

1 EXPEDITE
2 No Hearing Set
3 Hearing is set:
4 Date: January 6, 2023
5 Time: 9:00am
6 Judge/Calendar: Thomas

7
8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THURSTON COUNTY

10 COOKE AQUACULTURE PACIFIC,
11 LLC, a Washington limited liability
company,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No. 22-2-03398-34

DECLARATION OF KEVIN BRIGHT IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

18 Kevin Bright declares as follows:

19 1. I am over the age of 18, make this declaration based upon my personal knowledge,
20 and I am competent to testify on the matter stated herein.

21 2. I am the Permit Coordinator for Cooke Aquaculture Pacific, LLC ("Cooke").
22 Absent a stretch between 2002 and 2005, I have been continuously employed by Cooke or its
23 predecessors since 1991. I have held multiple positions during that time, including as an
24 aquaculture technician working at both the marine sites and freshwater hatcheries. As Permit
25 Coordinator, I have been in regular contact with various permitting agencies, including the
26 Washington State Department of Natural Resources ("DNR").

1 3. Cooke is in the business of growing fish at marine net pens in Puget Sound.
2 Historically, Cooke and its predecessors have operated eight net pen sites in four different areas,
3 commonly referred to as the Port Angeles, Rich Passage, Hope Island, and Cypress Island fish
4 farms. The Port Angeles and Cypress Island farms ceased operations in 2019 after leases were
5 terminated by DNR.

6 4. Marine fish farming (aquaculture) starts with incubating the steelhead eggs in a
7 freshwater hatchery. Our hatchery is located south of Olympia and grows fish from eggs to juvenile
8 fish (smolts) ready for the next phase of their life in the marine environment. The hatching and
9 smolt growing process takes approximately 10 months. The smolts are transported by truck and
10 boat to the marine fish farms located in Puget Sound, where they are stocked into the fish pens.
11 The young fish continue to be fed, cared for, and grown to adult market sized fish that are ready
12 to be harvested. This continued marine growth phase of the process takes another 12-18 months to
13 complete.

14 5. Cooke has endeavored to operate its farms in a way that provides a year-round
15 steady supply of fresh fish products to its customers. Each farm site receives a single generation
16 of fish, referred to as “planting” or “stocking” the farm site with fish. The fish stocking cycle is
17 carefully coordinated with the projected growth cycle and the forecasted harvesting periods to
18 achieve a steady supply of harvestable fish for our seafood customers. Aquaculture fish production
19 allows the aquatic farmer flexibility to either increase or decrease fish harvesting volumes based
20 upon the market demand and trends in the seafood marketplace. If market demand is down,
21 harvesting volumes can be adjusted accordingly and the remaining crop of fish is continued to be
22 fed and grown to larger sizes. Dramatic and forced changes to the scheduled production and
23 harvesting plans can create extraordinary farm staffing and safety concerns in addition to negative
24 disruptions for our customers and seafood markets.

25 6. Currently, Cooke has fish that are actively being grown in the fish pens at the Hope
26 Island farm and at the Clam Bay farm, which is one of the three farms located in Rich Passage.

1 These fish are the first two full crops of sterile steelhead to be raised at these farms. The Hope
2 Island fish were planted in the marine net pens in August 2021. Harvesting of those fish started in
3 September 2022, 13 months after they were initially planted, and was projected to be completed
4 around February 2023. DNR was aware of the harvest schedule and the past harvesting cycles for
5 these farm sites.

6 7. The second crop of sterile steelhead were started at the freshwater hatchery as eggs
7 approximately three months later than the Hope Island eggs in order to stagger the marine planting
8 cycle. This group of smolt was transported and stocked into the Clam Bay marine farm in
9 November and December 2021, approximately 3 to 4 months after the Hope Island site was stocked
10 with their fish. The first harvest of the Clam Bay steelhead crop started in early November 2022,
11 approximately 12 months later, and harvesting of this group was planned to last into April 2023.
12 DNR was aware of the harvest schedule and the past harvesting cycles for these farm sites.

13 8. Our leases with DNR for Rich Passage and Hope Island have been in place for over
14 40 years. The first lease for Hope Island was issued in 1986; the first leases for Rich Passage were
15 issued in the 1970s (approximately 1973). Those leases have been periodically renewed for the
16 past four to five decades. During that timeframe, the leases have routinely gone into holdover
17 status as DNR and the farm operators worked on new lease terms. For instance, the Rich Passage
18 lease was held over for six months when it was last renewed in 2008. The previous Hope Island
19 lease expired on March 31, 2006 and was not renewed until October 19, 2007. It has been Cooke's
20 experience with DNR that a lease that goes into holdover tenancy will be reauthorized or renewed.

