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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

JAMESTOWN S’KLALLAM TRIBE, a
federally recognized sovereign Indian tribe,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF NATURAL RESOURCES, and
HILARY FRANZ, the Washington State
Commissioner of Public Lands,

Defendants.

Case No. _____

NOTICE OF APPEAL PURSUANT TO
RCW 79.02.030 AND COMPLAINT FOR
RELIEF

I. INTRODUCTION

1. The Jamestown S’Klallam Tribe (“Jamestown”) is a federally recognized sovereign nation that manages natural resources within the State of Washington, with an interest in protecting and preserving the natural environment as well as protecting their Tribal members’ way of life. All fish, whether found in nature or in farms, must continue to be available to harvest for cultural practices, commercial uses, and subsistence for Tribal people.

2. Jamestown has fished the rivers and streams draining into the Strait of Juan de Fuca and Puget Sound since time immemorial, but when development in the areas surrounding

1 their home territory has threatened continuation of their historical use of these waters, Jamestown
2 turned to hatcheries and aquaculture to mitigate those losses. Fish supplementation in the form of
3 hatcheries and aquaculture is necessary – or the Tribe is forced into dependence on non-Indian
4 food supplies. Dependence solely on non-Indian food supplies threatens Jamestown’s
5 sovereignty. If Tribes are unable to procure culturally appropriate foods, this can increase disease
6 in native people and threaten their physical health.¹ Salmon, steelhead, sablefish, and other
7 marine resources are integral to the native diet, and Tribes must be ensured fish in the future.

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9 3. When Jamestown signed the 1855 Treaty of Point No Point (“Treaty”), they were
10 promised by the federal government that it “secures your fish.” *Washington v. Wash. State*
11 *Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 667 n. 11, 99 S. Ct. 3055, 61 L. Ed.
12 2d 823 (1979), quoting *Documents Relating to the Negotiation of the Treaty of Point No Point*,
13 Jan. 26, 1855. Article 6 of the Treaty of Point No Point, 12 Stat. 933 (Jan. 26, 1855), encourages
14 Tribes to cultivate, and this cultivation must now extend into the sea to ensure that Jamestown’s
15 way of life is preserved. Tribes are entitled to an adequate supply of fish, and artificially
16 produced fish are counted as such. *United States v. Washington*, 759 F.2d 1353, 1358 (9th Cir.
17 1985) (internal citations omitted). As part of this analysis, federal courts have recognized that
18 hatchery programs have “served a mitigating function” since 1895 and operate to “replace
19 natural fish lost to non-Indian degradation of the habitat and commercialization of the fishing
20 industry.” *Id.* at 1360. The federal court has found that without allowing hatcheries to
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25 ¹ See Elizabeth Hoover, “You can’t say you’re sovereign if you can’t feed yourself:” *Defining*
26 *and Enacting Food Sovereignty in American Indian Comm. Gardening*. *American Indian Culture*
and Res. J., 41(3): 31-70 (2017), <https://doi.org/10.17953/aicrj.41.3.hoover> (accessed Dec. 13, 2022).

1 supplement for the loss of natural fish and ensuring Indians can harvest these fish, it will be the
2 Indians who bear the full brunt of natural stock declines. *Id.* at 1360.²

3 4. Commissioner of Public Lands Hilary Franz (“Commissioner”) issued Order No.
4 202211 (“CO 202211” or “CO”) on November 17, 2022, directing all “Department leadership”
5 and “staff” to make immediate changes to “rules, policies and procedures” to “prohibit
6 commercial net pen aquaculture on state-owned aquatic lands.” **Exhibit A.**

7 8. Jamestown has plans to engage in net pen aquaculture in Puget Sound and the
9 Strait of Juan de Fuca and strives through its company, Jamestown Seafoods, and its joint
10 commercial venture, Salish Fish LLC, to produce seafood in a sustainable and environmentally
11 protective manner.

12 6. CO 202211 arbitrarily does not recognize any potential benefits to artificially
13 produced fish, nor the Tribal need for supplementation to reduce pressure on wild stocks. *Fish*
14 *Northwest v. Rumsey*, No. C21-570 TSZ, 2022 U.S. Dist. LEXIS 131671, at *29 (W.D. Wash.
15 July 25, 2022) (federal court recognizing two important benefits of hatchery fish, including
16 “reducing demographic risks and preserving genetic traits for populations at low abundance in
17 degraded habitats,” and hatchery fish increase harvest opportunity).³ These are the types of
18 benefits that Jamestown seeks to obtain by engaging in fish net pen aquaculture.

19 7. State agencies, such as the Washington State Department of Natural Resources

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23 ² The Tribe does not raise these points to adjudicate or assert their Treaty rights but do so
24 persuasively to encourage this Court to recognize that there are established rulings regarding
25 Tribal property rights and that there is public interest in leaving the door open to the propagation
26 of finfish.

³ See case attached as **Exhibit B**. This unpublished case is not being cited as precedent, but
rather as a factual reference regarding the 2021 Puget Sound Chinook BiOp. Citations to
unpublished opinions is permissible under Wash. R. Gen. R. 14.1.

1 (“DNR”), have promised to consult with federally recognized sovereign Tribes when taking
2 actions that affect their interests, even when they attempt to carve out carefully crafted
3 exceptions for these interests. DNR and its Commissioner, though, failed to fully consult with
4 Jamestown about issuing CO 202211.

5
6 8. Natural fresh- and seawater systems can no longer sustain fish production in
7 sustainable numbers due to anthropogenic impacts. Traditional fish species can be reared using
8 aquacultural techniques that promote fish health and survival while minimizing environmental
9 impacts. While these fish are not a true replacement for fish that can be caught in healthy rivers
10 and oceans, many Tribes and the State of Washington will need to supplement fish supplies now
11 and into the future or be dependent on other nations for food. Farming of the world’s oceans is
12 occurring, and the CO prohibits the potential for it to benefit from Tribal leadership, innovation,
13 and values. For example, “80% of seafood” in the United States is imported, and 50% of that
14 seafood comes from aquaculture operations. *See Exhibit C*, p. 8. Thus, CO 202211 effectively
15 makes a first-world decision to export any potential impacts to other countries who engage in net
16 pen aquaculture and who may or may not be as advanced as Tribes in terms of environmental
17 stewardship.

18
19 9. Here, the Commissioner justified this ban by implying DNR had the support of all
20 Tribes. The Commissioner, though, ignored how it affects certain Tribes like Jamestown, who
21 are pursuing commercial fish farming of native species and attempting to learn best practices
22 from leading commercial experts so they are prepared for future needs.

23
24 10. The Commissioner also failed to consider that, even with its broadly worded
25 exception, its actions effectively prevent Tribes from being able to freely enter into joint ventures
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1 with commercial entities, which is a way to provide for their own people as they see fit, as well
2 as forge their own business relationships.

3 11. The Commissioner’s ban is a step beyond legislative intent. In 2018, the
4 Legislature declined to take the drastic step that the Commissioner took; instead, it passed
5 Engrossed House Bill 2957, Laws of 2018, ch. 179 §§ 1-12 (“HB 2957”), which phases out
6 farming of Atlantic salmon but explicitly allows commercial farming of native species like
7 rainbow trout (*Oncorhynchus mykiss*) or sablefish (*Anoplopoma fimbria*).
8

9 12. The Commissioner’s ban sidesteps the legislative process and ignores that other
10 agencies have been tasked with regulating this industry, such as the Washington Department of
11 Fish & Wildlife (“WDFW”) and Washington State Department of Ecology (“Ecology”) as well
12 as the federal agencies, e.g., the U.S. Fish & Wildlife Service and National Marine Fisheries
13 Service (“NMFS”), who possess well-defined expertise regarding the complex balance of health
14 and species habitat, as well as fishing.
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16 13. The Commissioner’s total commercial ban appears to also be overbroad and
17 untethered to the specific science of other expert agencies and other policy considerations that
18 demonstrate that fish farming, particularly native fish farming, as proposed by the Legislature in
19 2018, can be accomplished with minimal impacts to the environment, allowing permits to be
20 authorized.
21

22 14. Jamestown has monitored Cooke Aquaculture Pacific, LLC’s (“Cooke”)
23 undertakings during this time and is confident that Cooke is and will be acting responsibly, such
24 that it entered into a partnership with Cooke (Salish Fish LLC) to operate an aquatic farming
25 facility of native sterile all-female rainbow trout, as permitted by HB 2957.
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1 1442-1443 (W.D. Wash. 1985); *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash.
2 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976) (Boldt Decision).

3 20. Defendant Washington State Department of Natural Resources is an
4 administrative agency of the State of Washington. It is considered an agency described in RCW
5 70A.65.305 with the power to lease state-owned lands. RCW 79.105.210(4).

7 21. Defendant Hilary Franz is the elected Washington State Commissioner of Public
8 Lands. Pursuant to RCW 43.30.105, the Commissioner is the administrator of DNR with all
9 DNR decisions regarding acceptance or denial of a lease of aquatic lands at the Commissioner's
10 direction and within the Commissioner's control.

11 III. JURISDICTION AND VENUE

12 22. This is an appeal under RCW 79.02.030, RCW 43.376.020, RCW 7.24.020, and
13 the Washington State Constitution.

14 23. The action appealed is issuance of CO 202211, a decision by the DNR, a state
15 agency, and the Commissioner. *See* Exhibit A.

16 24. This Court has jurisdiction under RCW 79.02.030, RCW 43.376.020, RCW
17 7.24.020, and the Washington State Constitution.

18 25. Venue is proper in this Court pursuant to RCW 4.92.010(5) and RCW 4.12.020(2)
19 because Jamestown asserts claims against DNR, an agency of the State of Washington, and
20 Hilary Franz, its Commissioner, a public officer acting in official capacity in Thurston County.
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1 IV. STATEMENT OF THE CASE AND ARGUMENT

2 A. The Commissioner’s Action Is an Overreach, as the Legislature Allows Commercial
3 Finfish Farming of Native Rainbow Trout, and the Overall Legislative Framework
4 Directs DNR to Foster and Encourage Water Dependent Uses, Including
5 Aquaculture.

6 26. The Commissioner’s rationale for the complete prohibition on commercial net
7 pens is her opinion that they necessarily (i) contribute to impacts on Endangered Species Act-
8 listed species, acting as a “stressor” for salmon and killer whales; (ii) have damaging benthic
9 impacts; and (iii) pose unacceptable and unavoidable risks. *See* Exhibit A.

10 27. The Commissioner, through the CO, makes several “regulatory” decisions. These
11 decisions include the acceptable level of environmental impact, setting the risk at zero, and in the
12 process failing to adhere to or defer to other prior agency findings on the *actual* environmental
13 impacts, as well as failing to consider that if all environmental permits are properly obtained, net
14 pen farming’s risks are minimized or eliminated. Therefore, it appears the Commissioner and
15 DNR have prejudged all future net pen lease applications on all 2.6 million acres of DNR aquatic
16 lands, regardless of other agency decisions, mitigation measures, or even science-based
17 improvements.

18 28. The Legislature has actually encouraged responsible farming of Washington
19 waters, and recently confirmed that native species of fish can be responsibly farmed here. Since
20 that confirmation, extensive work has been done by multiple state agencies, alongside Cooke, to
21 strengthen the regulatory framework in governing fish farming in Washington. All of these
22 developments have undergone judicial review, with the Washington State Supreme Court
23 decision in *Wild Fish Conservancy v. Washington Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 887,
24 592 P.3d 359 (2022), a unanimous decision upholding WDFW’s Mitigated Determination of
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1 Nonsignificance (“MDNS”) for Cooke’s fish farms.

2 29. The separation of powers doctrine is vital to the operation of the government’s
3 legislative, judicial, and executive branches with its principal function “to ... provid[e] a
4 ‘safeguard against the encroachment or aggrandizement’” of each, safeguarding their
5 inviolate separation. Const. art. II, § 1, art. III, § 5, art. IV, § 1; *Colvin v. Inslee*, 195 Wn. 2d 879,
6 891-92, 467 P.3d 953, 960-61 (2020) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122, 96 S. Ct. 612,
7 46 L. Ed. 2d 659 (1976)).

8
9 30. In fact, AGO 1991 No. 21 (June 11, 1991) advises that an executive action which
10 exceeds statutory and constitutional authority does not have the full force and effect of the law.
11 In this matter, the Legislature’s actions give clear direction to state agencies, including DNR,
12 that those agencies should be fostering and encouraging use of state waters for aquaculture, not
13 banning such uses by executive action.

14
15 31. The Aquatic Lands Act, ch. 79.105 RCW, is an example of the legislative
16 framework that supports use of state aquatic lands for production of food, directing DNR to
17 continue to foster such use. *See* RCW 79.105.030. Under the Aquatic Lands Act, the legislature
18 found that “water-dependent industries and activities have played a major role in the history of
19 the state and will continue to be important in the future.” This act specifically recognizes that
20 there will be conflicting use demands, with one of these demands under RCW 79.105.050, a
21 requirement that the “department shall foster the commercial and recreational use of the aquatic
22 environment for production of food” Aquaculture and net pens are water dependent uses.
23 RCW 79.105.060(24).

24
25 32. The Legislature recently confirmed the importance of aquaculture in Washington
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1 by allowing the continued farming of native fish species after a collapse of an Atlantic salmon
2 farm in 2017. Despite significant pressure on it to do so, the Legislature declined to take the
3 drastic step of eliminating all commercial finfish net pen aquaculture in Washington; instead, it
4 passed HB 2957, which phases out farming of non-native species such as *Atlantic* salmon but
5 allows commercial farming of native species such as all-female sterile native rainbow trout
6 (*Oncorhynchus mykiss*) and sablefish (*Anoplopoma fimbria*). This law also strengthens the
7 regulatory framework of the commercial aquatic finfish industry; for instance, the law now
8 requires third-party inspections by a WDFW-approved marine engineer, and WDFW possesses
9 the ability to deny transfer permits for fish.
10

11 33. The Legislature possesses the authority to write laws. Const. art. II, § 1. DNR’s
12 authority to manage aquatic lands is delegated to it by the Legislature through the
13 aforementioned Aquatic Lands Act, RCW ch. 79.105. This act directs DNR to foster water-
14 dependent uses, such as aquaculture, and manage lands for the production of food. RCW
15 79.105.030; RCW 79.105.050.
16

17 34. DNR manages 2.6 million acres of Washington aquatic lands.⁴

18 35. The Commissioner’s delegated role is to effectuate DNR’s legislative
19 responsibilities. One way the Commissioner accomplishes these responsibilities is through
20 review of lease applications for aquatic lands to ensure “compliance with applicable
21 environmental laws and regulations” and “appropriate steps” are to be taken “to mitigate”
22 “substantial” or “irreversible damage” to the environment. WAC 332-30-122. Neither DNR’s
23 regulations nor the Aquatic Lands Act authorize the Commissioner to issue a preemptory blanket
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26 ⁴ See <https://www.dnr.wa.gov/managed-lands> (accessed Dec. 13, 2022).

1 denial of leases due to alleged or feared environmental impacts. *See id.* DNR may authorize a
2 lease even if there are adverse environmental impacts, provided that the applicant complies with
3 all applicable laws and/or condition the lease on acquiring the permits. WAC 332-30-122.

4 36. Under the State Constitution, the Commissioner oversees a state executive agency
5 tasked with the execution of laws, particularly those in ch. 79.105 RCW, but not the creation
6 thereof. *See* Const. art. III, § 5. The Commissioner is constrained by the Constitution, which,
7 pursuant to art. I, § 3, guarantees due process rights. CO 202211 directs DNR leadership and
8 staff to immediately develop the implementation of rules to effectuate a total prohibition of all
9 commercial finfish net pen aquaculture, overstepping the legislative process and the authority of
10 the agency to manage aquatic lands in a manner that is “balanced,” which includes “water
11 dependent uses” and “generating revenue.” RCW 79.105.030. All actions taken by DNR and its
12 Commissioner must be in accordance with the Washington State Constitution and chapters
13 70.105 through 79.140 RCW.

14 **B. The Commissioner’s Order Squarely Contradicts WDFW’s Recent SEPA**
15 **Determination About the Impact of Commercial Farming of Native Rainbow Trout.**

16 37. The possible environmental impacts from the farming of the species of fish
17 proposed to be farmed by Salish Fish LLC have been heavily analyzed by WDFW and other
18 state agencies, that have concluded that farming all-female sterile steelhead trout will not pose
19 risk of significant impacts to the environment. In 2019, WDFW determined that Cooke’s
20 application for new farm registrations triggered the requirements of the State Environmental
21 Policy Act, ch. 43.21C RCW (“SEPA”), and directed it to prepare an environmental checklist as
22 well as an update to its 1990 Programmatic Environmental Impact Statement that had previously
23 analyzed fish farming impacts. Cooke hired two expert fisheries scientists who prepared an
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1 extensive report updating the science with respect to possible impacts from net pen farms in
2 Washington. This report included an annotated bibliography of scientific studies conducted since
3 2000, addressing issues of concern regarding farming of rainbow trout in Washington waters.

4 38. WDFW concluded that farming all-female sterile rainbow trout in Washington
5 waters would not have probable significant adverse impacts on the environment. As part of this
6 process, WDFW developed 29 conditions to include in Cooke’s permit, which were incorporated
7 in an MDNS.

8
9 39. After the MDNS was finalized, a group of environmental organizations
10 challenged the MDNS under SEPA. A hearing was held with the Superior Court upholding
11 WDFW’s determination, and upon appeal to Washington State Supreme Court, the Court
12 unanimously affirmed the lower court’s ruling, finding that WDFW did not err in concluding that
13 farming of rainbow trout, as proposed by Cooke and as conditioned by WDFW, would not have
14 a probable significant adverse impact on the environment. *Wild Fish Conservancy v. Washington*
15 *Dep’t of Fish & Wildlife*, 198 Wn. 2d 846, 887, 502 P.3d 359 (2022).

16
17 **C. The Environmental Impacts of Fish Farming Are Well Known and Said Risks Can**
18 **Be Mitigated, but the Commissioner Ignored These Details.**

19 40. There has been an increased understanding of finfish net pens and marine
20 aquaculture, particularly since the 2017 Cypress Island incident, after which considerable
21 changes in the regulatory framework and heightened standards for all lease applicants were
22 implemented.

23 41. Several state agencies are charged with issuing permits for state-owned lands.
24 WDFW is tasked with evaluation under SEPA. WDFW is tasked with impacts to fish, wildlife,
25 and habitat. Federal agencies are tasked with federal Endangered Species Act (“ESA”)
26

1 compliance requirements.

2 42. Ecology, the agency charged with developing rules to implement the Shoreline
3 Management Act, ch. 90.58 RCW, recognizes that the culture or farming of fish is an “activity of
4 statewide interest” that can result in long-term benefit to the State of Washington in the form of
5 food production and revenue generation from state lands. *See* WAC 173-26-241(3)(b).

6
7 43. Ecology,⁵ not DNR, is responsible for water quality permits for fish farms
8 monitoring the sediments and water quality and imposing measures to minimize impacts. In
9 1998, the first permits Ecology issued for fish farms were the subject of litigation, with the
10 Washington State Pollution Control Hearings Board upholding National Pollution Discharge
11 Elimination System permits and finding that salmon farming does not present an either/or
12 situation with other beneficial uses requiring a choice between the two. *Marine Environmental*
13 *Consortium v. Dep’t of Ecology*, PCHB Nos. 96-257 through 96-266 & 97-110, 1998 WL
14 933353, pp. 60-61 (Nov. 30, 1998). The Board specifically found that “[t]he legislature has
15 determined that the marine waters of the state shall accommodate both recreational uses and net-
16 pen facilities.” *Id.* at 59.

17
18 44. NMFS, not DNR, is the federal agency tasked with ensuring compliance with the
19 federal ESA, engaged in a comprehensive evaluation of the possible impacts of fish farming on
20 federally listed endangered species, including wild steelhead, Chinook salmon, chum salmon,
21 rockfish, green sturgeon, eulachon, humpback whales, and Southern Resident Killer Whales.

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23 45. In April 2022, WDFW and DNR issued guidance for local and state governments
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26 ⁵ <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Aquaculture/Net-pens>
(accessed 12/14/2022).

1 to use in assessing new or existing net pen operations under Washington’s Shoreline
2 Management Act.

3 46. The Commissioner’s order relies on one-sided opinions about aggregate risks to
4 salmon, steelhead, and killer whale health, concluding that it is an established fact that net pen
5 farms will impermissibly impact all of these species negatively. But these determinations are not
6 the Commissioner’s to make, nor are these solely negative conclusions borne out by the agencies
7 tasked with regulatory review of permits and proposed projects.

