which cannot be deprived without due process of law and just compensation. Only Congress can abrogate the Tribe's treaty rights, which it has never done. See, e.g., *Menominee Tribe v. United States*, 391 U.S. 404, 412-13, (1968) (treaty rights may only be abrogated by Congress).

### **Net Pen Aquaculture in Puget Sound May Affect Salmon and Steelhead Recovery**

Much has changed since the Final EIS for Fish Culture in Floating Net Pens was issued in 1990. Puget Sound Chinook salmon were listed as Threatened under the Federal Endangered Species Act in 2005, and Puget Sound steelhead officially achieved the same dubious distinction in 2007. These populations remain listed, and could even be downgraded to Endangered, due to a lack of substantial progress and many examples of losing ground. Additionally, years of study of the impacts of net pen aquaculture on local ecosystems have advanced our knowledge in this area. We now know that these operations can be massive sources of pollution, spreading dangerous and potentially deadly diseases and viruses to wild fish populations. Under the current proposal, this would occur in an already over-polluted Puget Sound, and these impacts can manifest from the cultivation of any species of finfish. In particular, because of their polluting effects, net pens should not be sited in bays or inlets where shellfish beds are located.

Some insufficiently evaluated impacts relate to the use of rainbow trout/steelhead in aquaculture. Since escaped *O. mykiss* can interbreed with native wild stocks, the proposal has the potential to negatively alter the remaining native gene pool of Puget Sound *O. mykiss*. Even though the proposal would use triploid *O. mykiss*, this sterilization procedure is not 100 percent successful. The potential impacts of using a struggling species native to Puget Sound in these net pen operations are a new consideration. The impacts would be unique and potentially distinct from the previous practice of using Atlantic salmon as the primary cultured species, and therefore they should have been fully evaluated in a new EIS. WDFW erred in issuing its MDNS for Cooke



Aquaculture's latest scheme to profit by imposing pollution on the rest of us who rely on Puget Sound, such as the Snoqualmie Tribe.

Additionally, the Salish Sea ecosystem (of which Puget Sound and the Strait of Juan de Fuca are a part) has changed significantly in recent decades, likely due to the interaction of a number of overlapping factors, many of which are anthropogenic and within our power to improve or eliminate as impacts. This includes contamination and disease, which we know net pens can contribute to. The effect of this change is that marine survival of Chinook, coho salmon, and steelhead populations in the Salish Sea have declined by up to 90%, and their abundance remains well below what it was 30 years ago. Snoqualmie fish must use these same migratory pathways where *O. mykiss* net pens would be located, and Snoqualmie fish are also in severe decline. Given the level of investment in recovery from tribes, their federal and state partners, and the citizens of Washington State, allowing increased impacts to struggling stocks, without giving them full evaluation based on the best available science and temporal context, and without making every attempt to minimize the impacts and risks that we know exist, seems downright irresponsible.

### **Cooke Aquaculture's Safety Record Calls for Additional Permit Modifications Beyond What Is Included in the Draft Permits**

When Cooke Aquaculture's Cypress Island net pen operation breached in August 2017, over 250,000 farmed salmon dispersed into the waters of Puget Sound. Cooke responded extremely slowly, under-reported the number of spilled fish, and attempted to cover up their disregard for the Puget Sound ecosystem, claiming that a solar eclipse was responsible for the catastrophe. In reality, Cooke's negligence was responsible, and follow-up investigations at their other facilities revealed that some of those had also not been maintained properly, in violation of their existing permits, and the trust of the state and its citizens. Washington State's legislature responded by passing HB 2957 in 2018, which banned nonnative finfish farming in the waters of Washington State after 2022, and which seemed to be a potential reprieve for struggling stocks from the negative impacts of this harmful practice.

The Snoqualmie Tribe feels that Cooke Aquaculture has previously demonstrated that they do not take seriously their responsibility to help steward the Salish Sea, and therefore the proposed draft permits are not the appropriate course of action for ECY. ECY should not continue to allow Cooke Aquaculture to pollute Puget Sound. Cooke Aquaculture could not comply with previous permits, so it is justifiable for ECY to reduce risks to Puget Sound through additional permit conditions. The paltry mitigation measures in the draft permit are inadequate. Likewise, the Pollution Prevention Plan and the Fish Escape Prevention, Reporting, and Response Plan are also insufficient inasmuch as they merely ask for more information about the pollution that is acknowledged to assuredly occur, or for future investigation of new technologies that may not exist, and



would be perhaps be implemented at an undetermined time. Hoping that Cooke Aquaculture will do better in the future is not enough. Ecology should use the authority it has to protect Puget Sound. **We request that ECY revise the draft permits to significantly reduce the size and scope of the facilities, which will correspondingly reduce their pollutant loads and other significant risks.** Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to be "Matt B.", followed by a long horizontal line.

Matthew J. Baerwalde  
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Snoqualmie Indian Tribe  
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