21 9. In 2017, DNR terminated the Port Angeles lease held by Cooke, purportedly for
22 safety reasons that Cooke still disagrees with. At that time, fish were still being grown in the pens
23 at the farm. DNR agreed to allow Cooke to continue to grow those fish at the facility under the
24 predetermined production and harvest schedule for another 16 months after the lease termination
25 date, when the last fish were finally harvested out in April 2019.

26 10. Cooke has been in compliance with the terms of the Rich Passage and Hope Island

1 leases. Cooke has paid rent in a timely manner and has kept the facilities in good order and repair.
2 After the collapse of one of Cooke’s farms in 2017, Cooke and DNR worked cooperatively
3 together to ensure Cooke’s other facilities were in good condition. DNR hired a marine engineer
4 to survey Cooke’s farms, and Cooke worked with DNR to both supply information and to
5 implement the recommendations of that marine engineer. Cooke has since hired marine engineers
6 to inspect its facilities, perform mooring design analyses, review each site’s anchor and pen
7 maintenance routines, and share the results of those reports with DNR and other agencies. DNR
8 has explicitly acknowledged—multiple times—that the inspections by that marine engineer
9 confirm that Cooke’s facilities are in good order and repair.

10 11. Cooke and DNR have also worked cooperatively to implement better monitoring
11 of the ongoing condition of its facilities. The current reporting system requires Cooke to maintain
12 and send weekly “Net Score Reports” for each active farm site. The report produces a score for
13 the cleanliness of each fish-rearing net and records the frequency of the net cleaning process for
14 each net. DNR verifies the accuracy of the weekly Net Score Reports for the site by randomly
15 selecting between two and four nets that are to be video inspected. DNR randomly selects which
16 nets will be video surveyed for verification purposes. Cooke sends its divers into those randomly
17 selected pens the next day with video cameras to film the net wall and floor panels, which allows
18 DNR to make their own assessment on the cleanliness of the nets. The videos include audio and
19 visual verification of the date the videotape was taken, the farm site, and pen number that is being
20 videotaped. DNR reviews the video footage to verify that net hygiene is being properly maintained
21 and the visual scoring assessment by Cooke staff aligns with DNR’s scoring assessment. DNR can
22 provide feedback to Cooke about net hygiene or maintenance that may be needed, which Cooke
23 then implements.

24 12. The latest 15-year term of the Hope Island lease expired on March 31, 2022. Cooke
25 was in compliance with that lease throughout its entirety, including making all base rent and
26 royalty fee payments.

1 13. The latest 15-year term of the Rich Passage lease expired on November 10, 2022.
2 Cooke was in compliance with that lease throughout its entirety, including making all base rent
3 and royalty fee payments.

4 14. On May 10, 2021, well in advance of either lease expiring, I signed and sent notice
5 to DNR of Cooke’s intent to continue to use the sites and apply for new lease authorizations with
6 DNR for Hope Island and Rich Passage. A true and correct copy of my letter to DNR is attached
7 to my declaration as **Exhibit A**.

8 15. In the past, when DNR has renewed leases, it has done so by gathering more
9 information about the current operations and assessing the possible environmental impacts of the
10 operations. For instance, when the Port Angeles lease was renewed in 2015, DNR sent a Habitat
11 Stewardship specialist to inspect the farms. That individual prepared a Habitat Stewardship Report
12 that then became the basis for issues to be addressed in the lease renewal.

13 16. DNR never requested any information from Cooke about its lease renewal
14 applications. While DNR did conduct some routine inspections of the farms, it never conducted a
15 “Habitat Stewardship” visit to assess the renewal applications, as it had routinely done so in
16 response to other renewal applications made by Cooke’s predecessors.

17 17. DNR receives copies of all monitoring and other data Cooke generates at its farms,
18 pursuant to Ecology-issued water quality permits, along with fish health and other information
19 required by the Washington State Department of Fish and Wildlife (“WDFW”) Marine Finfish
20 Aquaculture Permit. Cooke has been in compliance with its Ecology-issued permit and WDFW-
21 issued permit.