8 47. CO 202211 described hypothetical risks to salmon, steelhead, and whales. But
9 with respect to future operations, CO 202211 fails to consider all new permit proposals will
10 engage in appropriate permitting by the appropriate expert agencies.

11 48. The Commissioner’s factual recital also asserts that there are damaging risks to
12 the benthic environment associated with net pen operations. However, DNR’s analysis of the
13 lease application and the approval thereof will require all lessors to apply for the appropriate
14 agency permits whose relevant experts will evaluate under specified scientific standards and
15 those relevant agency permits will properly evaluate the decision regarding what impacts the
16 proposed project has on the environment.

17 **D. The Commissioner and DNR Cannot Use a Backdoor Method to Prevent Tribes**
18 **Like Jamestown from Engaging in Commercial Ventures that Will Support Their**
19 **People; Jamestown’s Sovereignty Must Be Respected.**

20 49. All of DNR’s actions must be in accordance with the Washington State
21 Constitution and chapters 70.105 through 79.140 RCW. DNR leases aquatic lands, including
22 those in Port Angeles Harbor.
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1 50. Salish Fish LLC applied for a sub-tidal aquatic land lease for the Port Angeles
2 Harbor site in December 2021. *See* Exhibit C.

3 51. While Jamestown has much of its own expertise, it also recognizes its limitations
4 and must be able to enter into joint commercial ventures with experts such as Cooke in
5 commercial aquatic finfish farming.
6

7 52. Jamestown, as a sovereign nation, must be able to enter such ventures to protect
8 their way of life, ensure food stability, and preserve the cultural rights of their people as they see
9 fit. While the final paragraph of CO 202211 attempts to carve out exceptions for Tribes, the
10 Commissioner’s complete ban still effectively prevents Tribes from entering into commercial
11 ventures with non-Indians who possess particular expertise in this area, thereby substituting their
12 decisions for the Tribes’. This directly interferes with Tribal sovereignty.
13

14 53. The Commissioner’s order claims to help Tribal interests and claims to be
15 protective; however, such “protection” was done without consultation.

16 54. The order’s exception remains unclear and ignores the fact that DNR and its
17 Commissioner still need to properly engage in government-to-government consultation as
18 required and promised by DNR, e.g., RCW 43.376.020. The Commissioner’s assumption,
19 though, was that it could craft a “Tribal exception” without consultation, with the resulting
20 problem being that it remains unclear whether Tribal commercial ventures as well as other
21 related uses fall within the exception.
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V. CAUSES OF ACTION

**FIRST: BREACH OF DUTY TO PERFORM
GOVERNMENT-TO-GOVERNMENT CONSULTATION**

55. Jamestown realleges paragraphs 1 through 54.

56. Pursuant to RCW 43.376.020, DNR and its Commissioner must make reasonable efforts to collaborate and consult with federally recognized sovereign Indian Tribes before issuing orders that directly affect them.

57. DNR and its Commissioner failed to adequately perform this consultation with Jamestown, a sovereign nation, and failed to provide appropriate notice, comment, and opportunity to object prior to the issuance of said order.

58. Jamestown is entitled to government-to-government consultation and to be meaningfully heard prior to the issuing of a blanket prohibition on net pen farming and creation of a Tribal interest exception. Fish farms might be the only way to ensure food independence and cultural survival, and the Tribe is harmed if this type of decision is made without consultation.

**SECOND: APPEAL OF THE ORDER PROHIBITING ALL
COMMERCIAL FISH FARMING ON PUBLIC LANDS**

59. Jamestown realleges paragraph 1-58.

60. RCW 79.02.030 provides that any applicant whose property rights or interest will be affected by a decision of the Commissioner as to a lease by DNR may appeal therefrom to the superior court.

61. DNR performed no assessment or review of the Port Angeles Harbor lease application before the Commissioner issued CO 202211, completely banning all commercial finfish aquaculture operations, and thereby prejudicing this application.

1 62. DNR and its Commissioner have provided no information or rationale to
2 Jamestown regarding CO 202211, which directly affects its pending lease application for Port
3 Angeles Harbor. The implication from the Commissioner’s public statements is that this ban will
4 be applied to the Port Angeles Harbor application as well as any future applications by
5 Jamestown.⁶

7 63. The Commissioner’s demand for a complete ban on commercial finfish net pen
8 aquaculture prejudices and prejudges any DNR review of the Port Angeles Harbor lease as well
9 as any future rulemaking or policy changes by DNR regarding net pen aquaculture. DNR
10 employees will be at odds with CO 202211 if they attempt to comply with other conflicting
11 Washington laws or consider any other viable options for such aquatic lease applications.

12 64. CO 202211 effectively prohibits Jamestown from entering into such partnerships
13 or similar ventures with non-Indians that engage in commercial finfish net pen aquaculture,
14 effectively interfering with their sovereignty.

15
16 **THIRD: VIOLATION OF JAMESTOWN’S**
17 **SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS**

18 65. Jamestown realleges paragraphs 1-64.

19 66. The state cannot deprive anyone of life, liberty, or property without both
20 substantive and procedural due process. Wash. Const. art. 1, §3; U.S. Const. amend. XIV.

21 67. Substantive due process means the state must refrain from depriving Jamestown
22 of its property rights in an arbitrary and capricious manner.

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26 ⁶ See <https://www.knkx.org/environment/2022-12-01/washington-tribe-tests-its-rights-to-commercial-net-pen-fish-farming> (accessed Dec. 14, 2022).

1 2. Determine that in issuance of CO 202211, the Commissioner failed to consult
2 Jamestown and failed to provide due process regarding its impacts and proposed Tribal
3 exception(s).

4 3. Determine that CO 202211 exceeded the agency's authority and is contrary to
5 legislative action, violating the separation of powers doctrine.

6 4. Determine that CO 202211 does not have the full force and effect of law and
7 therefore must be withdrawn or revised.

8 5. Determine that DNR acted arbitrarily when it prejudged the Salish Fish LLC lease
9 application for Port Angeles Harbor, by and through the Commissioner's prohibition on all net
10 pens regardless of design, mitigation, actual impact, location, and permit requirements.

11 6. Determine that CO 202211 must explicitly provide an exception for all Tribal
12 commercial net pen aquaculture ventures, including those ventures operating, consulting, or
13 working with non-Tribal commercial entities and ensure said order does not impact any Tribal or
14 state or joint enhancement of net pens already in place, nor any net pens needed for
15 compensatory mitigation of adverse impacts to fish.

16 7. Enter injunctive relief, as needed, to ensure Tribal due process and consultation is
17 appropriately effectuated by DNR and the Commissioner prior to the development of any orders
18 intending to or foreseeably impacting any existing or future Tribal interests, including any
19 attempts to create a Tribal exception thereto.

20 8. Order any such other relief as is just and equitable.

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DATED this 16th day of December 2022.

S/LAUREN RASMUSSEN

LAUREN RASMUSSEN
WSBA # 33256
LAW OFFICES OF LAUREN P. RASMUSSEN
1904 Third Avenue, Suite 1030
Seattle, WA 98101
(206) 623-0900

lauren@rasmussen-law.com

Attorney for Plaintiff Jamestown S’Klallam Tribe

Exhibit A

COMMISSIONER'S ORDER

NUMBER 202211

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
Hilary Franz
Commissioner of Public Lands
Olympia, Washington 98504

COMMISSIONER'S ORDER ON COMMERCIAL FINFISH NET PEN AQUACULTURE

WHEREAS, under Article XVII of the Washington State Constitution, the State of Washington is owner of certain aquatic lands underlying navigable waters, including the bedlands of Puget Sound. Under Title 79 of the Revised Code of Washington (RCW) and other constitutional and statutory mandates, the Department of Natural Resources (Department) is responsible for management of these state-owned aquatic lands. Under RCW 43.30.105, the Commissioner of Public Lands is the administrator of the Department; and

WHEREAS, for more than 40 years, commercial finfish farmers have operated marine net pens in Puget Sound. The Department leases state-owned aquatic lands for these operations. After a net pen array near Cypress Island collapsed in August 2017, releasing 250,000 nonnative Atlantic salmon into Puget Sound, the Legislature in 2018 passed EHB 2957 (codified at RCW 79.105.170), prohibiting the Department from allowing nonnative marine finfish aquaculture as an authorized use under any new lease or other use authorization and requiring state agencies to finalize the ongoing development of a new guidance document for marine finfish net pen aquaculture; and

WHEREAS, under RCW 79.105.010, the Legislature established that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The Legislature delegated to the Department the responsibility to manage state-owned aquatic lands for the benefit of the public trust and as the best interests of the State require; and

WHEREAS, under RCW 79.105.030, the Legislature directed the Department to manage state-owned aquatic lands to provide a balance of public benefits for all citizens of the State. Such benefits are varied and include encouraging public access, fostering water dependent uses, ensuring environmental protection, utilizing renewable resources, and generating revenue in a manner consistent with the foregoing benefits; and

WHEREAS, under RCW 79.105.210(4), the power to lease state-owned aquatic lands is vested in the Department, which has the authority to make leases upon terms and conditions in conformance with the Washington State Constitution and chapters 79.105 through 79.140 RCW; and

WHEREAS, under WAC 332-30-122(2)(a), the Department must consider whether or not a facility within a leasehold is properly designed, constructed, maintained and conducted in accordance with sound environmental practices, as well as whether or not the use causes adverse environmental impacts; and

WHEREAS, aquatic ecosystems hold high value for cultural practice and maintenance of food sovereignty among Tribal Nations and Indigenous Peoples in Washington State; and

WHEREAS, an interagency team, along with Tribal and university experts, published the *Commercial Marine Finfish Net Pen Aquaculture in Puget Sound and Strait of Juan de Fuca, Guidance and Risk Management* document, as directed by the Legislature in Engrossed House Bill 2957, in 2021. The document identified risks to the natural environment from commercial finfish net pen aquaculture, including degradation of the benthic environment, biofouling, and ecological impacts to the broader habitat. It noted that "not all risk can be eliminated, even if every best practice outlined in this document is followed"; and

WHEREAS, salmon and steelhead populations across Washington State, and in particular in the Salish Sea, are not recovering. Further, salmon and steelhead are integral parts of the Salish Sea

ecosystem, cultural identity, and Tribal Treaty Rights. In addition, Southern Resident Killer Whales continue to be endangered due to a lack of prey, noise and disturbance, and toxics and other pollution. Commercial finfish net pen aquaculture poses risks to the State, many of which cannot be avoided even with best management practices. It is important to ensure that commercial finfish net pen aquaculture does not contribute added stressors to salmon, steelhead, Southern Resident Killer Whales, or the ecosystem; and

WHEREAS, it has been documented that the proportion of natural-origin Puget Sound Chinook spawners has trended downward across the Evolutionary Significant Unit; and

WHEREAS, the damaging impacts of commercial finfish net pen aquaculture operations to habitat have been documented, including impacts to benthic conditions and sediment quality, macroalgae, and eelgrasses; and

WHEREAS, the cumulative effects of existing stressors, and stressors associated with climate change, may have synergistic impacts on species and ecosystems, and may further inhibit recovery of ESA-listed species.

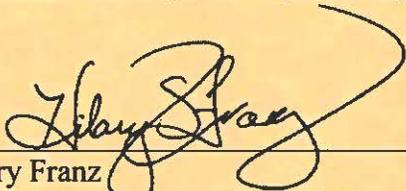
NOW, THEREFORE, I hereby ORDER and DIRECT Department leadership and all staff:

To develop necessary changes to agency rules, policies, and procedures to prohibit commercial finfish net pen aquaculture on state-owned aquatic lands. This order shall not be construed to alter, amend, repeal, interpret or modify Tribal sovereignty, any treaty or reserved rights, or other rights of any Tribe, or to preempt, modify, prejudice, or otherwise affect such rights or claims. Any use or construction of this order to limit, prejudice, or otherwise affect such rights or claims or use of this order as precedent is unauthorized and improper.

Dated this 17th day of November, 2022



STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES



Hilary Franz
Commissioner of Public Lands

Exhibit B



Caution

As of: December 13, 2022 10:10 PM Z

[Fish Northwest v. Rumsey](#)

United States District Court for the Western District of Washington

July 25, 2022, Decided; July 25, 2022, Filed

C21-570 TSZ

Reporter

2022 U.S. Dist. LEXIS 131671 *; 2022 WL 2916627

FISH NORTHWEST, Plaintiff, v. SCOTT RUMSEY¹; CHRIS OLIVER; NATIONAL MARINE FISHERIES SERVICE; GINA RAIMONDO; and UNITED STATES DEPARTMENT OF COMMERCE, Defendants.

Subsequent History: Appeal filed, 08/10/2022

Prior History: [Fish Northwest v. Thom, 2021 U.S. Dist. LEXIS 196480, 2021 WL 4744768 \(W.D. Wash., Oct. 12, 2021\)](#)

Core Terms

salmon, species, fisheries, fish, jeopardize, consultation, harvest, notice, effects, continued existence, hatchery, agency's action, proposed action, authorizations, jeopardy, redressability, habitat, moot, co-managers', conservation, declarations, recreational, alleges, populations, standing to sue, injury in fact, causation, factors, metric, summary judgment motion

Counsel: [*1] For Fish Northwest, a Washington non-profit corporation, Plaintiff: Joel Daniel Matteson, I, LEAD ATTORNEY, BARLEENS ORGANIC OILS LLC, Legal/Executive, FERNDAL, WA; Joseph D. Frawley, SCHEFTER & FRAWLEY, LACEY, WA.

For Barry Thom, in his official capacity as Regional Administrator of the National Marine Fisheries Service, Chris Oliver, in his official capacity as the Assistant Administrator for National Marine Fisheries Service, National Marine Fisheries Service, Gina Raimondo, in her official capacity as Secretary of the United States Department of Commerce, Bureau of Indian Affairs, United States Department of Commerce, Martha

Williams, in her official capacity as Principal Deputy Director of U.S. Fish and Wildlife Services, United States Fish and Wildlife Service, United States Department of Interior, Defendants: Carter Howell, US DEPARTMENT OF JUSTICE, ENVIRONMENT & NATURAL RESOURCES DIVISION, WILDLIFE & MARINE RESOURCES SECTION, C/O US ATTORNEY'S OFFICE, PORTLAND, OR.

Judges: Thomas S. Zilly, United States District Judge.

Opinion by: Thomas S. Zilly

Opinion

ORDER

THIS MATTER comes before the Court on cross-motions for summary judgment, docket nos. 62 and 64, filed by plaintiff Fish Northwest ("FNW") and defendants [*2] National Marine Fisheries Service ("NMFS"), United States Department of Commerce, and various individuals acting in their official capacities (collectively the "Defendants"). Having reviewed all papers filed in support of, and in opposition to, the motions, and having determined that oral argument is unnecessary, the Court DENIES FNW's motion for summary judgment and GRANTS the Defendants' cross-motion.

Background

1. The Endangered Species Act

Congress enacted the Endangered Species Act ("ESA") to conserve endangered species and to protect their critical habitats. See 16 U.S.C. § 1531(b). Under § 7(a)(2) of the ESA, federal agencies (action agencies) must insure that any action they authorize, fund, or carry

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Scott Rumsey, in his official capacity as Acting Regional Administrator for NOAA Fisheries' West Coast Region, is hereby SUBSTITUTED for Barry Thom as a defendant in this action. See Defs.' Mot. for Summ. J. (docket no. 64 at 1).

out "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of designated critical habitat. *Id.* at [§ 1536\(a\)\(2\)](#).

If a proposed federal action "may affect" a listed species or critical habitat, see [50 C.F.R. § 402.14\(a\)](#), then the action agency must engage in formal consultation with a consulting agency. Formal consultation results in the consulting agency's issuance of a Biological Opinion ("BiOp"). *Id.* at [§ 402.14\(h\)](#). A BiOp includes the consulting agency's opinion on whether the action at issue is likely "to jeopardize [*3] the continued existence of a listed species or result in the destruction or adverse modification of critical habitat." *Id.* at [§ 402.14\(h\)\(1\)\(iv\)](#).

[Section 9 of the ESA](#) prohibits any "take" of a listed species. [16 U.S.C. § 1538\(a\)\(1\)\(B\)](#); see also *id.* at [§ 1532\(19\)](#) (defining "take" as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect," or to "attempt to engage in any such conduct"). If a consulting agency determines that a proposed action is not likely to jeopardize the continued existence of a listed species, but the action is reasonably certain to result in a "take" of some listed species, the consulting agency provides an incidental take statement ("ITS") along with the BiOp. [16 U.S.C. § 1536\(b\)\(4\)](#); [50 C.F.R. § 402.14\(g\)\(7\)](#). A "take" that occurs in compliance with an ITS is exempt from liability under [§ 9](#). [16 U.S.C. § 1536\(o\)\(2\)](#); [50 C.F.R. § 402.14\(i\)](#).

2. Factual Background

Beginning in 2001, NMFS received, evaluated, and approved under § 4(d) of the ESA a series of jointly developed resource management plans ("RMPs") from the Washington Department of Fish and Wildlife ("WDFW") and the Puget Sound Treaty Indian Tribes ("PSIT") (collectively the "co-managers"). ARf002756-57. "These RMPs provided the framework within which the tribal and state jurisdictions jointly managed all recreational, commercial, ceremonial, subsistence [*4] and take-home salmon fisheries, and steelhead gillnet fisheries impacting listed Chinook salmon within the greater Puget Sound area." AR2757. The last of the RMPs approved by NMFS expired on April 30, 2014. *Id.*

Since that time, NMFS has consulted under [§ 7 of the ESA](#) on single-year actions by the Bureau of Indian Affairs ("BIA"), the United States Fish and Wildlife Service ("USFWS"), and NMFS. AR2756-58. "These

consultations considered the effects of Puget Sound salmon fisheries on listed species based on the general management framework described in the 2010-2014 RMP as amended to address specific, annual stock management issues." AR2757. In each year from 2014 to 2020, NMFS issued one-year BiOps which considered BIA's, USFWS's, and NMFS's actions related to the planning and authorization of Puget Sound fisheries. *Id.* The BiOps produced through these formal consultations examined the effects of fishing on the listed Puget Sound Chinook salmon Evolutionarily Significant Unit ("ESU"), the Puget Sound steelhead Distinct Population Segment ("DPS"), the Southern Resident killer whale DPS, the Mexico DPS of humpback whales, the Central America DPS of humpback whales, and two listed Puget Sound rockfish [*5] DPSs. AR2756-58. Each year, the BiOps concluded that the proposed fisheries "were not likely to jeopardize the continued existence of" these listed species. AR2757.

On April 26, 2021, BIA initiated formal consultation "on its authority to assist with the development and implementation of the co-managers' 2021-2022 Puget Sound Harvest Plan, and expenditure of funding to support implementation of federal court decisions." *Id.* The request included a joint plan between the co-managers for the 2021-2022 Puget Sound salmon and steelhead fisheries. *Id.* In addition to consultation on BIA's authority to assist with the development of the co-managers' plan, NMFS also considered some of its own actions as well as those carried out by USFWS.² AR2760-61. After examining the effects of these proposed actions, NMFS concluded that the actions were not likely to jeopardize the continued existence of the listed species, including the Puget Sound Chinook salmon ESU, or adversely modify the species' designated critical habitat. AR3046. NMFS issued the 2021 BiOp along with an incidental take statement. AR3047.

On April 28, 2021, FNW filed its initial complaint in this

²In the 2021 BiOp, NMFS considered three actions it proposed to take between May 1, 2021, and May 14, 2022. AR2761. Two of the actions concerned NMFS's role under the Pacific Salmon Treaty ("PST") for Fraser Panel fisheries. *Id.* The third action was associated with its funding of activities by WDFW "for the implementation, management, and monitoring of Puget Sound fisheries, consistent with the PST." *Id.* The Fraser Panel fisheries (sockeye and pink salmon) do not appear to be at issue in this case. See *generally* Third Amended Complaint (docket no. 55).

action, challenging [*6] only the 2020 BiOp because the 2021 BiOp had not yet been issued. See Compl. (docket no. 1). On August 13, 2021, FNW amended its complaint to challenge the 2021 BiOp as well. See Second Amended Complaint ("SAC") (docket no. 39). On October 12, 2021, the Court dismissed FNW's SAC for lack of standing. Order at 11 (docket no. 53). The Court, however, granted FNW leave to file another amended complaint. *Id.* at 19. On November 1, 2021, FNW filed its Third Amended Complaint ("TAC").³ See TAC (docket no. 55).