22 18. On November 14, 2022, Cooke received lease application denial notices from DNR
23 regarding both Hope Island and Rich Passage. That notice came as a surprise because DNR had
24 never discussed the lease renewal application with Cooke, and Cooke had no indication that DNR
25 was going to deny the lease renewal application. Those lease application denials also terminated
26 Cooke’s holdover tenancy of Hope Island and Rich Passage. The termination was to be effective

1 30 days later, on December 14, 2022. True and correct copies of DNR’s November 14, 2022 letters
2 regarding the Hope Island lease and the Rich Passage lease are attached as **Exhibit B** and **Exhibit**
3 **C**, respectively.

4 19. The demand to remove the fish and farms from both sites by December 14, 2022
5 was impossible for Cooke to meet. Cooke had approximately 360,000 fish at the Hope Island and
6 Rich Passage sites that were at or nearing their harvestable sizes at the time the demand was made.
7 As mentioned previously, this was the first crop of marine-grown sterile steelhead trout coming
8 from these farms after decades of growing exclusively Atlantic salmon and after not having any
9 harvestable fish production from the marine farms since October 2020. Cooke had to find new
10 customers and was able to gradually work up to selling approximately 20,000 fish a week during
11 its harvests at Hope Island. At that rate, Cooke needs another 18 weeks to finish harvesting the
12 remaining crops of fish at Hope Island and Rich Passage.

13 20. On November 21, 2022, I sent correspondence to DNR asking for clarification
14 regarding the November 14, 2022 notices and whether DNR intended Cooke to remove the fish
15 and structures within 30 days. A true and correct copy of that email is attached as **Exhibit D**. On
16 a telephone call with DNR representatives on that day, DNR confirmed that it wanted both the fish
17 and the structures removed on that timeline. Cooke explained that such a demand was impossible
18 and created safety and other risks for Cooke and its employees.

19 21. Cooke conducted a second call with DNR on November 22, 2022. Again, Cooke
20 informed DNR that the December 14, 2022 deadline was not possible and asked DNR for
21 reasonable time to harvest the fish at its farms and wind down its operations in a safe manner.
22 Cooke asked DNR for a rationale for the tight timeline and whether it was driven by any
23 environmental considerations. DNR admitted it was not related to environmental concerns but
24 otherwise would not explain why it was imposing such a requirement.

25 22. On November 23, 2022, I received a letter from DNR pertaining to both the Hope
26 Island and Rich Passage leases, explaining that DNR would allow an additional 31 days to harvest

1 the remaining fish by January 14, 2023 and that all the equipment at both sites needed to be
2 completely removed by April 14, 2023. A true and correct copy of that letter is attached as **Exhibit**
3 **E**. DNR relied upon historic production records that showed Cooke had harvested up to 2,000,000
4 pounds of fish per month during certain time periods when it had much larger operations and was
5 harvesting Atlantic salmon it had been growing, harvesting, and marketing since the early 1990s.

6 23. The harvest rate calculated by DNR is impossible to achieve without safety risks
7 and financial loss to Cooke. In an attempt to meet DNR's demand, Cooke has managed to increase
8 its harvest rate up to 45,000 fish per week. Given that expedited schedule, Cooke's local buyers
9 that had expected a fresh fish supply well into April have canceled their contracts with Cooke. Due
10 to those canceled contracts, the fish must be frozen and exported to Asian markets at a price of \$2
11 per pound rather than the \$4.50 per pound that Cooke's customers were paying for fresh fish. If
12 Cooke is forced to harvest at that rate, Cooke will lose millions in revenue from that forced harvest.

13 24. The harvest rates calculated by DNR are also impossible to achieve because Cooke
14 is now a much smaller operation than it was at the times cited by DNR. DNR cited harvest rates
15 from June 2017 and August 2018 to justify its request to empty these farms within 61 days. In June
16 2017, Cooke had approximately 80 employees, and all eight of its farms were fully operational
17 and producing Atlantic salmon, which have a much larger, more established position in the market
18 than the steelhead trout now being produced at these two farm sites. The 2017 harvests occurred
19 at one farm at a time, allowing Cooke to sustain such large harvest rates. The same is true for
20 August 2018, although at that time only seven farms were operational.

21 25. DNR's reliance on the total harvested pounds from 2017 and 2018 also fails to
22 account for the size difference between Atlantic salmon and steelhead trout. The processing
23 capacity of the plant that receives Cooke's fish is dictated by the number of fish it can process in
24 a week—not the number of pounds of fish it can process. Each individual fish must be handled by
25 the seafood processing personnel when it is being cleaned and processed for packaging. The
26 Atlantic salmon used in DNR's assumption of monthly processing capacity weighed

1 approximately 12 to 16 pounds on average when they were being harvested. The steelhead trout
2 Cooke is currently growing in the pens are smaller, weighing in the six to eight pound range.
3 DNR's assumption that similar pounds of steelhead can be processed as some of the peak months
4 of prior Atlantic salmon processing is incorrect.