FNW is a Washington non-profit corporation "committed to the conservation and preservation of Puget Sound salmon and restoring and expanding fishing opportunities for Washington's anglers." TAC at ¶ 8. The organization's members include individuals who "enjoy fishing and care deeply about the conservation and recovery of Puget Sound salmon" and businesses "that rely on salmon fisheries for Puget Sound salmon." *Id.* at ¶ 9. FNW alleges that (i) NMFS violated [ESA § 7\(a\)\(2\)](#) by failing to ensure that its actions in the 2021 BiOp do not jeopardize listed species, and (ii) the 2021 BiOp is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the Administrative [*7] Procedure Act ("APA"). See TAC at ¶¶ 47-50.

Discussion

1. Summary Judgment Standard

The Court shall grant summary judgment if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. See [Fed. R. Civ. P. 56\(a\)](#); see also [Karuk Tribe of Cal. v. U.S. Forest Serv.](#), [681 F.3d 1006, 1017 \(9th Cir. 2012\)](#). An agency's compliance with the ESA is reviewed under the APA. See [Karuk Tribe](#), [681 F.3d at 1017](#). "Judicial review pursuant to the APA is based solely on the administrative record in existence at the time of the agency's decision." [Ctr. for Biological Diversity v. U.S. Env't Prot. Agency](#), [90 F. Supp. 3d 1177, 1197 \(W.D. Wash. 2015\)](#). In a record review case, the Court may direct that summary judgment be granted to either party

based upon its review of the administrative record. See [Karuk Tribe](#), [681 F.3d at 1017](#). A district court, however, may consider evidence outside the record "(1) if admission is necessary to determine whether the agency has considered all relevant factors and has explained its decision, (2) if the agency has relied on documents not in the record, (3) when supplementing the record is necessary to explain technical terms or complex subject matter, or (4) when plaintiffs make a showing of agency bad faith." [Ctr. for Biological Diversity](#), [90 F. Supp. 3d at 1197](#) (quoting [Lands Council v. Powell](#), [395 F.3d 1019, 1030 \(9th Cir. 2005\)](#)). These exceptions, although "widely accepted," must be "narrowly construed and applied." [Lands Council](#), [395 F.3d at 1030](#).

"Under the APA, a court may set aside an agency action if the court determines [*8] that the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id.* (quoting [5 U.S.C. § 706\(2\)\(A\)](#)). Courts will "reverse a decision as arbitrary and capricious only if the agency relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." [N. Plains Res. Council, Inc. v. Surface Transp. Bd.](#), [668 F.3d 1067, 1074-75 \(9th Cir. 2011\)](#) (citation omitted). The Court's "review of agency actions, including the promulgation of a BiOp, is narrow." See [Alaska v. Lubchenko](#), [723 F.3d 1043, 1052 \(9th Cir. 2013\)](#). The Court will typically accord "significant deference to an agency's decisions that require a 'high level of technical expertise.'" See [Ctr. for Biological Diversity v. Bernhardt](#), [982 F.3d 723, 740 \(9th Cir. 2020\)](#) (quoting [Kleppe v. Sierra Club](#), [427 U.S. 390, 412, 96 S. Ct. 2718, 49 L. Ed. 2d 576 \(1976\)](#)). The Court will be at its most deferential "when reviewing scientific judgments and technical analyses within the agency's expertise." See [Lands Council v. McNair](#), [629 F.3d 1070, 1074 \(9th Cir. 2010\)](#).

2. Article III Standing

As an initial matter, the Defendants contend that FNW has failed to set forth facts demonstrating its Article III standing. Three elements are required to establish the "irreducible constitutional minimum of standing:"

First, the plaintiff must have suffered an "injury [*9] in fact"—an invasion of a legally protected interest

³On November 1, 2021, FNW filed its TAC at docket no. 54. After realizing that it had filed an incorrect version of the document, FNW filed a praecipe on November 3, 2021, docket no. 55, which contains the operative version of its TAC. See Praecipe (docket no. 55).

which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (internal citations and quotations omitted). As the party invoking federal jurisdiction, FNW bears the burden of establishing these elements. See *id.* at 561. "[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." *Id.* Thus, at the summary judgment stage, FNW must set forth, by affidavit or other evidence, specific facts to support its standing. See *id.* In this case, FNW has submitted three declarations which purportedly establish its standing to bring its claims.⁴

An organization can bring suit in [*10] federal court

⁴ FNW filed two of the three declarations in response to the Defendants' motion to dismiss, docket no. 46. Specifically, FNW submitted declarations from members Barry Allyn and Art Tachell, docket nos. 48 and 49, in response to the prior motion. Because the Defendants raised a facial challenge to the Court's subject matter jurisdiction, the Court declined to consider the declarations at that time. See Order at 10 (docket no. 53); see also *Ctr. for Biological Diversity v. Bernhardt*, No. 19-cv-05206, 2020 U.S. Dist. LEXIS 129941, 2020 WL 4188091, at *5 n.4 (N.D. Cal. May 18, 2020) (declining to review similar declarations in the context of a facial challenge). But the procedural posture of this case has changed, and the Court is now faced with cross-motions for summary judgment. The Court, therefore, will consider the Allyn and Tachell declarations for the issue of standing. FNW has also submitted a declaration from member Curt Smitch that addresses standing. See Smitch Decl. (docket no. 67). The Defendants' move to strike docket no. 67 and contend that FNW improperly submitted the declaration for the first time in support of its reply brief. FNW, however, properly submitted the declaration in support of its combined response and reply brief after the Defendants again challenged FNW's standing to bring its claims. The Court DENIES the Defendants' motion to strike the Declaration of Curt Smitch, docket no. 67, and will consider the declaration only when evaluating FNW's standing.

under two theories of standing: by suing on (i) its own behalf, or (ii) on behalf of its members. FNW alleges that it has standing to bring its claims on its own behalf and on behalf of its members. TAC at ¶¶ 25-26. "The same three-part analysis used to determine whether an individual has standing (injury in fact, causation, and redressability) is used to determine whether an organization has standing to sue on its own behalf." *Ctr. for Env'tl. Sci. Accuracy & Reliability v. Nat'l Park Serv.*, No. 14-cv-02063, 2016 U.S. Dist. LEXIS 115940, 2016 WL 4524758, at *19 (E.D. Cal. Aug. 29, 2016) (citing *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)). To establish that it suffered an injury in fact, FNW must demonstrate "both a diversion of its resources and a frustration of its mission." See *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002). FNW alleges that it has diverted resources in the "form of the time and effort of its board of directors and in expenditures of money to attempt to influence [the Defendants'] fishery policies," and that its "purpose of conservation and preservation of Puget Sound salmon, along with expanding fishing opportunities, have been frustrated by [the Defendants'] actions." TAC at ¶ 25. These allegations in its TAC are insufficient to establish FNW's standing at this phase of the proceeding. The declarations FNW has submitted fail to demonstrate, or even address, a diversion of resources or a frustration [*11] of the organization's mission. See Allyn Decl. (docket no. 48); Tachell Decl. (docket no. 49); Smitch Decl. (docket no. 67). Accordingly, FNW has failed to present, by declaration or other evidence, specific facts necessary to establish standing to sue on its own behalf.

The Court, however, concludes that FNW has adequately demonstrated standing to sue on behalf of its members. An organization has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977). The Court concludes that FNW meets the last two criteria,⁵ and

⁵ FNW is a non-profit organization that was "founded in 2005 to promote recreational fishing opportunity and salmon conservation." Smitch Decl. at ¶ 3. The interests at stake in this action are germane to the FNW's purpose and the

turns to whether FNW has demonstrated that its members would otherwise have standing to sue in their own right.

a. Injury in Fact

In environmental cases, the injury in fact requirement "is satisfied if an individual adequately shows that she has an aesthetic or recreational interest in a particular place, or animal, or plant species and that that interest is impaired by a defendant's conduct." [*Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 \(9th Cir. 2000\)](#). FNW has submitted [*12] declarations from three of its members describing alleged recreational injuries. Specifically, Barry Allyn was raised "along the North Fork of the Stillaguamish River and developed a passion for fishing and the outdoors beginning at age six." Allyn Decl. at ¶ 2. Allyn "care[s] deeply about habitat and salmon conservation" and started salmon fishing in Puget Sound as a young adult. *Id.* at ¶¶ 3 & 7. Allyn has experienced "reduced opportunity" for recreational fishing in recent years. *Id.* at ¶ 5. Similarly, Art Tachell has been fishing recreationally in Puget Sound for 60 years. Tachell Decl. at ¶ 2. Tachell also "care[s] deeply about Puget Sound salmon . . . and the conservation and recovery of Puget Sound salmon" and has been involved in "many conservation projects aimed at" salmon recovery. *Id.* at ¶¶ 2 & 5. Finally, Curt Smitch previously served as the president of FNW. Smitch Decl. at ¶ 2. Smitch fishes recreationally in Puget Sound and has "spent years working on fishery issues . . . to reform fisheries to be more selective and enable the recovery of wild salmonids in Puget Sound and Washington." *Id.* Smitch is "regularly" in contact with members of the Washington legislature "to [*13] advocate for fisheries improvements and recovery." Smitch believes that "[i]f Puget Sound Chinook were recovered, there would be far more opportunity for fisheries (both tribal and non-tribal)." *Id.* at ¶ 4.

The Defendants argue that FNW's members are concerned primarily with "reallocation of the treaty and non-treaty salmon harvest," see Defs.' Mot. for Summ. J. (docket no. 64 at 16), and provide no clear articulation as to how their interests are harmed by the 2021 BiOp. The Court recognizes that none of the proffered declarations specifically reference the 2021 BiOp. Although reference to the challenged BiOp would provide further support for the members' alleged injuries, the members need not do so to demonstrate

that they have suffered the requisite recreational injuries. The Defendants' argument ignores that FNW brings this action for NMFS's alleged failure to ensure no jeopardy to Puget Sound salmon, see TAC at ¶ 16, which purportedly results in the declining salmon populations that Allyn, Tachell, and Smitch hope to recover. The Court concludes that the declarations of Allyn, Tachell, and Smitch, docket nos. 48, 49, and 67, provide specific facts concerning the members' imminent [*14] and concrete recreational injuries sufficient to establish injury in fact.

b. Causation and Redressability

The Court similarly concludes that FNW has sufficiently established causation and redressability. "The 'fairly traceable' and 'redressability' components for standing overlap and are 'two facets of a single causation requirement.'" [*Ctr. for Biological Diversity*, 90 F. Supp. 3d at 1189](#) (citing [*Wash. Env't Council v. Bellon*, 732 F.3d 1131, 1146 \(9th Cir. 2013\)](#)). "The two are distinct insofar as causality examines the connection between the alleged misconduct and injury, whereas redressability analyzes the connection between the alleged injury and requested judicial relief." *Id.*

The causation inquiry focuses on "whether the alleged injury can be traced to the defendant's challenged conduct, rather than to that of some other actor not before the court." [*Ecological Rights Found.*, 230 F.3d at 1152](#). FNW must show that its members' alleged injuries are "causally linked" to the Defendants' alleged misconduct. See [*Wash. Env't Council*, 732 F.3d at 1141](#). The causal link "cannot be too speculative or rely on conjecture about the behavior of other parties, but need not be so airtight at this stage of litigation as to demonstrate that the plaintiffs would succeed on the merits." [*Ocean Advocs. v. United States Army Corps of Eng'rs*, 402 F.3d 846, 860 \(9th Cir. 2005\)](#) (quoting [*Ecological Rights Found.*, 230 F.3d at 1152](#)). To meet the redressability requirement, FNW must demonstrate that "it is likely, even if not necessarily [*15] certain, that [its] injury can be redressed by a favorable decision." See [*Ctr. for Biological Diversity*, 90 F. Supp. 3d at 1189](#) (citing [*Bonnichsen v. United States*, 367 F.3d 864, 873 \(9th Cir. 2004\)](#)).

The Defendants contend that FNW's members are concerned primarily with their share of the Puget Sound salmon harvest and fail to explain how FNW's requested judicial relief will lead to increased recreational harvest. The Defendants again ignore that FNW brings this

action for the agency's alleged failure to ensure no jeopardy to Puget Sound salmon. See TAC at ¶ 16. NMFS concluded that the co-managers' 2021-2022 salmon fisheries were not likely to jeopardize the continued existence of the Puget Sound Chinook salmon ESU at issue in this case. AR3046-47. Having concluded that the proposed actions would not jeopardize the continued existence of the species, NMFS issued an ITS. AR3047. As discussed above, any "take" that occurs in compliance with an ITS is exempt from liability under [§ 9 of the ESA](#), [16 U.S.C. § 1536\(o\)\(2\)](#); [50 C.F.R. § 402.14\(j\)](#). Although NMFS is not involved in the allocation of the Chinook salmon harvest among state and tribal authorities, and does not take any of the listed salmon for itself, it is involved in the legal framework that permits state and tribal authorities to conduct certain salmon fisheries in compliance with the ESA. Because [*16] NMFS's finding of "no jeopardy" purportedly harms the members' conservation interests in the listed salmon, the Court concludes that FNW has sufficiently established a "causal link" between the members' recreational injury and NMFS's agency action.

FNW has also demonstrated that its members' alleged injuries could likely be redressed by a favorable decision. For reasons related to mootness, discussed below, FNW's requested relief would be limited in the event it received a favorable decision. The Court, for example, could not set aside a BiOp that has already expired. A favorable decision, however, could result in NMFS's consideration of the factors FNW alleges it routinely ignores when consulting on agency action year after year. Because FNW's members would otherwise have standing to sue in their own right, the Court concludes that FNW has standing to bring its claims on their behalf.

3. Mootness

Next, the Defendants contend that FNW's challenge to the 2021 BiOp is constitutionally moot; the 2021 BiOp expired on May 14, 2022, before briefing in this matter concluded. AR2735 ("This biological opinion and [essential fish habitat] consultation expire on May 14, 2022."). "A claim is moot [*17] if it 'has lost its character as a live controversy.'" [All. for the Wild Rockies v. Savage](#), [897 F.3d 1025, 1031 \(9th Cir. 2018\)](#) (quoting [Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly](#), [590 F.3d 725, 727 \(9th Cir. 2009\)](#)). FNW implicitly acknowledges that the case is moot because it argues only that its challenge falls under the "capable of

repetition, yet evading review" exception to the mootness doctrine. "The exception applies only where '(1) the duration of the challenged action is too short to allow full litigation before it ceases, and (2) there is a reasonable expectation that the plaintiffs will be subjected to it again.'" [Biodiversity Legal Found. v. Badgley](#), [309 F.3d 1166, 1173 \(9th Cir. 2002\)](#) (quoting [Greenpeace Action v. Franklin](#), [14 F.3d 1324, 1329 \(9th Cir. 1993\)](#)). For example, in [Greenpeace Action](#), the Ninth Circuit held that a fishing regulation in effect for less than one year satisfied the durational component. [14 F.3d at 1329-30](#). Although the Ninth Circuit has consistently held that challenges to superseded BiOps are moot and do not evade review, the new BiOps at issue in those cases often span more than one year, leaving plaintiffs with sufficient opportunity to challenge the agency action.⁶ Because the 2021 BiOp at issue in this case was in effect for only one year, the duration of the BiOp was too short to allow for full litigation before its expiration. Although the Defendants have made a strong showing that FNW's challenge to the 2021 BiOp is moot, the Court concludes that the durational [*18] element of the "capable of repetition, yet evading review" exception is satisfied.⁷

⁶ See, e.g., [Am. Rivers v. Nat'l Marine Fisheries Serv.](#), [126 F.3d 1118, 1124 \(9th Cir. 1997\)](#) ("[Plaintiff's] challenge to the 1994-1998 Biological Opinion will not evade review because the 1995 Biological Opinion will not expire until 1998."); [Idaho Dep't of Fish & Game v. Nat'l Marine Fisheries Serv.](#), [56 F.3d 1071, 1075 \(9th Cir. 1995\)](#) ("[T]he 1993 [BiOp] was not followed by a [BiOp] of similarly short duration; it was followed by the 1994-1998 [BiOp]."); [Grand Canyon Tr. v. Bureau of Reclamation](#), [691 F.3d 1008, 1017 \(9th Cir. 2012\)](#) (holding that a plaintiff's challenge to a 2009 BiOp and 2010 ITS was moot because a 2011 BiOp and 2011 ITS, which were issued after the plaintiff filed its notice of appeal, superseded the earlier documents and purported to "cover the operation of the Dam through 2020").

⁷ The prudent administration of justice supports the Court's consideration of the merits in this case. Further, FNW's alleged delay in moving for summary judgment did not foreclose the possibility of judicial review before the 2021 BiOp expired. As the Ninth Circuit has explained, "evading review" means that the "underlying action is almost certain to run its course before either [the Ninth Circuit] or the Supreme Court can give the case full consideration." [Alaska Ctr. for Env't v. U.S. Forest Serv.](#), [189 F.3d 851, 855 \(9th Cir. 1999\)](#) (citation omitted); see also [Biodiversity Legal Found.](#), [309 F.3d at 1173-74](#) ("In sum, an issue that 'evades review' is one which, in its regular course, resolves itself without allowing sufficient time for appellate review."). Although FNW could have moved for summary judgment a few months earlier than it did,

The second element of the exception "requires a probability that the challenged action will affect [FNW] in the future." See *Biodiversity Legal Found.*, 309 F.3d at 1174. The Court concludes that this element is also satisfied. Every year since 2014, NMFS has issued one-year BiOps that examine the effects of fishing on the listed Puget Sound Chinook salmon ESU.⁸ AR2756-58. NMFS is expected to issue another BiOp of equally short duration "that will likely cover the same agency actions in 2022-23," see Defs.' Mot. for Summ. J. (docket no. 64 at 18), and the procedural history of this case demonstrates that the challenged action will likely affect FNW in the future. When FNW commenced this action on April 28, 2021, it challenged only the 2020 BiOp as the 2021 BiOp was not issued until May 2021. See Compl. (docket no. 1). On August 13, 2021, FNW filed its SAC challenging the same analyses and conclusions in both the 2020 and 2021 BiOps.⁹ FNW can be reasonably expected to again litigate this matter if NMFS issues a similar BiOp for 2022-2023, as the agency has done every year since 2014. Thus, the Court concludes that it has jurisdiction [*19] to review this matter because FNW has satisfied both elements of the "capable of repetition, yet evading review" exception to the mootness doctrine.

4. Merits of FNW's Challenge to the 2021 Biological Opinion

a. First Cause of Action Under [ESA § 7\(a\)\(2\)](#)

The Defendants assert that the Court cannot adjudicate FNW's claim against NMFS under [§ 7\(a\)\(2\) of the ESA](#) because FNW failed to provide the required sixty-day notice that NMFS's actions in the 2021 BiOp allegedly violate the ESA. A plaintiff may not commence an action under the citizen-suit provision of the ESA without first providing written sixty-day notice of any alleged violations. [16 U.S.C. § 1540\(g\)\(2\)\(A\)](#). The notice is a

appellate review in this action would not have been possible before the BiOp expired.

⁸ In 2016, NMFS issued three BiOps related to the 2016-2017 Puget Sound fisheries. AR2757.

⁹ The Court previously dismissed FNW's challenge to the 2020 BiOp as moot. See Order at 11-13 (docket no. 53). The Court concluded that FNW's challenge to the 2020 BiOp did not evade review because FNW challenged the same analyses and conclusions in the 2021 BiOp that it sought to challenge in the 2020 opinion. *Id.*

jurisdictional requirement for commencing an action under the ESA. [Sw. Ctr. for Biological Diversity v. Bureau of Reclamation](#), 143 F.3d 515, 520 (9th Cir. 1998) ("A failure to strictly comply with the notice requirement acts as an absolute bar to bringing suit under the ESA."). The notice must provide sufficient information to allow an agency to identify the alleged violations and give the agency an opportunity to correct the violations, [id. at 522](#), but need not "list every specific aspect or detail of every alleged violation," [Klamath-Siskiyou Wildlands Ctr. v. MacWhorter](#), 797 F.3d 645, 651 (9th Cir. 2015) (internal quotations and citations omitted).

To be clear, the sixty-day notice requirement does not apply to FNW's claim that NMFS's 2021 [*20] BiOp is arbitrary and capricious under the APA. In *American Rivers v. National Marine Fisheries Service*, the Ninth Circuit held that the issuance of a BiOp is a final agency action, properly challenged under the APA as opposed to the ESA's citizen suit provision. [126 F.3d at 1124-25](#). An alleged failure to comply with the sixty-day notice requirement will not deprive the court of jurisdiction over FNW's claim under the APA.

The notice requirement, however, applies to FNW's claim that NMFS violated [§ 7\(a\)\(2\) of the ESA](#) by failing to ensure that its actions identified in the 2021 BiOp do not jeopardize listed species. On January 29, 2021, FNW provided NMFS notice of its intent to sue under the ESA. See Notice (docket no. 39 at 19-49). The Defendants contend that FNW failed to provide notice that NMFS's own actions in the 2021 BiOp (regulating the Fraser Panel sockeye and pink salmon fisheries and providing funding to WDFW for activities such as fishery monitoring and sampling) violate the ESA. Indeed, FNW initially commenced this action to challenge the 2020 BiOp and amended its complaint to also challenge the 2021 BiOp after NMFS issued the opinion in May 2021. Having reviewed the notice, the Court agrees that FNW failed to [*21] address these actions.

Moreover, in its TAC, FNW does not allege that NMFS's own actions in the 2021 BiOp related to the Fraser Panel fisheries and funding for fishery monitoring violate [§ 7\(a\)\(2\) of the ESA](#), and FNW did not specifically address these actions in its motion for summary judgment. FNW's arguments focus on the 2021 BiOp as it relates to NMFS's conclusion that the co-managers' 2021-2022 fisheries are not likely to jeopardize the continued existence of the Puget Sound Chinook salmon ESU. As discussed above, NMFS considered the co-managers' fisheries in its role as a consulting

agency after BIA (the action agency) requested formal consultation "on its authority to assist with the development and implementation of the co-managers' 2021-2022 Puget Sound Harvest Plan, and expenditure of funding to support implementation of federal court decisions." See AR2757. To the extent it is trying to do so, FNW cannot claim that NMFS violated the ESA by issuing the 2021 BiOp in its consultation role. See [Bennett v. Spear, 520 U.S. 154, 174, 117 S. Ct. 1154, 137 L. Ed. 2d 281 \(1997\)](#) ([Section 1540\(g\)\(1\)\(A\)](#)'s "reference to any 'violation' of the ESA" does not include "any errors on the part of the Secretary in administering the ESA.").

Therefore, FNW's claim that NMFS violated [§ 7\(a\)\(2\) of the ESA](#) by failing to ensure that its [*22] actions identified in the 2021 BiOp do not jeopardize listed species is DISMISSED for lack of notice.

b. Second Cause of Action Under the APA

Under [§ 7\(a\)\(2\) of the ESA](#), NMFS evaluates whether proposed actions are "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species." [16 U.S.C. § 1536\(a\)\(2\)](#) (emphasis added). The phrase "jeopardize the continued existence of" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." [50 C.F.R. § 402.02](#). According to the Ninth Circuit, to "'jeopardize' . . . means to 'expose to loss or injury' or to 'imperil.' Either of these implies causation, and thus some new risk of harm. . . . Agency action can only 'jeopardize' a species' existence if that agency action causes some deterioration in the species' pre-action condition." [Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 524 F.3d 917, 929-30 \(9th Cir. 2008\)](#). Therefore, when reviewing FNW's challenge to the 2021 BiOp under the APA, the Court must determine if NMFS considered whether the proposed actions at issue reduce appreciably [*23] the likelihood of both survival and recovery of listed salmon.¹⁰

¹⁰ The Defendants' motion to strike the other declaration of Curt Smitch, docket no. 63, is GRANTED. In addition to the declaration regarding standing, docket no. 67, addressed above, FNW also submitted a declaration from Smitch in support of its claims under the APA. In this case, all factors

Under the APA, FNW makes three basic challenges to the 2021 BiOp, arguing that the 2021 BiOp fails to ensure no jeopardy because it: (i) "authorizes the harvest of listed salmon at a rate that exceeds the maximum rate of harvest that can occur without jeopardizing the existence of the listed species"; (ii) "fails to coordinate harvest with hatchery genetic management"; and (iii) "fails to account for the increased risk of single-year fisheries authorizations." Pl.'s Mot. for Summ. J. (docket no. 62 at 3). All three arguments lack merit.

i. Rebuilding Exploitation Rates

FNW argues that NMFS failed to ensure no jeopardy to Puget Sound Chinook because the 2021 BiOp allegedly authorized harvest that exceeds the rebuilding exploitation rate ("RER") NMFS "determined as the maximum allowable rate without producing jeopardy." *Id.* (docket no. 62 at 27). FNW's contention conflates species and population levels. NMFS is required to make a jeopardy determination at the *species level*, rather than the individual population level. [16 U.S.C. § 1532\(16\)](#) ("The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population [*24] segment of any species of vertebrate fish or wildlife which interbreeds when mature."); see also [Ctr. for Biological Diversity v. Salazar, 695 F.3d 893, 913 \(9th Cir. 2012\)](#) ([T]he "standard under [Section 7\(a\)\(2\) of the ESA](#) is whether the agency action would 'jeopardize the continued existence' of the species as a whole.").

To determine whether the proposed harvest actions would appreciably reduce the survival and recovery of

weigh in favor of striking the declaration, which only discusses the Puget Sound Salmon Management Plan ("PSSMP") between state and tribal authorities. See [Lands Council, 395 F.3d at 1030](#). Even if the Court considered the declaration, it would still conclude that FNW's challenge to the 2021 BiOp under the APA lacks merit. The declaration argues generally that compliance with the PSSMP would improve inequities in the salmon harvest between state and tribal authorities and disincentivize the overharvest of listed salmon. See Smith Decl. at ¶¶ 14-15 (docket no. 63). The declaration does not support that NMFS "relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." See [N. Plains Res. Council, 668 F.3d at 1074-75](#).

the Puget Sound Chinook salmon ESU, which comprises 22 populations spread across five different regions, NMFS considered population-specific exploitation rates, or RERs, that if met would provide a "high probability of attaining escapement levels which will maximize the natural production for each population (the rebuilding escapement threshold) and a low probability of escapements falling below levels at which the population may become unstable (the critical escapement threshold) due to effects of fisheries."¹¹ AR2911 & AR3019. "When the exploitation rate from a proposed fishery is likely to be at or below the RER, that results in reasonable confidence that the likely effects of the fisheries pose a low risk to that population." AR2912. As NMFS explains:

Comparison of the RERs to the results of the proposed action establishes an initial map of risk across the populations [*25] in the Puget Sound Chinook salmon ESU. However, it is not the only consideration in our overall jeopardy assessment, under the ESA. Our analysis also accounts for many other variables, both at the population and the region and ESU levels. That information, together with the rest of the information described below informs NMFS's determination as to whether the proposed action would jeopardize the ESU. As detailed in the sections below, the RER analysis together with these additional elements can provide meaningful context for the potential effects to the specific populations. Collectively it informs NMFS's determination as to whether the proposed action would jeopardize the ESU, as well as the recovery of the ESU, as a whole. The jeopardy determination is made on the ESU, not based on effects to an individual population.

Id. RERs, however, are only one metric that NMFS uses in its analysis. *Id.* "NMFS uses a variety of quantitative metrics (e.g., RERs, critical and rebuilding thresholds, measures of growth rate and productivity) and qualitative considerations . . . in its assessment of the proposed actions." AR3019. "None of these factors in

¹¹ "The rebuilding threshold is defined as the escapement that will achieve Maximum Sustainable Yield ("MSY") under current environmental and habitat conditions." AR2780. "[T]he critical escapement threshold is defined as a point below which: (1) compensatory processes are likely to reduce the population below replacement; (2) the population is at risk from inbreeding depression or fixation of deleterious mutations; or (3) productivity variation due to demographic stochasticity becomes a substantial source of risk." AR2912.

isolation are dispositive or dictate a particular [*26] conclusion. They are all factors that inform NMFS's conclusions with respect to the ESU and are considered comprehensively." *Id.* The 2021 BiOp shows that NMFS considered many variables and did not use RERs, which are *population*, rather than *species*, related statistics, as a single jeopardy threshold for the purposes of its analysis under the ESA. See AR2912.

Despite FNW's argument to the contrary, NMFS thoroughly considered why exceedances of RERs for certain populations are not likely to jeopardize the continued existence of the Puget Sound Chinook ESU. See, e.g., AR3018-26. For example, FNW alleges that the Duwamish-Green River Chinook population are harvested at a rate that exceeds the RER by 221%.¹² Pl.'s Mot. for Summ. J. (docket no. 62 at 22). But NMFS specifically addressed the risks associated with exceeding the RER. As the 2021 BiOp explains:

The risks associated with exceeding the RER in the 2021 fishing year should not impede achievement of viability by the Nisqually, Puyallup or Green, Sammamish, and Cedar River populations. . . . Natural-origin returns for the Green River have substantially increased in recent years and the population will be managed in 2021 to ensure that [*27] the gains are preserved, maintaining the abundance with additional opportunities to strengthen the trend. Growth rates for natural-origin escapement are consistently higher than growth rates for natural origin recruitment in the Green River. This indicates that sufficient fish are escaping the fisheries to maintain or increase the number of spawners from the parent generation, providing some stabilizing influence for abundance and reducing demographic risks.

AR3021.¹³ Based on its review of the available evidence, NMFS concluded that the proposed harvest actions would not reduce appreciably the likelihood of

¹² How FNW reached this figure is unclear. The 2021 BiOp lists the estimated exploitation rate for the Duwamish/Green River Chinook population for ocean and Puget Sound at 54.7%. See Table 23, AR2919.

¹³ See also AR2932 (explaining that anticipated escapement in 2021 for the Duwamish-Green River Chinook population is just below the rebuilding threshold and well above the critical threshold, and that anticipated total returns in 2021 are expected to be consistent with 2016, 2017, and 2018, which all resulted in higher than expected returns).

both the survival and recovery of the Puget Sound Chinook ESU. See [50 C.F.R. § 402.02](#). FNW's argument that NMFS misused and/or misapplied RERs is not supported by the record.

ii. Hatchery and Natural Origin Salmon

FNW also argues that NMFS's "analysis fails to differentiate between hatchery and natural origin salmon, and NMFS treats the two as interchangeable." Pl.'s Mot. for Summ. J. (docket no. 62 at 27). FNW alleges that NMFS "ignores any distinction between hatchery fish and natural origin fish" to support its conclusion that long-term abundance trends and recruitment of natural origin [*28] salmon are positive. *Id.* (docket no. 62 at 18); see also AR2783. The Defendants label this argument as "mystifying," and explain that NMFS includes "both natural origin spawners and hatchery origin fish spawning naturally to assess the total number of spawners passed through the fishery to the spawning ground" when it evaluates the recruits-to-spawners ("R/S") metric. AR2784 (Table 6 n.1). The R/S metric is used to estimate long-term trends in a population's status by evaluating how many juveniles (recruits) are produced from an adult (spawner). See *id.* As the Defendants explain, "[h]atchery-origin fish that spawn naturally will produce juveniles that are not raised in a hatchery, i.e., naturally, and thus these recruitment estimates are included in the dataset for this specific metric." Defs.' Mot. for Summ. J. (docket no. 64 at 26). FNW argues that "settled science" indicates "hatchery fish are less effective at spawning in the wild" when compared to natural origin fish, see Pl.'s Mot. for Summ. J. (docket no. 62 at 19) (citing AR49128), and contends that NMFS provided no analysis of the risk of considering hatchery and natural origin salmon as interchangeable.

The portion of the [*29] record cited by FNW in support of this argument merely shows how NMFS calculated a particular metric. See AR2784. Further, NMFS considered the effects of hatchery fish in detail in the 2021 BiOp. See, e.g., AR2870-78. NMFS recognized that hatcheries might provide benefits to the status of Puget Sound Chinook and steelhead by "reducing demographic risks and preserving genetic traits for populations at low abundance in degraded habitats," and that hatchery-origin fish can increase harvest opportunity. AR2870. NMFS also considered the risks associated with hatchery-origin fish, such as their "genetic, ecological, or harvest effects." *Id.* FNW's arguments in its motion for summary judgment are

nothing more than arguments, and the record reflects a careful analysis of the effects of hatchery-origin fish on the Puget Sound Chinook salmon ESU. FNW's argument that NMFS failed to differentiate between hatchery and natural origin salmon is not supported by the record. Like its first argument, FNW's second argument also lacks merit.

iii. Single-Year-Fishery Authorizations

Finally, FNW alleges that NMFS failed to consider the risk of single-year-fishery authorizations in the 2021 BiOp. Pl.'s Mot. [*30] for Summ. J. (docket no. 62 at 28). According to FNW, the 2021 BiOp does not contain any "mitigation, explanation, or analysis" regarding this issue. *Id.* FNW is mistaken. The 2021 BiOp does "address specific, annual stock management issues," AR2757, and considers the long-term effects of single-year authorizations, see AR3026. FNW has not demonstrated that NMFS ignored the potential risk of yearly fishery authorizations.

Throughout its motion, FNW disputes NMFS's scientific conclusions but it has not demonstrated that NMFS ignored particular issues in its analysis. FNW has not shown that NMFS "relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." [N. Plains Res. Council, 668 F.3d at 1074-75](#). As the record reflects, NMFS provided reasonable explanations supporting its conclusions in this highly technical and complex area. Without more, the Court will not second-guess NMFS's scientific judgment that the proposed actions it considered in the 2021 BiOp were unlikely to reduce [*31] appreciably the likelihood of both the survival and recovery of the listed species it analyzed in the opinion. AR3026. NMFS's analysis is unquestionably within the agency's expertise. See [Lands Council, 629 F.3d at 1074](#). FNW has failed demonstrate that the 2021 BiOp is arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with law.

Conclusion

For the foregoing reasons, the Court ORDERS:

(1) Pursuant to [Rule 25\(d\)](#), Scott Rumsey, in his official

capacity as Acting Regional Administrator for NOAA Fisheries' West Coast Region, is hereby SUBSTITUTED for Barry Thom as a defendant in this action, and the Clerk is DIRECTED to amend the caption accordingly;

(2) The Defendants' motion, docket no. 64 at 10 n.5, to strike the Declaration of Curt Smitch, docket no. 63, is GRANTED, and their motion, docket no. 69 at 6 n.2, to strike the Second Declaration of Curt Smitch, docket no. 67, is DENIED;

(3) The Defendants' motion for summary judgment, docket no. 64, is GRANTED. FNW's first cause of action under [§ 7\(a\)\(2\) of the ESA](#) is DISMISSED for lack of notice and its second cause of action under the APA is DISMISSED with prejudice;

(4) FNW's motion for summary judgment, docket no. 62, is DENIED; and

(5) The Clerk is DIRECTED to enter judgment **[*32]** consistent with this Order, to send a copy of the Judgment and this Order to all counsel of record, and to CLOSE this case.

IT IS SO ORDERED.

Dated this 25th day of July, 2022.

/s/ Thomas S. Zilly

Thomas S. Zilly

United States District Judge

Exhibit C



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

December 21, 2021

Sean Carlson, District Manager
Washington Department of Natural Resources
Aquatic Resources Division, Orca-Straits District
5310 Eaglemount Rd.
Chimacum, WA 98325

Re: Application for Lease – Port Angeles Harbor

Dear Sean Carlson:

Salish Fish, LLC is a partnership between the Jamestown S'Klallam Tribe and Cooke Aquaculture. Salish Fish is hereby formally applying for a DNR sub-tidal aquatic land lease for the site located in the Port Angeles Harbor. The attached JARPA, Attachment E, and Site Plans detail the project extensively. Salish Fish is requesting authorization for a new aquatic land lease for the purposes of installing and operating a state-of-the-art marine sea cage fish rearing facility. The facility would be located within the area of previous finfish aquaculture facilities that had historically operated in this area since the early 1980's.

Salish Fish proposes to install a newly constructed engineered floating fish pen system and to sustainably grow native fish species in the pens for the purposes of creating locally grown seafood products and generation of the associated economic business activity that comes from aquatic farming.

If you have any questions or need any additional information regarding this application, please contact Jim Parsons at jparsons@jamestowntribe.org. The Jamestown S'Klallam Tribe looks forward to working with you during this process.

Sincerely,

W. Ron Allen
Tribal Chairman/CEO

Cc: Jim Parsons, CEO Salish Fish, LLC



WASHINGTON STATE

Joint Aquatic Resources Permit Application (JARPA) Form^{1,2} [\[help\]](#)

USE BLACK OR BLUE INK TO ENTER ANSWERS IN THE WHITE SPACES BELOW.



US Army Corps of Engineers
Seattle District

AGENCY USE ONLY

Date received: _____

Agency reference #: _____

Tax Parcel #(s): _____

Part 1–Project Identification

1. Project Name (A name for your project that you create. Examples: Smith’s Dock or Seabrook Lane Development) [\[help\]](#)

Salish Fish, LLC- WDNR Aquatic Use Authorization to Operate Port Angeles Marine Aquaculture Site

Part 2–Applicant

The person and/or organization responsible for the project. [\[help\]](#)

2a. Name (Last, First, Middle)			
Allen, W. Ron			
2b. Organization (If applicable)			
Salish Fish, LLC			
2c. Mailing Address (Street or PO Box)			
W. Ron Allen Jamestown S’Klallam Tribal Council Office 1033 Old Blyn Hwy			
2d. City, State, Zip			
Sequim, WA 98382			
2e. Phone (1)	2f. Phone (2)	2g. Fax	2h. E-mail
(360) 681-4621			Rallen@JamestownTribe.org

¹Additional forms may be required for the following permits:

- If your project may qualify for Department of the Army authorization through a Regional General Permit (RGP), contact the U.S. Army Corps of Engineers for application information (206) 764-3495.
- Not all cities and counties accept the JARPA for their local Shoreline permits. If you need a Shoreline permit, contact the appropriate city or county government to make sure they accept the JARPA.

²To access an online JARPA form with [\[help\]](#) screens, go to

http://www.epermitting.wa.gov/site/alias_resourcecenter/jarpa_jarpa_form/9984/jarpa_form.aspx.

For other help, contact the Governor’s Office for Regulatory Innovation and Assistance at (800) 917-0043 or help@oria.wa.gov.

Part 3—Authorized Agent or Contact

Person authorized to represent the applicant about the project. (Note: Authorized agent(s) must sign 11b of this application.) [\[help\]](#)

3a. Name (Last, First, Middle)			
Parsons, Jim			
3b. Organization (If applicable)			
Salish Fish, LLC			
3c. Mailing Address (Street or PO Box)			
Jamestown S’Klallam Tribal Council Office 1033 Old Blyn Hwy			
3d. City, State, Zip			
Sequim, WA 98382			
3e. Phone (1)	3f. Phone (2)	3g. Fax	3h. E-mail
(253) 261-8751			jparsons@jamestowntribe.org

Part 4—Property Owner(s)

Contact information for people or organizations owning the property(ies) where the project will occur. Consider both **upland and aquatic** ownership because the upland owners may not own the adjacent aquatic land. [\[help\]](#)

- Same as applicant. (Skip to Part 5.)
- Repair or maintenance activities on existing rights-of-way or easements. (Skip to Part 5.)
- There are multiple upland property owners. Complete the section below and fill out [JARPA Attachment A](#) for each additional property owner.
- Your project is on Department of Natural Resources (DNR)-managed aquatic lands. If you don’t know, contact the DNR at (360) 902-1100 to determine aquatic land ownership. If yes, complete [JARPA Attachment E](#) to apply for the Aquatic Use Authorization.

4a. Name (Last, First, Middle)			
4b. Organization (If applicable)			
4c. Mailing Address (Street or PO Box)			
4d. City, State, Zip			
4e. Phone (1)	4f. Phone (2)	4g. Fax	4h. E-mail

Part 5–Project Location(s)

Identifying information about the property or properties where the project will occur. [\[help\]](#)

- There are multiple project locations (e.g. linear projects). Complete the section below and use [JARPA Attachment B](#) for each additional project location.

5a. Indicate the type of ownership of the property. (Check all that apply.) [\[help\]](#)

- Private
- Federal
- Publicly owned (state, county, city, special districts like schools, ports, etc.)
- Tribal
- Department of Natural Resources (DNR) – managed aquatic lands (Complete [JARPA Attachment E](#))

5b. Street Address (Cannot be a PO Box. If there is no address, provide other location information in 5p.) [\[help\]](#)

The JARPA and Attachment E are submitted for the approval of an aquatic use permit to lease sub-tidal aquatic land. The nearest property street address to the subject area is 645 Ediz Hook Rd. Port Angeles, WA 98362. The nearest adjacent uplands are owned by the City of Port Angeles and the U.S. Government. The proposed lease area is located immediately to the south of Ediz Hook in the sub-tidal water of Port Angeles Harbor approximately 700 to 1,000 feet from the shoreline. The lease area is in the vicinity of aquatic lands previously leased by DNR for the purposes of commercial fish aquaculture activities to different businesses since the early 1980's. The general project area was most recently leased under aquatic land lease #20-B02777 and operated up to 2019.