5 26. The processing capacity available to Cooke is also limited due to the upcoming
6 holidays when the plant will be closed.

7 27. Cooke is also having to harvest at two farms at two geographically different
8 locations with one harvest vessel and one harvest crew. To harvest at Hope Island, that vessel
9 needs to spend approximately eight hours in transit to Hope Island from the processing plant. The
10 harvesting operation from the pens takes from three to six hours to complete, depending on the
11 number of fish being loaded and other factors such as tide and weather conditions. Once loaded,
12 the harvest vessel returns to the processing plant and unloads the following morning. Harvests at
13 Hope Island can only occur two days a week at this time as a result. While the Hope Island farm
14 is being harvested, this limits the capacity and ability to harvest at the Clam Bay farm in Rich
15 Passage.

16 28. Achieving the rates of harvest quoted by DNR is also problematic from a staffing
17 standpoint. Cooke employs approximately 24 employees between the two marine farm sites at the
18 present time. Assembling a harvest crew from those employees is more difficult than when Cooke
19 had approximately 60 employees working at the eight marine farms in 2017 and 2018. Employee
20 illness and inclement weather can further limit the pace of harvest as a result. The harvest operation
21 is physically demanding work that is done outside in the elements, and Cooke's priority in this
22 operation is worker safety. Rushing harvesting operations and creating stress for employees who
23 have just learned they are going to be losing jobs due to DNR's actions (right before the holidays)
24 is not a safety risk that Cooke is willing to take.

25 29. During harvesting operations, employees are shifted away from the normal day-to-
26 day farming tasks to focus their efforts on completing the fish handling process safely and

1 efficiently. While harvesting, Cooke needs to ensure that its remaining fish are being cared for, the
2 nets are still being cleaned, and the equipment is being maintained. With Cooke's existing work
3 force, it is impossible to harvest at the pace to meet DNR's arbitrary deadlines, try to begin
4 removing farming equipment and physical improvements from the other sites, and conduct
5 important day-to-day farming tasks.

6 30. Staffing concerns also exist at the individual farms. Cooke currently has only nine
7 employees left at Hope Island, and one of those employees has given notice that the week of
8 December 11 will be his last week of employment. Harvesting at Hope Island is in the "clean out"
9 phase where the remaining fish in each of the pens are harvested out. Cleaning out an individual
10 pen involves sending divers into the water to prepare the rearing nets for lifting to a shallower
11 depth so that the harvest vessel can remove the remaining harvest fish from the pen. Cooke has
12 attempted to accelerate the clean out of Hope Island in response to DNR's demand, but has
13 determined that doing so creates undue strain on the small farm crew, risks physically exhausting
14 that crew, and potentially increases the risk of an accident.

15 31. That risk is compounded by the working conditions of winter. Cooke needs
16 flexibility in its harvest schedules to be able to cancel a harvest when weather conditions or tidal
17 conditions are not safe. That is the normal practice that Cooke has utilized for harvesting and other
18 operations at the marine sites. Working with the elements and environmental conditions is
19 necessary for the safety and success of the farming operations. For instance, there are times at the
20 marine farm sites when winter weather conditions and wave action make attaching the harvest
21 vessel to the farm structure unsafe for the employees, the farm, or the harvest vessel. Harvesting
22 operations are canceled or delayed until conditions are deemed safe, and employees are instructed
23 to prioritize safety over harvesting schedules. There are also times when the harvesting operations
24 need to be coordinated with the timing of the tidal currents. Forcing unnecessary deadlines on
25 harvesting operations for the harvest vessel and farm increases the risk of accidents occurring in
26 an attempt to meet those deadlines. DNR's mandate to empty that farm on a shortened schedule

1 restricts the flexibility to account for these weather factors and creates safety risks that Cooke is
2 not willing to impose on its employees, contractors, and its farms.

3 32. Cooke cannot begin removing equipment from the water while harvests are being
4 conducted and the fish are still being grown in the pens. Removing the equipment at these sites is
5 a difficult task that requires careful planning and permitting to be performed safely. Each site
6 consists of a large array of net pen structures that need to first be disassembled by divers, lifted to
7 the surface, transported to shoreside facilities, lifted onto docks, and handled accordingly at upland
8 facilities. This all has to occur before the fish pen structure can be removed from the site. There
9 are 20 to 30 or more large anchors that secure each site, which weigh from 3,000 to 10,000 pounds
10 each. Weather during the winter months makes this type of removal work more challenging, and
11 Cooke needs the time and flexibility in removal of these facilities to ensure its workers and
12 contractors are safe and to carry this work out safely and responsibly.