The City of Port Angeles maintains a public boat launch on Ediz Hook to the west of the proposed lease area. The Puget Sound Pilots Association leases land from the City of Port Angeles and has an associated pier facility located along the shoreline of Ediz Hook between the public boat launch and the project location. The listed owner of the upland properties immediately adjacent to the proposed lease is the City of Port Angeles, which holds the land under a 99-year lease with the U.S. Government. Immediately adjacent to the project area is the U.S. Coast Guard Air Station/Sector Field Office Port Angeles and the U.S. Navy Transit Protection System Naval Pier and their associated support facilities.

5c. City, State, Zip (If the project is not in a city or town, provide the name of the nearest city or town.) [\[help\]](#)

Port Angeles, WA 98362

5d. County [\[help\]](#)

Clallam

5e. Provide the section, township, and range for the project location. [\[help\]](#)

¼ Section	Section	Township	Range
	Out Lot 8	31 North	6 West

5f. Provide the latitude and longitude of the project location. [\[help\]](#)

- Example: 47.03922 N lat. / -122.89142 W long. (Use decimal degrees - NAD 83)

48.14015 N lat. / -123.42181 W long.

5g. List the tax parcel number(s) for the project location. [\[help\]](#)

- The local county assessor's office can provide this information.

55542		
5h. Contact information for all adjoining property owners. (If you need more space, use JARPA Attachment C.) [help]		
Name	Mailing Address	Tax Parcel # (if known)
U.S. Coast Guard Air Station/Sector Field Office Port Angeles	1 Ediz Hook Road. Port Angeles, WA 98363	06-31-00-00-0000
Port Angeles Puget Sound Pilots	305 Ediz Hook Road. Port Angeles, WA 98363	06-31-00-00-0000
U.S. Navy Transit Protection System Facility Port Angeles	100 Ediz Hook Road. Port Angeles, WA 98363	06-31-00-00-0000
City of Port Angeles	321 East 5 th Street. Port Angeles, WA 98363	06-31-00-00-0000

5i. List all wetlands on or adjacent to the project location. [\[help\]](#)

No wetlands are located within or adjacent to the proposed lease area.

5j. List all waterbodies (other than wetlands) on or adjacent to the project location. [\[help\]](#)

Port Angeles Harbor and Strait of Juan de Fuca.

5k. Is any part of the project area within a 100-year floodplain? [\[help\]](#)

Yes No Don't know

5l. Briefly describe the vegetation and habitat conditions on the property. [\[help\]](#)

The proposed lease area is located within the sub-tidal area of Port Angeles Harbor approximately 700' from the southeastern shorelines of Ediz Hook. Water depths in this location range from 75 feet to 250 feet in depth. The floating sea cages will be anchored in waters that range from 150 feet to 185 feet in depth and are beyond the photic zone. There are no benthic marine algae or plants found at these depths (150 to 185 feet) in this location. The substrate is composed of a primarily silt and mud benthic habitat within the immediate area below the proposed fish pens and temperate marine waters from the Strait of Juan de Fuca make up the aquatic habitat.

Sediment sampling of the seafloor and past photographic/video surveys have been carried out for the Department of Natural Resources and the Department of Ecology monitoring requirements and have consistently demonstrated the marine benthic environment in this area is composed of unconsolidated silt and muddy marine sediments with no attached marine vegetation. The associated benthos in the project vicinity are typical marine invertebrates associated with cold, deep marine waters of the Strait of Juan de Fuca and with soft-mud benthic environments.

5m. Describe how the property is currently used. [\[help\]](#)

The property has historically functioned as a commercial aquaculture fish pen facility raising various species of marine finfish (including Atlantic Salmon, Chinook, Coho, Rainbow/Steelhead, Halibut and Sablefish) since

the early 1980's. The fish aquaculture operations in Port Angeles Harbor, in unison with the surrounding marine environment have grown and harvested well over 100 million pounds of high-quality fish over the past 35 years. During this time, the fish farming operation created a sustainable seafood supply, local employment, local economic activity, and generated aquatic lease revenue paid to DNR exceeding \$750,000 dollars. Aquatic lands lease revenue helps fund the Aquatic Lands Enhancement Account (ALEA) that is used by DNR to increase and maintain existing public access projects, and to protect and re-establish the natural ecological functions of aquatic land located throughout Washington State.

In May of 2019, the previous operator of the marine net pen facility, Cooke Aquaculture Pacific, harvested the remaining fish from the pens being reared at the facility. After the fish were harvested from the site, the rearing nets, predation barrier nets and the associated fish rearing equipment were removed from the facility. In August of 2020, the steel floating net pen walkway structure and the associated mooring equipment was removed from the site. The fish pen structure, consisting of 20 individual pens, was removed from the site by Cooke, as the steel cage structures were due to be retired from service and eventually replaced with newly built sea cages after the completion of this growing cycle. Currently there are no sea cage structures, barges or anchoring equipment located in the proposed marine farming area. The concrete feed barge that was installed at the PA farm site in 2000, was moved in 2006 by the prior company to their Bainbridge Island farm site and is currently in service at that location.

Salish Fish LLC (Salish Fish) is pursuing the opportunity to enter into a new lease agreement with DNR in the same general fish aquaculture area for the purposes of growing native fish stocks and producing locally grown seafood products. Salish Fish will initially begin growing the native all-female sterile Rainbow/steelhead trout (*O. mykiss*). In the future, other species of native fish may also be grown (such as Sablefish) along with research trials of cultivating other native marine organisms such as Sea Cucumbers or marine seaweeds. Culturing different species of marine organisms will require the company to receive approval from the City of Port Angeles Planning Department as well as an approved Marine Aquaculture Permit from the Washington Department of Fish and Wildlife. Depending upon the organisms being cultured other appropriate agency review and approvals may also be required. As stated previously, Salish Fish will begin their operations by raising native all-female sterile Rainbow/steelhead trout in their facility. Both Ecology and WDFW have thoroughly reviewed the potential impacts of culturing this fish and have issued or modified the necessary permits that approves this species to be cultured in marine net pen operations in the Salish Sea.

In addition, Salish Fish will seek collaborative opportunities with tribal resource managers for developing local salmon enhancement projects. The infrastructure of the net pen facility can create available fish rearing pen space that can carry out juvenile salmon delayed release projects that can support both local recreational and tribal fisheries. A portion of the fish pen facility could also be used for captive native salmon brood stock rearing that could be used to increase nearby tribal fish hatchery production. These concepts are discussed in detail later in the document.

5n. Describe how the adjacent properties are currently used. [\[help\]](#)

Port Angeles Harbor is used for the navigation and moorage of both commercial, and recreational vessels. The Harbor is used for berthing, loading and anchorage of large commercial vessels, commercial and recreational marine transportation and commercial and recreational boat activities and moorage.

To the west of the property, the Puget Sound Pilots Association operates a pier and dock structure for the moorage of their vessels. The pilot vessels are approximately 60 feet in length and are used to transport marine navigational pilot personnel to and from large commercial shipping vessels, which transit the Strait of Juan de Fuca and inland waters of Puget Sound. The Port Angeles Pilot Station vessels operate at various hours throughout the day and can operate 7 days per week. Generally, hours of Port Angeles pilot vessel

activity are during daylight hours as they transfer the marine pilots to and from commercial ships at designated rendezvous points located in the Strait of Juan de Fuca.

In 2019, the U.S. Navy completed construction of a pier facility on Ediz Hook. The new pier facility is located to the northeast of the subject property. The Navy pier and associated upland facility are used for the periodic and temporary moorage of U.S. Coast Guard, commercial contractor, and U.S. Navy submarine escort vessels. These vessels are operated under the U.S. Navy Transit Protection System (TPS) Program and range in size from 30 feet to 250 feet in length. The TPS vessels are temporarily moored at the pier facility in between transit events to and from Naval Submarine Base Bangor located in Hood Canal. The pier facility is available 24 hours a day, seven days per week for use by the TPS vessels and U.S. Coast Guard vessels on an as needed basis. As these vessels are used for the surface protection of submarines as they travel through the Strait of Juan de Fuca, Admiralty Inlet and Hood Canal waters they are assumed to be crewed by highly skilled mariners and are likely extremely maneuverable in tight quarters. These vessels have been observed (pers. comm. Brett Raemer, long time fish pen manager) to enter and exit the TPS pier facility at normal docking speed and without assistance.

The eastern tip of Ediz Hook is federally controlled land which is utilized also by the U.S. Coast Guard. The Coast Guard Air Station/ Sector Field Station Port Angeles has been located on Ediz Hook for many years. The Coast Guard maintains both a pier facility for vessels and an aircraft runway for aircraft. The proximity to major shipping channels and the entrance to the eastern Pacific Ocean allow quick response to marine related emergencies. The Coast Guard vessels and pier are located to the east of the project site. There have never been any vessel collisions or other negative navigational issues with the Puget Sound Pilots vessels, U.S. Coast vessels, commercial vessels and U.S. Navy escort vessels and the various floating sea cage structures in this area over the last 35 years.

The City of Port Angeles maintains a concrete public boat launch ramp on the southeastern shore of Ediz Hook. The public boat launch is located to the west of the proposed lease area and the ramp is used to launch or retrieve smaller "trailer-able" recreational sized boats. The boat launch and adjacent Port Angeles Harbor is protected by the Ediz Hook jetty from prevailing westerly winds and waves generated in the Strait of Juan de Fuca. The majority of boat launch activity occurs during the spring through early fall when weather conditions are more amenable to small crafts venturing outside of Ediz Hook and beyond the protection of Ediz Hook, however there are seasoned mariners who use the launch year-round for various boating activities. Most of the recreational boat traffic are day trips generally returning before nightfall to the boat launch and retrieving the boats back onto the trailers, (pers. comm. Brett Raemer, long time fish pen manager).

There are no private residential properties or private business properties located immediately adjacent to the proposed lease area.

5o. Describe the structures (above and below ground) on the property, including their purpose(s) and current condition. [\[help\]](#)

There are no structures currently installed on the property. The existing fish pen, barge and associated mooring lines and anchoring components were removed from the proposed lease area.

5p. Provide driving directions from the closest highway to the project location and attach a map. [\[help\]](#)

Take Hwy 101 west bound to Port Angeles, Washington. From downtown Port Angeles drive to address 670 Ediz Hook Road, Port Angeles, WA 98362. There is a public boat launch facility at the end of Ediz Hook road that could be used to view the subject area from the shoreline. Transport of persons by boat to the project area can be accommodated upon advance notice to the applicant.

Part 6–Project Description

6a. Briefly summarize the overall project. You can provide more detail in 6b. [\[help\]](#)

Salish Fish is requesting authorization for a new aquatic land lease for the purposes of installing and operating a state-of-the-art marine sea cage fish rearing facility. The facility would be located within the area of previous finfish aquaculture facilities that had historically operated in this area since the early 1980's. Salish Fish proposes to install a newly constructed engineered floating fish pen system and to sustainably grow native fish species in the pens for the purposes of creating locally grown seafood products and generation of the associated economic business activity that comes from aquatic farming. Other native marine species, such as sea cucumber and marine seaweeds, may also be grown at the sea cages. The fish production facility will generate employment opportunity for the local community and help to maintain the important native cultural connection to the production, harvesting, and consumption of seafood that comes from their local area and the Salish Sea.

Salish Fish will install a brand-new replacement cage system consisting of two 10-pen cage systems (total of 20 pens). Each 10-pen cage system measures 182 feet wide by 433 feet in length. The two cage systems will be attached together with an approximately 10-foot-wide gap between the two systems (see attached JARPA drawings). A 46-foot wide by 100-foot-long concrete feed barge will be moored at the eastern end of the cage system, which will support the associated fish feeding machinery and aquaculture support systems. Each individual fish pen opening measures 80 feet square at the surface and each pen will be approximately 40 feet deep. The total surface area of the new pen systems and feed barge will be approximately 166,000 square feet and approximately 10,000 square feet less than the prior sea cage systems that were located in the area. A new mooring and anchoring system will be installed according to the specifications of an engineered mooring design, which incorporates the use of Doppler current data collected at the project location and the use of historic weather and wave data. A professional marine engineering firm will be used to produce a mooring plan that will be strictly followed by the company during installation of the moorings.

The facility will cultivate only fish that are native to the Pacific Northwest. The primary species to be grown at the facility will be sterile all-female Rainbow/steelhead trout, *Oncorhynchus mykiss*. Salish Fish will also pursue future opportunities to cultivate additional native seafoods, such as the Sable Fish, *Anoplopoma fimbria*; Sugar Kelp, *Laminaria saccharina*; and Pacific Sea Cucumbers, *Parastichopus californicus* as the company gains the necessary future approval of any required permits. Research into integrated multitrophic aquaculture has demonstrated beneficial ecosystem services occur in aquatic farming operations that grow different species of both fed and unfed aquatic organisms. For example, seaweeds rapidly consume carbon dioxide, nitrogen and phosphorous from the water column, which are the metabolic by-products from fish culturing practices. The seaweeds can sequester available nutrients immediately adjacent to fish growing operation, while also producing additional ambient dissolved oxygen which the cultured fish stocks require to thrive and grow. Closing the nutrient cycle loop while also producing a diversified portfolio of seafood products presents obvious benefits to the environment and for Salish Fish as a seafood business.

U.S. seaweed farming has taken off in recent years, with dozens of farms in the marine waters off New England, Maine, California, here in the Pacific Northwest, and Alaska. Seaweed farming is currently the

fastest-growing aquaculture sector. For example, farmers in Alaska produced more than 112,000 pounds of sugar, ribbon, and bull kelp in 2019, a 200 percent increase over the state's first commercial harvest in 2017. The largest kelp farm in North America is located off southeastern Alaska. Farmers grow various types of seaweed—including dulse, bull kelp, ribbon kelp, and sugar kelp—that are used in sushi, salsas, sauces, salads, seasonings, and other food products. Seaweed farming in the U.S. and around the world is being explored also as a method to sequester carbon and excess nutrients from the water. The cultured algal biomass is then removed from the water and processed for food products or composted and then used as a natural plant fertilizer for other agricultural crops. For shellfish and finfish farmers, seaweed offers an opportunity to diversify a farming operation or start a new business. Seaweeds use the entire water column. This means farmers can grow seaweed using a process known as vertical, or 3D, farming—and reap large harvests from a small area. Most seaweeds grow on longlines suspended around 4–8 feet below the surface throughout the winter. Their blades will reach 10 feet or more before they are harvested in the spring. Salish Fish will work with the Puget Sound Restoration Fund's algae culturing experts to provide seed stock for these projects. The company plans to utilize the new floating sea cage facility and its associated anchor lines to suspend algal spore seeded lines at the surface between anchor buoys in select locations. Because of the synergies achieved of an integrated multitrophic aquaculture system the fixed costs for growing the algae can be reduced and competitive in the marketplace.

Over 80% of the seafood consumed in the United States is imported from overseas with more than 50% of that seafood being grown in aquaculture operations carried out in other countries. The United States, a country that is surrounded by oceans and has one of the world's largest Exclusive Economic Zones, has the resources, science, work force and the technical knowledge to be significantly involved in the future development of sustainable aquaculture. This country can be growing more of our seafood right here at home. Increasing local seafood production capacity is needed if Washington is to reduce "food miles" carbon footprint and secure affordable seafood sources for the future. Developing local aquaculture production will increase U.S. employment opportunity, boost domestic food security, mitigate the increasing harvest pressure exerted on wild capture fisheries, and reduce the carbon footprint of healthy protein sources. Aquaculture is a very well-regulated activity in the U.S. that can be and currently is done correctly and sustainably. Washington has the history, the natural resources, and the regulatory framework in place to increase the quantity of locally grown seafoods.

Sustainable aquaculture production has been identified around the world as one of the more efficient, and least environmentally impactful protein production systems that has the capability of increasing food supplies for an ever-increasing population. The human population is forecasted to grow by more than 15% in the next 20 years from 7.8 billion in 2021, to 9 billion by 2037 (United Nations Food and Agriculture Organization report, 2020). The Coller Fairr Protein Producer Index (an independent organization, which ranks top global protein producers against United Nations Sustainable Development Goals regarding environmental, social and governance issues) places top salmonid aquaculture producers at the top of their list for meeting sustainability requirements. Fish and shellfish that are farmed and grown in the ocean allow species to be raised in their natural environment. Furthermore, increasing production and sources of environmentally sustainable food coming from aquaculture produced fish, shellfish and seaweeds will be vital in providing future generations with a healthy protein source and for mitigating human impacts to global capture fisheries.

Cultivating native fish for harvesting and consumption will also be a new and efficient pathway for the Jamestown S'Klallam Tribe, a lead partner with Salish Fish, to pursue the creation of their own sustainable seafood resources. The Jamestown S'Klallam are pursuing new, long-term sustainable seafood businesses for their citizens, their neighbors, and the nearby Olympic Peninsula community. Increasing fish, shellfish and seaweed aquaculture production will be necessary at the same time we continue to work to restore the

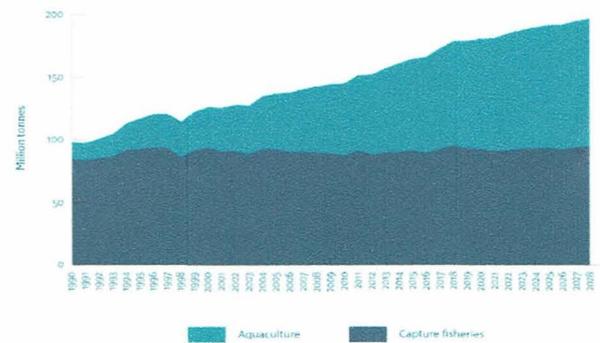
depleted fishery stocks. Both will be essential for providing local and tribal food sovereignty for future generations.

6b. Describe the purpose of the project and why you want or need to perform it. [\[help\]](#)

Salish Fish believes fostering responsible aquaculture operations can help create ecologically sustainable and locally produced seafood while creating economic and employment opportunity for their coastal community. Responsible, modern and well-regulated aquaculture operations are carried out in a manner that maintains healthy and productive marine populations, ecosystems, and coastal communities, while also creating a valuable and healthy seafood source. For the Jamestown S'Klallam Tribe it will be a way to continue the important cultural connection to the marine environment both as a food source, and as a source of water dependent work for their tribal members and nearby communities. The aquaculture project will be a new way for learning to cultivate finfish in concert within the marine environment and the waters of the Salish Sea. Growing and harvesting food from the marine environment in this manner will continue to provide a direct connection to the local ecosystem throughout the entire year for present and future generations.

Global wild capture fishery harvest volumes flat lined beginning around 1985 as most wild capture fisheries reached their maximum sustainable yield. Most managed wild capture fisheries are considered to be at, or near full exploitation volumes. Global capture fishery volumes are not projected to increase in the future (Figure 1). Locally, wild capture fisheries for most of the traditional northwest fish species have either been in decline or are fully exploited at their maximum sustainable yield. Developing new aquaculture operations, including delayed release enhancement net pens (fish ranching) as well as on-growing captive fish rearing (fish farming), will be essential for meeting both the traditional and cultural connections to the sea for Washington tribes and residents, and ultimately necessary for meeting the increasing demand for food resources of a growing human population.

World fisheries and aquaculture production in million tonnes (1990-2028)



Source: OECD/FAO (2019)

Aquaculture will have to be part of the long-term solution for increasing food production and stabilizing global food supplies. The COVID-19 epidemic and disruptions to many supply chains has shown us the imperative of local food production and the essential role aquaculture can play in our local communities. The United Nations Food and Agriculture Organization believes aquaculture will play an important role in addressing food security, climate change and ocean sustainability. As stated previously, the United States relies upon importing over 80% of the seafood it consumes from foreign countries. There is ample opportunity for a domestic, modern, and well-regulated aquaculture industry to create thousands of American jobs and increase the production of healthy local seafood products for the U.S. consumer.

The National Ocean and Atmospheric Administration, which is charged with protecting and managing our nation's fisheries resources recognizes the importance of fostering the new development of aquaculture; *"Marine aquaculture is vital in supporting our nation's seafood production, year-round jobs, rebuilding protected species and habitats, and enhancing coastal resilience. Aquaculture—the breeding, rearing, and harvesting of animals is one of the most resource-efficient ways to produce protein and has helped improve nutrition and food security in many parts of the world."* (NOAA, 2020 <https://www.fisheries.noaa.gov/topic/aquaculture>).

Salish Fish believes that this type of facility will contribute sustainably to the well being of the citizens of Washington by the production of seafood, commerce, and income through the balanced use of state-owned aquatic lands. The balance of science shows that marine aquaculture can be done sustainably and will be needed to meet future increased demand for healthy seafood products. Undeniably, DNR is charged with fostering the long-term use and management of these lands for both commercial and recreational opportunities as spelled out in RCW 79.68.080, "*Fostering Use of Aquatic Environment Limitation. The Department of Natural Resources shall foster the commercial and recreational use of the aquatic environment for production of food, fiber, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sea life attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game and water.*" (emphasis added). Salish Fish intends to increase the production of food by utilizing sustainable aquaculture practices in the marine environment to produce seafood, jobs, income, and our cultural connection to the marine waters of the Salish Sea.

The ability of sovereign Tribes to help find and create new sources of locally produced seafood.

Wild caught fisheries are not meeting the increased domestic demand for seafood alone. Cultivating fish and shellfish in our local waters can help ensure we have seafood for future generations. The Jamestown S’Klallam Tribe has substantial interest in this project because they understand that aquaculture technology has advanced and the partnership in a well-run operation will enable their members to maintain cultural traditions of working on the water to provide both fish and shellfish to themselves and others. For millennia, S’Klallam people fed their families with fish and shellfish harvested from the sea and traded their abundant harvest with other Tribes, devising methods for holding fresh catch, and preserving the harvest for future consumption. When explorers, and then settlers arrived on this land, S’Klallam people bartered and sold their familiar harvests to them. Market demand grew with the increasing European population, and S’Klallam fishermen discovered a new market for their traditional foods. Finfish and shellfish have always been an integral part of S’Klallam culture as sustenance, as well as for the traditions associated with harvest, preparation, and celebration.

As a sovereign nation, the Jamestown S’Klallam Tribe has always cherished and protected treaty rights and the right to pursue economic development, both of which contribute to self-reliance and the ability to thrive as a people and a culture. The 21st century has brought new challenges to exercising treaty rights and continue cultural traditions. The Jamestown S’Klallam Tribe, as a partner in this venture, has two parallel goals with this project – to continue to be stewards of traditional homelands so that the S’Klallam people can continue to fish, hunt, and gather treaty resources; and to generate revenue to fund programs and services to S’Klallam citizens. Being partners in owning and operating a well-run, egg to plate, marine net pen aquaculture operation represents a new approach to build a sustainable fishery for their members and local community.

Salish Fish will also be seeking opportunities to partner with local Tribes and fisheries enhancement managers for the purposes of carrying out fishery research and fish enhancement projects at the new facility. Space within the sea cages can be made available for possible annual delayed release salmon enhancement projects that can benefit local tribal fisheries as well as create new recreational fishing opportunities in the area. Marine net pen reared, delayed release Coho and Chinook salmon enhancement programs by the Port Gamble, Squaxin, Suquamish, Lummi, and Muckleshoot Tribes, utilize their net pen systems to augment the population of catchable salmon available for tribal and non-tribal participants. With the correct planning, space can be made available for the temporary rearing of groups of delayed release juvenile Coho or Chinook salmon originating from a tribal, state, or private fish hatcheries. Salish Fish can provide the infrastructure,

labor, fish feed and cultivation experience to accomplish these types of salmon enhancement projects. Delayed release salmon enhancement projects like these are recognized as a means to supplement natural salmon production losses and increase fishery opportunity for both people and salmon predators, such as the native orcas. These types of future projects are dependent upon all the necessary review and approval by tribal, local, and state agencies involved in natural resource management in Washington. Additional information on enhancement projects and other multitrophic aquaculture species is found later in the document under mitigation measures and reducing environmental impacts.

6c. Indicate the project category. (Check all that apply) [\[help\]](#)

- Commercial
 Residential
 Institutional
 Transportation
 Recreational
 Maintenance
 Environmental Enhancement

6d. Indicate the major elements of your project. (Check all that apply) [\[help\]](#)

- | | | | |
|---|---|--|--|
| <input checked="" type="checkbox"/> Aquaculture | <input type="checkbox"/> Culvert | <input type="checkbox"/> Float | <input type="checkbox"/> Retaining Wall (upland) |
| <input type="checkbox"/> Bank Stabilization | <input type="checkbox"/> Dam / Weir | <input type="checkbox"/> Floating Home | <input type="checkbox"/> Road |
| <input type="checkbox"/> Boat House | <input type="checkbox"/> Dike / Levee / Jetty | <input type="checkbox"/> Geotechnical Survey | <input type="checkbox"/> Scientific Measurement Device |
| <input type="checkbox"/> Boat Launch | <input type="checkbox"/> Ditch | <input type="checkbox"/> Land Clearing | <input type="checkbox"/> Stairs |
| <input type="checkbox"/> Boat Lift | <input type="checkbox"/> Dock / Pier | <input type="checkbox"/> Marina / Moorage | <input type="checkbox"/> Stormwater facility |
| <input type="checkbox"/> Bridge | <input type="checkbox"/> Dredging | <input type="checkbox"/> Mining | <input type="checkbox"/> Swimming Pool |
| <input type="checkbox"/> Bulkhead | <input type="checkbox"/> Fence | <input type="checkbox"/> Outfall Structure | <input type="checkbox"/> Utility Line |
| <input type="checkbox"/> Buoy | <input type="checkbox"/> Ferry Terminal | <input type="checkbox"/> Piling/Dolphin | |
| <input type="checkbox"/> Channel Modification | <input type="checkbox"/> Fishway | <input type="checkbox"/> Raft | |

Other:

6e. Describe how you plan to construct each project element checked in 6d. Include specific construction methods and equipment to be used. [\[help\]](#)

- Identify where each element will occur in relation to the nearest waterbody.
- Indicate which activities are within the 100-year floodplain.

New marine fish pens will be built at an upland facility. The walkway structures will be lifted by a crane from a shoreside facility and placed into the water where they can be assembled into the floating fish pen structure and then towed into the project location. New mooring equipment will be installed at the location which will allow the floating fish pens to be attached quickly into the new anchoring grid. The marine fish pen structure and mooring components to be installed will have engineered specifications and stamped drawings that will ensure they can be operated safely and exceed the demands of the project location. The mooring system specification will be engineered using environmental parameters derived from Norwegian safety standards for fish pen anchoring systems. Anchors, chain, and mooring equipment will be prepositioned on the deck of the crane barge before being deployed into their permanent position. Smaller support vessels will be used to facilitate the process of attaching the moorings to the pen structure and positioning the pens.

Net weighting systems, predation barrier nets and fish stock containment nets will be installed into the net pen facility using various support vessels and employees. A computerized central feeding system will be installed at the facility that will distribute the fish feed through pipes to each of the fish pens using pneumatic pressure. Underwater cameras will be installed in each pen to monitor the fish stocks during the feeding process to ensure the fish populations are being fed properly and the fish feed is being consumed and not wasted. Growth of the fish stocks will be closely monitored to ensure that the proper feed conversion and growth rates are being achieved for the efficient growth of the cultured fish stocks.

The project involves the installation of new fish pens, new mooring systems and a feed support barge. Draft site plan drawings are included with this application showing the location of the project in the vicinity of the prior fish pen operations. The total number of new pens, the total surface area and the growing volumes of the proposed new fish pen facility is smaller than those structures that were previously permitted and installed at this this location. The new steel fish pens and support equipment will be designed to safely operate in the environmental conditions of this location. A mooring analysis for the new cage system will be performed by a marine engineering firm experienced in the design and installation of marine net pens. The mooring analysis and design will apply environmental parameters derived from existing Doppler current data and historical NOAA wave and weather data using the Norwegian Standard NS 9415. The mooring analysis and design will be provided to WDNR, WDFW and WDOE prior to installation. Mooring equipment will be used that meets or exceeds the engineering design specifications and will be installed consistent with the mooring plan developed by the marine engineers. Approximately 36 steel anchors will be used to securely moor the fish pen structure. Anchors will vary in size and type dependent upon their location. The majority of anchors will be either steel Danforth or steel Plow type anchors which are designed to penetrate the seafloor to increase their holding power as the anchors are set. One to two shots (90 foot lengths) of chain (depending upon mooring plan specifications) will be connected to each anchor. The anchor chain is then connected to a braided polypropylene mooring line that is then connected to the fish pen mooring points using a length of chain and shackles. Buoyancy compensator buoys will be installed on each mooring line around the perimeter of the fish pens. The compensator buoys will be attached per specifications of the mooring design and are typically attached to the surface chain at distances from 10 feet to 40 feet from the cage mooring point.

Visual Aids to Navigation- The proposed fish pens will be approximately 400' away from the nearest shoreline. The facility will utilize large yellow buoyancy compensators on the mooring points which will be highly visible to boat traffic. Additionally, navigational charts identify the locations of fish pens and navigational lighting will be installed on both ends of the fish pen structure in compliance with the U.S. Coast Guard Private Aids to Navigations permits. Aids to navigation markers help mariners navigate safely and avoid vessel strikes with permanently moored objects or structures located in navigable waters.

After the fish pen structures are securely moored into place a steel pipe frame will be installed for weighting both the fish containment nets and the predation barrier nets. Stock nets will be approximately 12 meters in depth and the predation barrier net will be approximately 14 meters in depth. The steel pipe frame is linked together by chain and suspended from the walkway structures. The pipe frame forms a grid around the perimeter of each individual pen and allows for the containment nets and the predation nets to be held taught and maintain a semi-rigid shape in the tidal currents. Nets will be kept clean using underwater net washing machines that either rinse the net surface with pressurized seawater or can mechanically remove marine algal and invertebrate growth from the net surface. Frequency of net washing will be dependent on the amount of observed bio-fouling growth found on the netting surfaces. Divers will be used to perform weekly net checks and assess a numerical score for each fish pen that relates to amount of growth on the net walls and floors. Salish Fish will work with WDNR to develop and implement a net hygiene scoring system and a monitoring, reporting and surveillance program that will be designed to maintain proper net hygiene, avoid excessive biofouling growth on the netting, and facilitate transparency and clear communication between the company

and regulators. Maintaining clean net surfaces is important for fish health, proper water circulation through the fish pens, and in minimizing frictional drag loads on the structures and mooring system.

The company plans on leasing moorage space at a nearby marina for their crew work vessel and will lease an upland space for handling materials and equipment in support of the aquaculture facility. A crew boat will carry farm staff to and from the fish pens each day during normal working hours. A larger work vessel and a contracted work vessel will be utilized to transport material to and from the fish pens.

The company plans to raise all-female triploid steelhead trout in the fish pens. A stocking generation of juvenile fish will be entered into fish pens and grown to harvestable sizes. The anticipated production period from stocking to completing the final harvest is 14 to 16 months. Stock nets will be removed upon completion of harvesting cycle and sent to an upland net cleaning facility for cleaning, disinfection and maintenance before returning to the fish pens for reuse. Predation nets may be maintained in place or replaced with new material depending upon the duty cycle. Stock nets will be periodically retired from service and replaced with new nets depending upon use and twine break strength testing. Culturing of other native fish species will be explored as the company matures and new technologies emerge. Fish species such as sterile Coho salmon, Rainbow Trout/Steelhead, Sablefish and Pacific Halibut have all been fish species that have been cultured previously in Puget Sound. Research has continued to advance in breeding programs, larval development, fish feeds, culturing techniques, and other technologies that are making other fish species commercially viable in aquaculture.

Salish Fish is also planning to offer pen space, stock nets, labor, and fish feed as a way of partnering with local groups seeking to create a delayed release salmon fishery enhancement program. Space within the new sea cages could be used to facilitate local salmon restoration and enhancement projects, whether through a delayed release program or from raising captive marine brood stock to augment egg production for tribal or state enhancement hatcheries. While these programs will present challenges, Salish Fish believes fostering physical working relationships with other fish culturists in the field of salmon enhancement and restoration can create new opportunities to supplement the natural salmon production losses that are occurring because of climate change and the ever-increasing population growth and development occurring around the Salish Sea.

6f. What are the anticipated start and end dates for project construction? (Month/Year) [\[help\]](#)

- If the project will be constructed in phases or stages, use [JARPA Attachment D](#) to list the start and end dates of each phase or stage.

Start Date: July/2022

End Date: October/2022

See JARPA Attachment D

6g. Fair market value of the project, including materials, labor, machine rentals, etc. [\[help\]](#)

Estimated \$5,500,000

6h. Will any portion of the project receive federal funding? [\[help\]](#)

- If **yes**, list each agency providing funds.

Yes No Don't know

Part 7–Wetlands: Impacts and Mitigation

Check here if there are wetlands or wetland buffers on or adjacent to the project area.

(If there are none, skip to Part 8.) [\[help\]](#)

7a. Describe how the project has been designed to avoid and minimize adverse impacts to wetlands. [\[help\]](#)

Not applicable

7b. Will the project impact wetlands? [\[help\]](#)

Yes No Don't know

7c. Will the project impact wetland buffers? [\[help\]](#)

Yes No Don't know

7d. Has a wetland delineation report been prepared? [\[help\]](#)

- If Yes, submit the report, including data sheets, with the JARPA package.

Yes No

7e. Have the wetlands been rated using the Western Washington or Eastern Washington Wetland Rating System? [\[help\]](#)

- If Yes, submit the wetland rating forms and figures with the JARPA package.

Yes No Don't know

7f. Have you prepared a mitigation plan to compensate for any adverse impacts to wetlands? [\[help\]](#)

- If Yes, submit the plan with the JARPA package and answer 7g.
- If No, or Not applicable, explain below why a mitigation plan should not be required.

Yes No Don't know

7g. Summarize what the mitigation plan is meant to accomplish and describe how a watershed approach was used to design the plan. [\[help\]](#)

N/A

7h. Use the table below to list the type and rating of each wetland impacted, the extent and duration of the impact, and the type and amount of mitigation proposed. Or if you are submitting a mitigation plan with a similar table, you can state (below) where we can find this information in the plan. [\[help\]](#)

Activity (fill, drain, excavate, flood, etc.)	Wetland Name ¹	Wetland type and rating category ²	Impact area (sq. ft. or Acres)	Duration of impact ³	Proposed mitigation type ⁴	Wetland mitigation area (sq. ft. or acres)
N/A -None						

¹ If no official name for the wetland exists, create a unique name (such as "Wetland 1"). The name should be consistent with other project documents, such as a wetland delineation report.

² Ecology wetland category based on current Western Washington or Eastern Washington Wetland Rating System. Provide the wetland rating forms with the JARPA package.

³ Indicate the days, months or years the wetland will be measurably impacted by the activity. Enter "permanent" if applicable.

⁴ Creation (C), Re-establishment/Rehabilitation (R), Enhancement (E), Preservation (P), Mitigation Bank/In-lieu fee (B)

Page number(s) for similar information in the mitigation plan, if available: _____

7i. For all filling activities identified in 7h, describe the source and nature of the fill material, the amount in cubic yards that will be used, and how and where it will be placed into the wetland. [\[help\]](#)

N/A

7j. For all excavating activities identified in 7h, describe the excavation method, type and amount of material in cubic yards you will remove, and where the material will be disposed. [\[help\]](#)

N/A

Part 8–Waterbodies (other than wetlands): Impacts and Mitigation

In Part 8, “waterbodies” refers to non-wetland waterbodies. (See Part 7 for information related to wetlands.) [\[help\]](#)

Check here if there are waterbodies on or adjacent to the project area. (If there are none, skip to Part 9.)

8a. Describe how the project is designed to avoid and minimize adverse impacts to the aquatic environment. [\[help\]](#)

Not applicable

The company will rely on science and natural resource experts that monitor for impacts and to minimize adverse impacts to the aquatic environment. The past marine aquaculture use of the subject area has demonstrated that impacts are minimal, well regulated, and are monitored by the various regulatory and operational conditions required by DNR, Ecology and the Department of Fish and Wildlife. Routine studies and sediment monitoring studies have been carried out at the past net pen facilities that have operated in this area since the early 1980's. Benthic monitoring results at this location have routinely demonstrated the impacts to be minimal and in compliance with state water quality and sediment management standards. Sediment sampling and analysis was last carried out in July of 2019 as per the requirements of the existing NPDES permit for the previous fish pen operation and the data shows the fish growing operation has not negatively impacted the surrounding benthic environment.

Mitigation measures include adaptive management techniques, underwater feed monitoring cameras, periodic fallowing, reduced standing stock biomass, continually improved feed formulations, computerized feed delivery systems, aquatic animal health standards, bio-security measures, vaccination of fish stocks, net hygiene surveillance videos, fish escape prevention procedures and routine environmental monitoring requirements. There are a multitude of regulatory protections to the environment for this activity and Salish Fish plans to operate a “state of the art” facility demonstrating a modern marine aquaculture facility with sustainable fish growing techniques. The facility will be operated consistent with any necessary updated NPDES permits and WDFW authorizations. Salish Fish anticipates that it will operate under the same or similar terms and conditions of the recently renewed and modified NPDES permits that were issued for other commercial marine fish pen facilities operating in Puget Sound, and under similar terms and conditions of the recently issued WDFW Marine Finfish Aquaculture permits for the commercial growing of all-female triploid Rainbow/steelhead trout in marine fish pens. Growing an all-female population of steelhead trout that is both a mono-sex cultured stock and reproductively sterile significantly reduces the risks of genetic interference with wild steelhead stocks in the event of accidental fish escape.

The aquatic lease and other environmental permit conditions issued by WDNR, WDFW and WDOE will also require engineering studies, engineered drawings, routine facility inspections by regulators, net hygiene maintenance/monitoring/reporting programs and a host of other measures that are all designed to avoid or minimize the adverse impacts to the aquatic environment. Installing a newly built and engineered steel cage system and mooring equipment is a means of minimizing risks of impact from a structural accident that could cause a fish escape. Salish Fish will incorporate into its plan of operation the net hygiene practices, net hygiene scoring and random underwater net hygiene video monitoring programs that have been developed with input from DNR at the other commercial fish pen facilities in Puget Sound.

Additionally, Salish Fish will explore the future viability of long line seaweed culture using growth lines around the farm site. There is increased awareness that marine algal culture can be a means to sequester CO₂ from the environment as well as produce a viable food and nutrient source when it is harvested. Seaweeds are incredibly efficient at metabolizing carbon dioxide and using it for growth. Eelgrass, mangroves, and salt marshes are already known for their ability to store carbon. But seaweeds pull more of the greenhouse gas from the water than all three combined based on biomass. The physical structures associated with marine fish pens such as mooring lines and nets become colonized with various marine invertebrates and marine algae that can have a beneficial reef-like effect on surrounding environment by increasing species abundance as well as diversity (Rensel, 2007). Cultivating algae in the adjacent waters may also increase natural assimilation of nutrients from fish metabolic waste products. Seaweeds utilize large amounts of nitrogen and phosphorus. Seaweed farms have been shown to help lower nutrient levels in nearby waters.

Salish Fish also will also explore collaborative work with researchers on either full culturing (from embryo to adult), or possibly “on-growing” commercially harvested Pacific Sea Cucumber, *Parastichopus californicus*. Contingent upon receiving the necessary approvals, juvenile or adult sea cucumbers could be cultured on the bottom of the fish stock rearing nets at the same time fish are being cultured in the fish pen. Sea cucumbers main food source is marine detritus and research has been carried out for NOAA¹ on utilizing sea cucumbers as nutrient recyclers, feeding on waste products from co-cultured organisms being grown above them. The Jamestown S’Klallam Tribe has tribal fishers that harvest sea cucumbers. Prices are subject to supply and during the harvesting periods prices are subject to downward pressures from increasing supplies. The ability to hold live product for sale at a later time could increase the selling price returned to the tribal fishers. Salish Fish would benefit from the nutrient recycling ability of the sea cucumbers and offsetting some of the nutrient waste products coming from the fish culturing operations. Additionally, full start to finish culture of sea cucumber from hatchery to harvest can also be explored as a mitigation measure and potential revenue source. Sea cucumbers and marine algae are both cultural foods of Coast Salish Tribes. There is an increased awareness of these types of seafood products in the U.S. seafood markets which can also make culturing and harvesting them a viable economic option. Salish Fish and the Jamestown S’Klallam Tribe in particular are interested in researching and developing these types of multitrophic and polyculture techniques that can provide additional food sources while also offsetting or mitigating adverse impacts to the marine environment.

References

- 1) Saltonstall-Kennedy Program #NA15NMF4270322, 06/01/2015 - 05/31/2019 Development of Red Sea Cucumber (*Parastichopus californicus*) Poly-Aquaculture for Nutrient Uptake and Seafood Export
- 2) Rensel, J.E, and J. Forster. 2007. Beneficial Environmental Effects of Marine Net Pen Aquaculture. Rensel Associates Aquatic Sciences. NOAA Technical Report 57 pp.
- 3) NOAA. www.fisheries.noaa.gov/national/aquaculture/seaweed-aquaculture

8b. Will your project impact a waterbody or the area around a waterbody? [\[help\]](#)

Yes No

8c. Have you prepared a mitigation plan to compensate for the project's adverse impacts to non-wetland waterbodies? [\[help\]](#)

- If Yes, submit the plan with the JARPA package and answer 8d.
- If No, or Not applicable, explain below why a mitigation plan should not be required.

Yes No Don't know

Salish Fish, LLC will operate under the conditions and requirements of the Washington Department of Ecology NPDES permit for this facility and will require approval by Washington Department of Fish & Wildlife of a Marine Aquaculture Finfish Permit, the WDFW Fish Transfer Permit, conditions of the DNR Aquatic Use Authorization Permit, as well as other federal, state, and local regulatory requirements. The various permits require fish pen operations to have pollution prevention plans in place along with other mitigative conditions that reduce, minimize, or eliminate potential adverse impacts to the environment.

8d. Summarize what the mitigation plan is meant to accomplish. Describe how a watershed approach was used to design the plan.

- If you already completed 7g you do not need to restate your answer here. [\[help\]](#)

The regulations and rules governing marine aquaculture in Washington, as well as the specific permit conditions, requirements, monitoring, and reporting procedures are all designed to reduce, eliminate, monitor, and mitigate potential impacts to the surrounding environment.

8e. Summarize impact(s) to each waterbody in the table below. [\[help\]](#)

Activity (clear, dredge, fill, pile drive, etc.)	Waterbody name ¹	Impact location ²	Duration of impact ³	Amount of material (cubic yards) to be placed in or removed from waterbody	Area (sq. ft. or linear ft.) of waterbody directly affected
Install the new fish pen structure and moorings for culturing of fish	Port Angeles Harbor	Port Angeles Harbor	Temporary	N/A	166,600 sq. ft. surface area

¹ If no official name for the waterbody exists, create a unique name (such as "Stream 1") The name should be consistent with other documents provided.

² Indicate whether the impact will occur in or adjacent to the waterbody. If adjacent, provide the distance between the impact and the waterbody and indicate whether the impact will occur within the 100-year flood plain.

³ Indicate the days, months or years the waterbody will be measurably impacted by the work. Enter "permanent" if applicable.

8f. For all activities identified in 8e, describe the source and nature of the fill material, amount (in cubic yards) you will use, and how and where it will be placed into the waterbody. [\[help\]](#)

No fill material will be used.

8g. For all excavating or dredging activities identified in 8e, describe the method for excavating or dredging, type and amount of material you will remove, and where the material will be disposed. [\[help\]](#)

N/A

Part 9—Additional Information

Any additional information you can provide helps the reviewer(s) understand your project. Complete as much of this section as you can. It is ok if you cannot answer a question.

9a. If you have already worked with any government agencies on this project, list them below. [\[help\]](#)

Agency Name	Contact Name	Phone	Most Recent Date of Contact
Washington Dept. of Natural Resources	Dennis Clark	360.708.7357	October 21, 2021

9b. Are any of the wetlands or waterbodies identified in Part 7 or Part 8 of this JARPA on the Washington Department of Ecology's 303(d) List? [\[help\]](#)

- If **Yes**, list the parameter(s) below.
- If you don't know, use Washington Department of Ecology's Water Quality Assessment tools at: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d>.

Yes No

9c. What U.S. Geological Survey Hydrological Unit Code (HUC) is the project in? [\[help\]](#)

- Go to <http://cfpub.epa.gov/surf/locate/index.cfm> to help identify the HUC.

17110020

9d. What Water Resource Inventory Area Number (WRIA #) is the project in? [\[help\]](#)

- Go to <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Watershed-look-up> to find the WRIA #.

WRIA #18

9e. Will the in-water construction work comply with the State of Washington water quality standards for turbidity? [\[help\]](#)

- Go to <https://ecology.wa.gov/Water-Shorelines/Water-quality/Freshwater/Surface-water-quality-standards/Criteria> for the standards.

Yes No Not applicable

9f. If the project is within the jurisdiction of the Shoreline Management Act, what is the local shoreline environment designation? [\[help\]](#)

- If you don't know, contact the local planning department.
- For more information, go to: <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-laws-rules-and-cases>.

Urban Natural Aquatic Conservancy Other: Aquatic Harbor

9g. What is the Washington Department of Natural Resources Water Type? [\[help\]](#)

- Go to <http://www.dnr.wa.gov/forest-practices-water-typing> for the Forest Practices Water Typing System.

Shoreline Fish Non-Fish Perennial Non-Fish Seasonal

9h. Will this project be designed to meet the Washington Department of Ecology's most current stormwater manual? [\[help\]](#)

- If No, provide the name of the manual your project is designed to meet.

Yes No

Name of manual: _____
Proper spill protection plans, preventative measures, and the appropriate spill containment materials will be in place and available on the marine barges and work vessels that are involved in assembling and deploying net pens and mooring components.

9i. Does the project site have known contaminated sediment? [\[help\]](#)

- If Yes, please describe below.

Yes No

9j. If you know what the property was used for in the past, describe below. [\[help\]](#)

The proposed lease area has been used for the commercial rearing of marine fish, primarily salmonids, since the early 1980's. The original facility received an SSD/CUP permit from the City of Port Angeles to raise both Atlantic salmon (*Salmo salar*) and Rainbow trout (*O. mykiss*). Commercial net pens of various configurations have been moored at this location and operated for decades by different entities. Marine fish pen aquaculture is carried out by stocking the individual fish pens with juvenile fish and then feeding and raising them for a period of time until they have reached a harvestable size. Adult fish are harvested at the end of the growing cycle, loaded on a fishing vessel and taken to a fish processing plant where they are cleaned, packaged, and sold to seafood buyers and customers.

Upon completion of the growth and harvesting cycle, the marine net pen facility is fallowed for a period of time prior to being restocked with the next generation of juvenile fish and the cycle repeated. Marine fish pens allow for a planned production cycle that can provide fresh, market sized harvest fish to the seafood market on nearly a year-round basis.

9k. Has a cultural resource (archaeological) survey been performed on the project area? [\[help\]](#)

- If Yes, attach it to your JARPA package.

Yes No The facility is located in open water with seafloor depths ranging from 120' to 250'.

9l. Name each species listed under the federal Endangered Species Act that occurs in the vicinity of the project area or might be affected by the proposed work. [\[help\]](#)

Puget Sound Chinook (T) [FCH 9/2/05], Hood Canal Summer Chum (T) [FCH 9/2/05], Ozette Lake Sockeye (T) [FCH 9/2/05],
Puget Sound Steelhead (T) [CH under dev.; ANPR 1/10/11].
Puget Sound/Georgia Basin Bocaccio Rockfish, Canary Rockfish, Yelloweye Rockfish.
Southern Resident Killer Whales, Humpback Whales.

9m. Name each species or habitat on the Washington Department of Fish and Wildlife's Priority Habitats and Species List that might be affected by the proposed work. [\[help\]](#)

None.

Part 10–SEPA Compliance and Permits

Use the resources and checklist below to identify the permits you are applying for.

- Online Project Questionnaire at <http://apps.oria.wa.gov/opas/>.
- Governor's Office for Regulatory Innovation and Assistance at (800) 917-0043 or help@oria.wa.gov.
- For a list of addresses to send your JARPA to, click on [agency addresses for completed JARPA](#).

10a. Compliance with the State Environmental Policy Act (SEPA). (Check all that apply.) [\[help\]](#)

- For more information about SEPA, go to <https://ecology.wa.gov/regulations-permits/SEPA-environmental-review>.

A copy of the SEPA determination or letter of exemption is included with this application.

A SEPA determination is pending with _____ (lead agency). The expected decision date is _____.

I am applying for a Fish Habitat Enhancement Exemption. (Check the box below in 10b.) [\[help\]](#)

This project is exempt (choose type of exemption below).

Categorical Exemption. Under what section of the SEPA administrative code (WAC) is it exempt?
WAC 197-11-800(3). Repair and maintenance by complete replacement.

Other: JARPA application for Aquatic Use Authorization. SSD/CUP # 99-09.

SEPA is pre-empted by federal law.

10b. Indicate the permits you are applying for. (Check all that apply.) [\[help\]](#)

LOCAL GOVERNMENT

Local Government Shoreline permits:

Substantial Development Conditional Use Variance

Shoreline Exemption Type (explain): The City of Port Angeles SSD/CUP SMA #99-09 for the net pen facility located in Port Angeles Harbor is still valid for the proposed lease area. Upon approval of the new aquatic use permit for Salish Fish, a replacement fish pen structure will be installed with approval of a shoreline exemption permit for repair and maintenance of the permitted structure by complete replacement. Complete replacement with new equipment is standard industry practice for marine aquaculture facilities.

Other City/County permits:

- Floodplain Development Permit Critical Areas Ordinance

STATE GOVERNMENT

Washington Department of Fish and Wildlife:

- Hydraulic Project Approval (HPA) Fish Habitat Enhancement Exemption – [Attach Exemption Form](#)

Washington Department of Natural Resources:

- Aquatic Use Authorization

Complete [JARPA Attachment E](#) and submit a check for \$25 payable to the Washington Department of Natural Resources.

Do not send cash.

Washington Department of Ecology:

- Section 401 Water Quality Certification Non-Federally Regulated Waters

Additional Information: An existing NPDES permit for this property will be assigned to Salish Fish, LLC.

FEDERAL AND TRIBAL GOVERNMENT

United States Department of the Army (U.S. Army Corps of Engineers):

- Section 404 (discharges into waters of the U.S.) Section 10 (work in navigable waters)

United States Coast Guard:

For projects or bridges over waters of the United States, contact the U.S. Coast Guard at: d13-pf-d13bridges@uscg.mil

- Bridge Permit Private Aids to Navigation (or other non-bridge permits)

United States Environmental Protection Agency:

- Section 401 Water Quality Certification (discharges into waters of the U.S.) on tribal lands where tribes do not have treatment as a state (TAS)

Tribal Permits: (Check with the tribe to see if there are other tribal permits, e.g., Tribal Environmental Protection Act, Shoreline Permits, Hydraulic Project Permits, or other in addition to CWA Section 401 WQC)

- Section 401 Water Quality Certification (discharges into waters of the U.S.) where the tribe has treatment as a state (TAS).

Part 11—Authorizing Signatures

Signatures are required before submitting the JARPA package. The JARPA package includes the JARPA form, project plans, photos, etc. [\[help\]](#)

11a. Applicant Signature (required) [\[help\]](#)

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities, and I agree to start work only after I have received all necessary permits.

I hereby authorize the agent named in Part 3 of this application to act on my behalf in matters related to this application. WRA (initial)

By initialing here, I state that I have the authority to grant access to the property. I also give my consent to the permitting agencies entering the property where the project is located to inspect the project site or any work related to the project. WRA (initial)

W. Ron Allen
Applicant Printed Name

W. Ron Allen
Applicant Signature

12/20/2021
Date

11b. Authorized Agent Signature [\[help\]](#)

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities and I agree to start work only after all necessary permits have been issued.

Jim Parsons
Authorized Agent Printed Name

James E. Parsons
Authorized Agent Signature

12/22/2021
Date

11c. Property Owner Signature (if not applicant) [\[help\]](#)

Not required if project is on existing rights-of-way or easements (provide copy of easement with JARPA).

I consent to the permitting agencies entering the property where the project is located to inspect the project site or any work. These inspections shall occur at reasonable times and, if practical, with prior notice to the landowner.

Property Owner Printed Name

Property Owner Signature

Date

18 U.S.C §1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

If you require this document in another format, contact the Governor's Office for Regulatory Innovation and Assistance (ORIA) at (800) 917-0043. People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341. ORIA publication number: ORIA-16-011 rev. 09/2018



WASHINGTON STATE
Joint Aquatic Resources Permit
Application (JARPA) [\[help\]](#)



US Army Corps
of Engineers
Seattle District

AGENCY USE ONLY

Date received: _____; Town
 Application Fee Received; Fee N/A
 New Application; Renewal Application
Type/Prefix #: _____; NaturE Use Code: _____
LM Initials & BP#: _____
RE Assets Finance BP#: _____
New Application Number: _____
Trust(s): _____; County: _____
AQR Plate #(s): _____
Gov Lot #(s): _____
Tax Parcel #(s): _____

Attachment E:
Aquatic Use Authorization on
Department of Natural Resources
(DNR)-managed aquatic lands [\[help\]](#)

Complete this attachment and submit it with the completed JARPA form only if you are applying for an Aquatic Use Authorization with DNR. Call (360) 902-1100 or visit <http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions> for more information.

- DNR recommends you discuss your proposal with a DNR land manager before applying for regulatory permits. Contact your regional land manager for more information on potential permit and survey requirements. You can find your regional land manager by calling (360) 902-1100 or going to <http://www.dnr.wa.gov/programs-and-services/aquatics/aquatic-districts-and-land-managers-map>. [\[help\]](#)
- The applicant may not begin work on DNR-managed aquatic lands until DNR grants an Aquatic Use Authorization.
- Include a \$25 non-refundable application processing fee, payable to the “Washington Department of Natural Resources.” (Contact your Land Manager to determine if and when you are required to pay this fee.) [\[help\]](#)

DNR may reject the application at any time prior to issuing the applicant an Aquatic Use Authorization. [\[help\]](#)

Use black or blue ink to enter answers in white spaces below.

1. Applicant Name (Last, First, Middle)	
Allen, Ron, Salish Fish, LLC	
2. Project Name (A name for your project that you create. Examples: Smith’s Dock or Seabrook Lane Development) [help]	
Salish Fish- WDNR Aquatic Use Authorization Port Angeles	
3. Phone Number and Email	
Contact: Mr. Jim Parsons (Phone) 253-261-8751 (Email) jparsons@jamestowntribe.org	
4. Which of the following applies to Applicant? Check one and, if applicable, attach the written authority – bylaws, power of attorney, etc. [help]	
<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> General Partnership <input checked="" type="checkbox"/> Limited Liability Company Home State of Registration: <u>Washington</u>	<input type="checkbox"/> Individual <input type="checkbox"/> Marital Community (Identify spouse): _____ <input type="checkbox"/> Government Agency <input type="checkbox"/> Other (Please Explain): _____

5. Washington UBI (Unified Business Identifier) number, if applicable: [help]
604-640-872
6. Are you aware of any existing or previously expired Aquatic Use Authorizations at the project location?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know If Yes, Authorization number(s): <u>Lease # 20-B10237</u>
7. Do you intend to sublease the property to someone else?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, contact your Land Manager to discuss subleasing.
8. If fill material was used previously on DNR-managed aquatic lands, describe below the type of fill material and the purpose for using it. [help]
N/A- There has been no excavation of material or fill material utilized at this location.

To be completed by DNR and a copy returned to the applicant.

Signature for projects on DNR-managed aquatic lands:

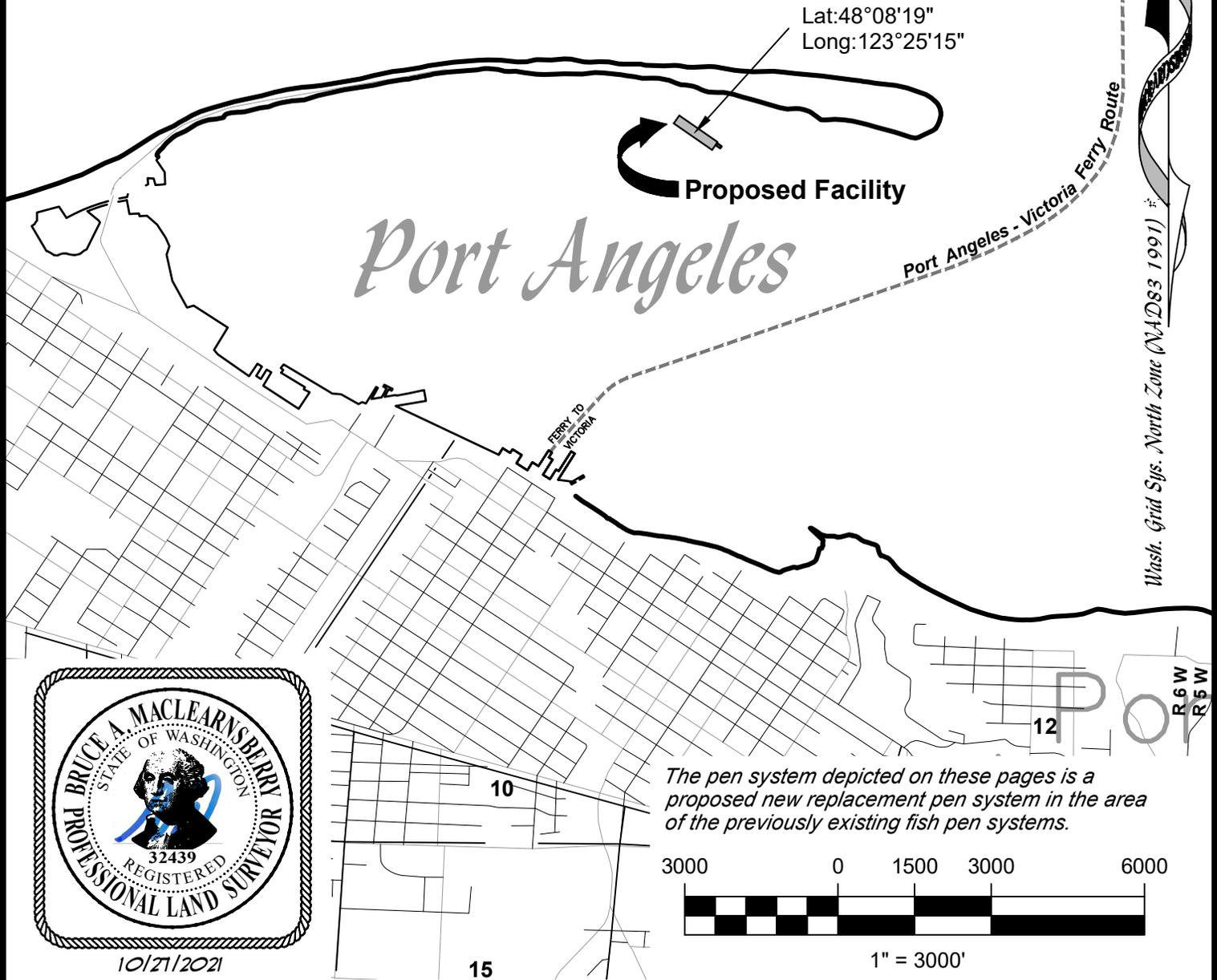
Applicant must obtain the signature of DNR Aquatics District Manager OR Assistant Division Manager if the project is located on DNR-managed aquatic lands.

I, a designated representative of the Dept. of Natural Resources, am aware that the project is being proposed on Dept. of Natural Resources-managed aquatic lands and agree that the applicant or his/her representative may pursue the necessary regulatory permits. My signature does not authorize the use of DNR-managed aquatic lands for this project.

Printed Name	Signature	Date
Dept. of Natural Resources District Manager or Assistant Division Manager	Dept. of Natural Resources District Manager or Assistant Division Manager	

If you require this document in another format, contact the Governor's Office for Regulatory Innovation and Assistance (ORIA) at (800) 917-0043. People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341. ORIA Publication ORIA-16-016 rev. 10/2016

Strait of Juan de Fuca



MACLEARNSBERRY, Inc. LAND SURVEYORS CONSULTANTS
1100 NW Thompson Road, Suite 301, Poulsbo, WA 98370 phone: 206 427-0506 www.sealandsurvey.com



REFERENCE: UPI 170544-08-01

APPLICANT: Salish Fish LLC

ADJACENT PROPERTY OWNERS:
Washington State; United States of America

LOCATION: Port Angeles, off south shore of Ediz Hook

LAT/LONG: Latitude: 48°08'19" N
Longitude: 123°25'15" W

Outlot 8, Township 31 North,
Range 6 West

PAGE 1 of 5 DATE: October 27, 2021

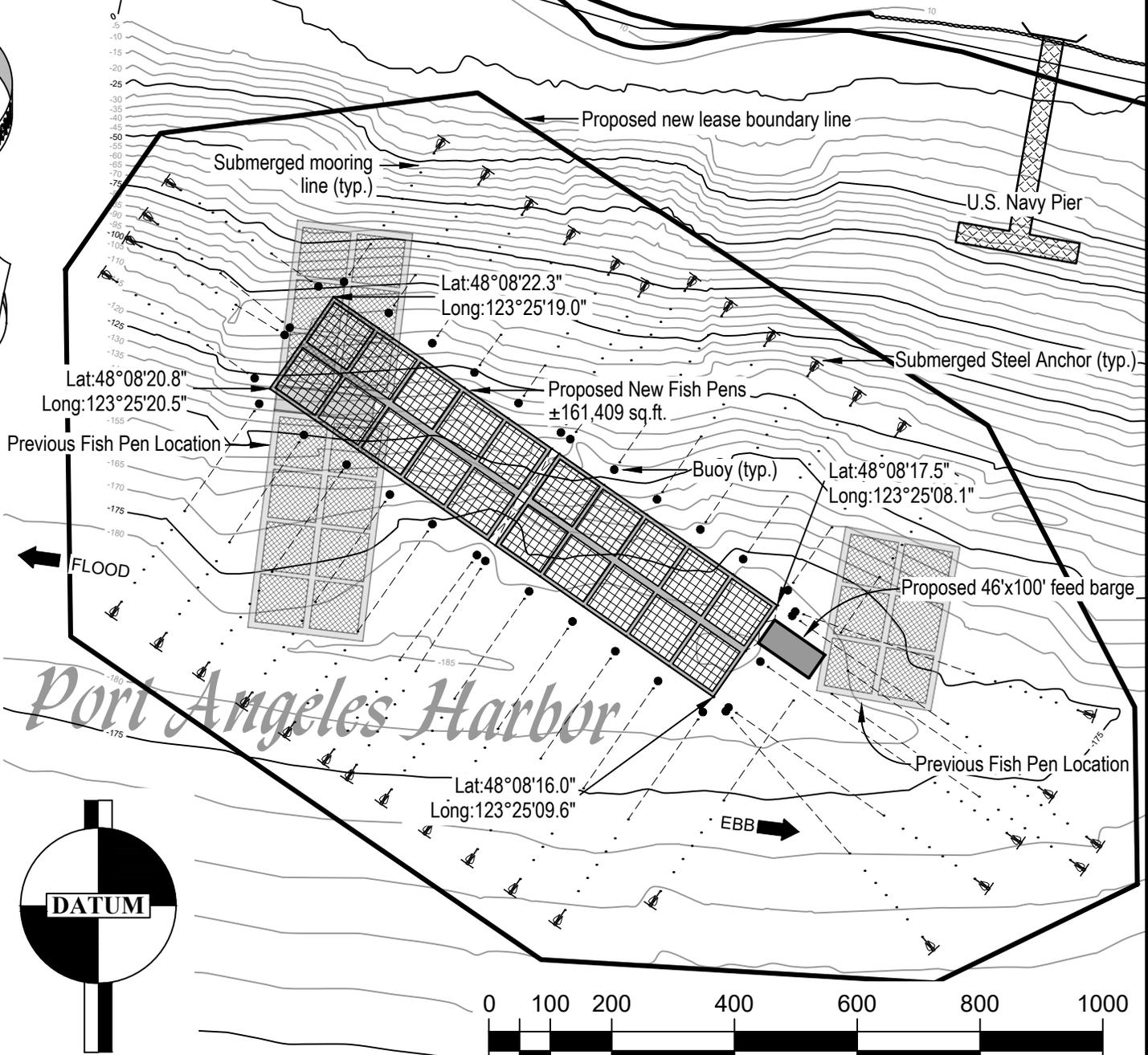
PROPOSED PROJECT: Salish Fish Aquaculture Site

IN: Port Angeles
NEAR/AT: Ediz Hook, Port Angeles
COUNTY: Clallam
STATE: WA

Proposed Salish Fish Aquaculture System

Ediz Hook

Wash. Grid Sys. North Zone (NAD83 1991)



MLLW (1983-2001 Epoch)
East Base

Scale = 1:3,000



MACLEARNSBERRY, Inc. LAND SURVEYORS CONSULTANTS
1100 NW Thompson Road, Suite 301, Poulsbo, WA 98370 phone: 206 427-0506 www.sealandsurvey.com



REFERENCE: UPI 170544-08-01

APPLICANT: Salish Fish LLC

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LOCATION: Port Angeles, off south shore of Ediz Hook

LAT/LONG: Latitude: 48°08'19" N
Longitude: 123°25'15" W

Outlot 8, Township 31 North,
Range 6 West

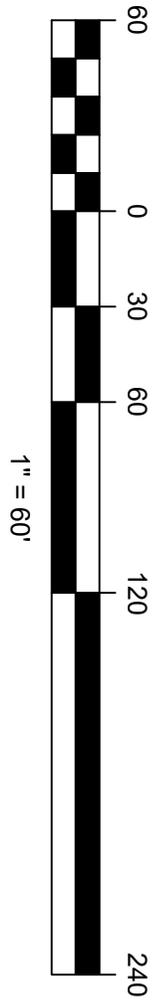
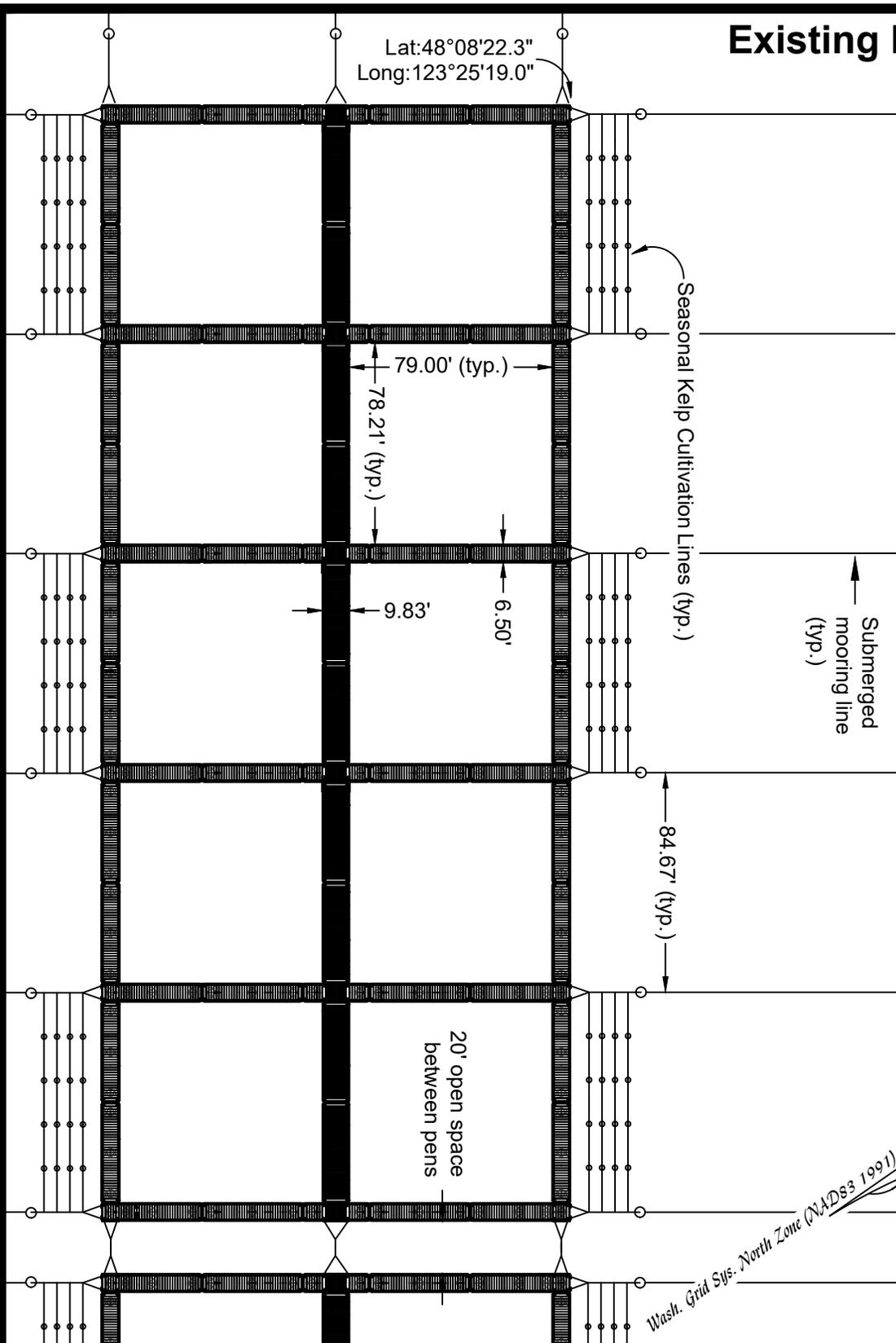
PAGE 2 of 5 DATE: October 27, 2021

PROPOSED PROJECT: Salish Fish Aquaculture Site

IN: Port Angeles
NEAR/AT: Ediz Hook, Port Angeles
COUNTY: Clallam
STATE: WA

Existing Net Pen Structure

Lat: 48°08'22.3"
Long: 123°25'19.0"



Wash. Grid Sys. North Zone (NAD83 1991)



MACLEARNSBERRY, Inc. LAND SURVEYORS CONSULTANTS

1100 NW Thompson Road, Suite 301, Poulsbo, WA 98370 phone: 206 427-0506 www.sealandsurvey.com



REFERENCE: UPI 170544-08-01

APPLICANT: Salish Fish LLC

ADJACENT PROPERTY OWNERS:
Washington State; United States of America

LOCATION: Port Angeles, off south shore of Ediz Hook

LAT/LONG: Latitude: 48°08'19" N
Longitude: 123°25'15" W

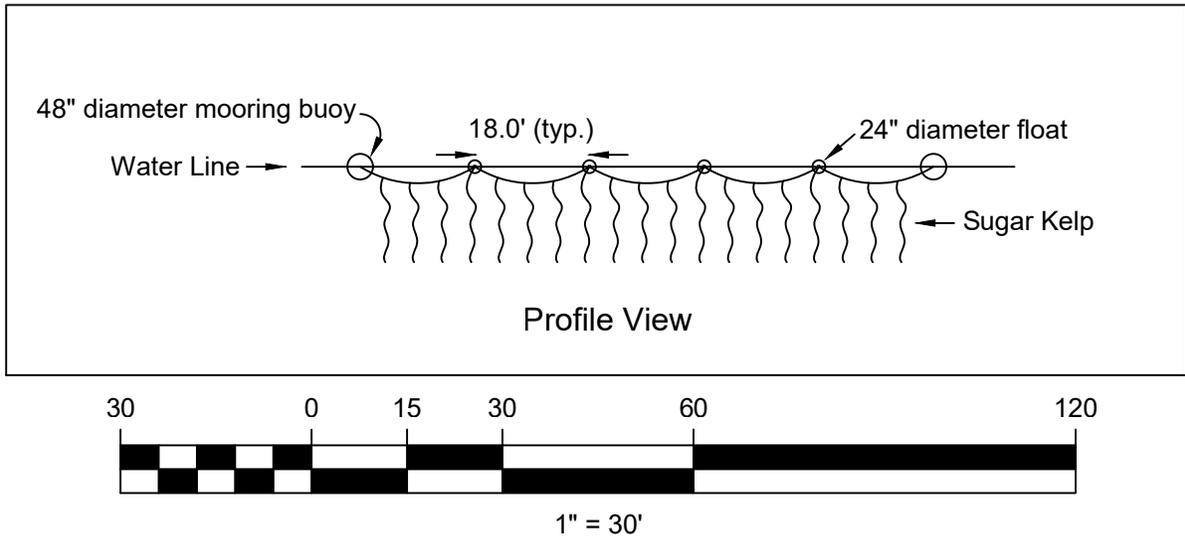
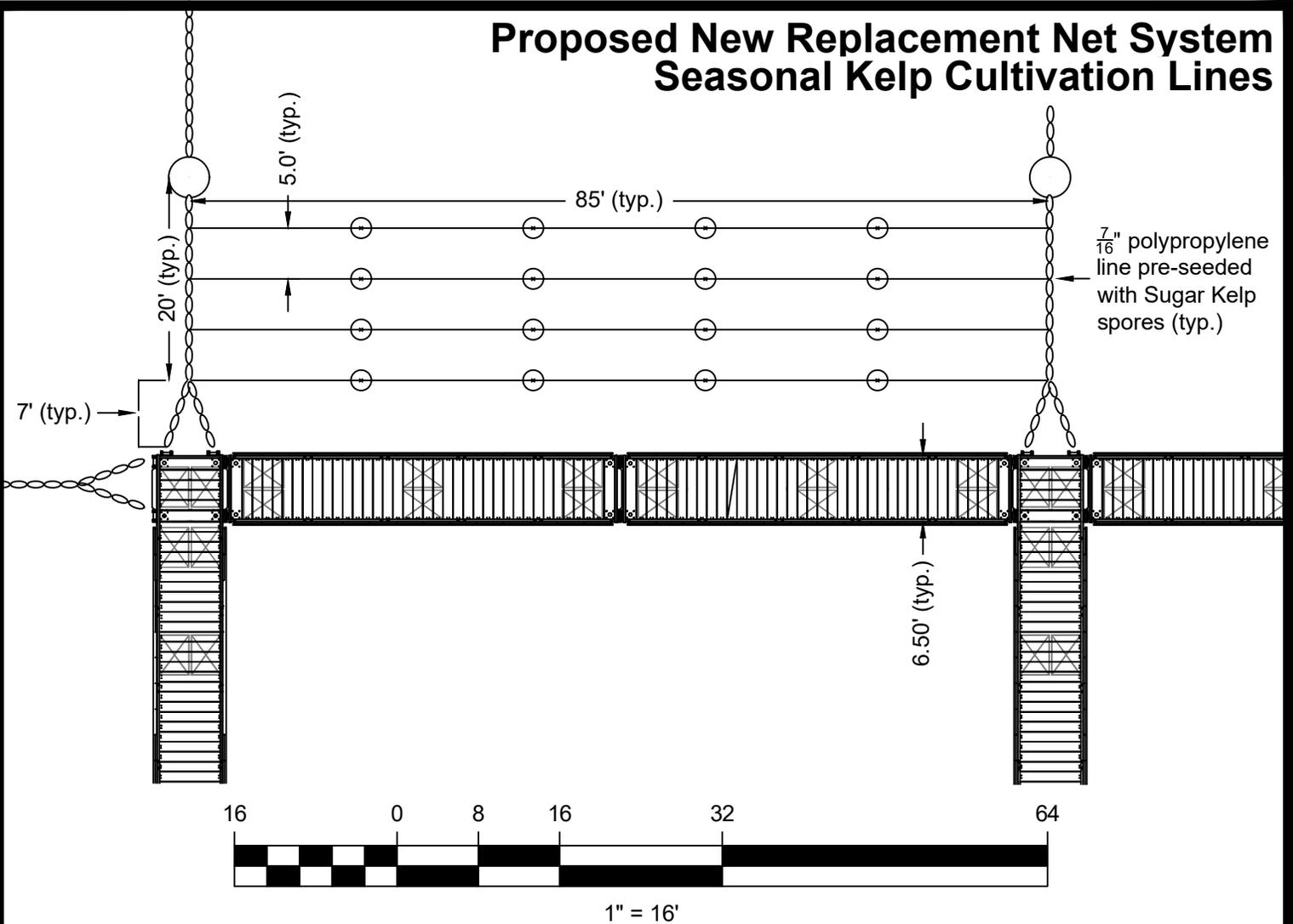
Outlot 8, Township 31 North,
Range 6 West

PAGE 3 of 5 DATE: October 27, 2021

PROPOSED PROJECT: Salish Fish Aquaculture Site

IN: Port Angeles
NEAR/AT: Ediz Hook, Port Angeles
COUNTY: Clallam
STATE: WA

Proposed New Replacement Net System Seasonal Kelp Cultivation Lines



MACLEARNSBERRY, Inc. LAND SURVEYORS CONSULTANTS
 1100 NW Thompson Road, Suite 301, Poulsbo, WA 98370 phone: 206 427-0506 www.sealandsurvey.com



REFERENCE: UPI 170544-08-01

APPLICANT: Salish Fish LLC

ADJACENT PROPERTY OWNERS:
 Washington State; United States of America

LOCATION: Port Angeles, off south shore of Ediz Hook

LAT/LONG: Latitude: 48°08'19" N
 Longitude: 123°25'15" W

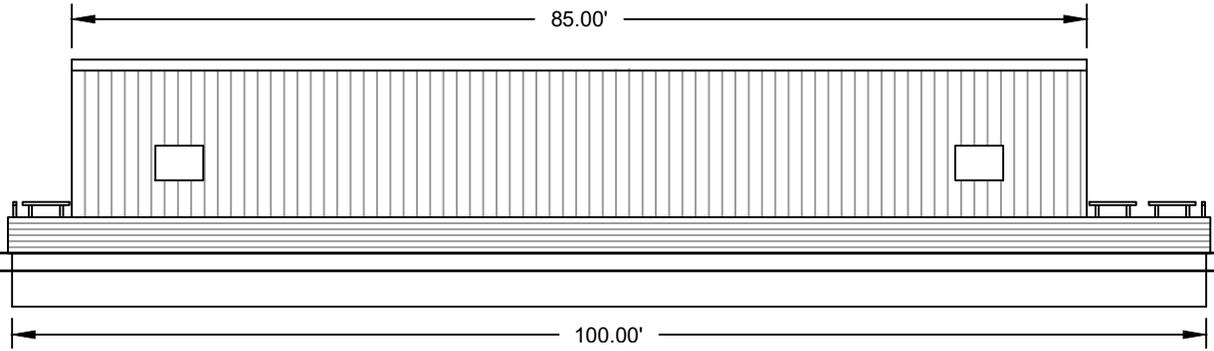
Outlot 8, Township 31 North,
 Range 6 West

PAGE 4 of 5 DATE: October 27, 2021

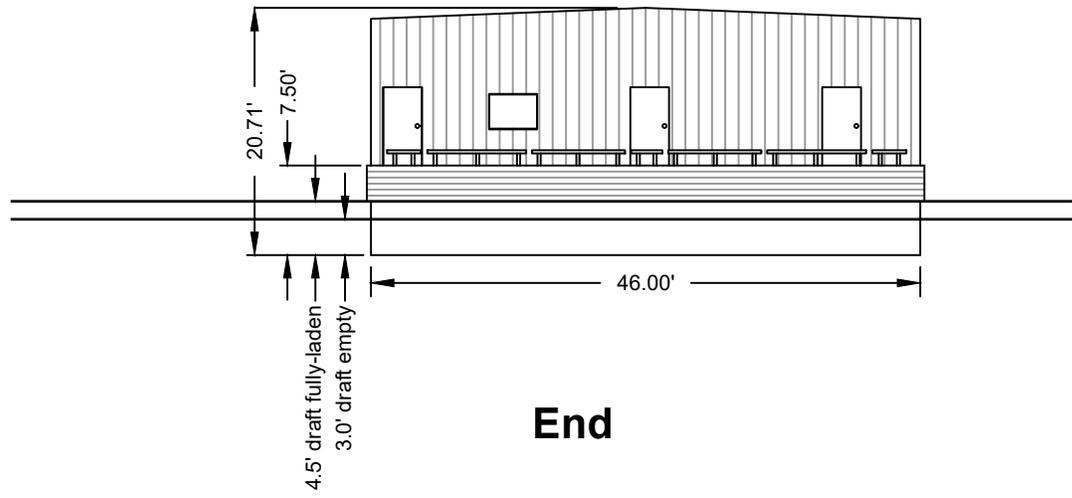
PROPOSED PROJECT: Salish Fish Aquaculture Site

IN: Port Angeles
 NEAR/AT: Ediz Hook, Port Angeles
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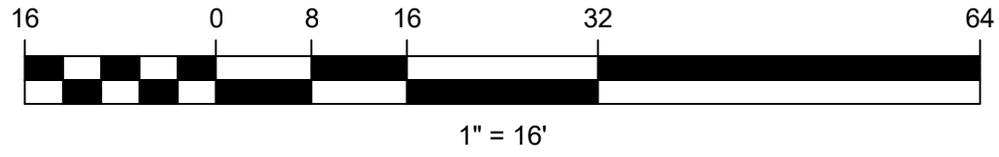
Barge Elevations



Side



End



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