13 33. In addition to these logistical and safety considerations, the removal of the facilities
14 may require authorizations from local shoreline jurisdictions and the Army Corps of Engineers
15 (the “Corps”). On November 28, 2022, I sent correspondence to the City of Bainbridge Island
16 regarding removal of some of the Rich Passage facilities to inquire about the permitting process
17 for the removal of the physical improvements at these facilities. The city’s initial determination is
18 that the removal project would require a Shoreline Substantial Development Permit Exemption
19 (“SSDE”) letter and State Environmental Policy Act review. Cooke had recently applied for a
20 SSDE letter from the City of Bainbridge Island in May of this year for a different project regarding
21 completion of maintenance and repair work at one of the Rich Passage sites and has been waiting
22 six months for the city to finish its reviews and issue the permits. I anticipate that seeking the
23 SSDE letter of exemption for the removal of these facilities could take a similar amount of time.
24 On December 1, 2022, I communicated with Kitsap County and Skagit County regarding the Rich
25 Passage facilities and the Hope Island facility. At this time, Kitsap County told us it will require a
26 SEPA review and determination for the removal. Skagit County is reviewing their codes and has

1 not given Cooke a final determination for their permitting process. The Corps has communicated
2 to Cooke that it may not require a permit for the removal of the structures, but there are remaining
3 questions Cooke will need to resolve regarding the Corps process and regulatory requirements.

4 34. Given the impracticality of DNR's slightly extended deadlines, Cooke attempted
5 further dialogue with DNR after DNR sent its November 23, 2022 letter but DNR declined to
6 engage in discussion of more reasonable timelines. Cooke has informed DNR in weekly reports
7 that these deadlines are impossible to meet, but DNR has refused to change the deadlines. Attached
8 as **Exhibit F** and **Exhibit G** are true and correct copies of Cooke's weekly reports dated Friday,
9 December 2, 2022 and Friday, December 9, 2022, respectively.

10
11 Sworn to under penalty of perjury of the laws of the Washington, at Anacortes,
12 Skagit County, Washington, this 14th day of Dec., 2022.

13
14 
15 _____
16 Kevin Bright
17
18
19
20
21
22
23
24
25
26

1 **DECLARATION OF SERVICE**

2 I declare that I caused the foregoing to be served to each of the following via email and
3 electronic notification via the electronic court filing system:

<i>Attorneys for Defendants</i>	
Jennifer Clements, WSBA #50408 Attorney General of Washington 1125 Washington Street SE P.O. Box 40100 Olympia, WA 98504-0100 360.586.3755	RESOlyEF@atg.wa.gov jennifer.clements@atg.wa.gov janelle.blevins@atg.wa.gov shirley.burrell@atg.wa.gov

4
5
6
7
8 I declare under penalty of perjury under the laws of the State of Washington, that the
9 foregoing is true and correct to the best of my knowledge.

10 DATED this 20th day of December, 2022, in Seattle, Washington.

11
12 *s/ Eliza Hinkes*
13 Paralegal

14 4894-3415-1490, v. 6

Exhibit A



Cooke Aquaculture Pacific

PO Box 669 Anacortes, WA 98221

Phone: (360) 391-2409

Sean Carlson, Land Manager
Washington Dept. of Natural Resources
Aquatic Resource Division, Orca Straits District
5310 Eaglemount Road
Chimacum, WA 98325

May 10, 2021

Re: Renewal Application for Aquatic Lands Lease Agreement No. 20-B12356 and Aquatic Lease No. 20-B10237

Dear Sean Carlson:

Thank you for reaching out to us in regarding the lease renewal process for the Hope Island and Rich Passage Fish Pen Aquatic Lands Leases (No. 20-B12356 and 20-B10237). Our intention will be to renew both leases and to continue using them to raise native fish species in fish pens. Copies of the completed intent forms for both these leases are included with this correspondence. We will begin working on completing new JARPA and Attachment E applications for each lease and will get those to you as soon as possible. Please let me know if you require any further information at this time.

Sincerely,

Kevin Bright, Permit Coordinator
Cooke Aquaculture Pacific, LLC

Cc. Jim Parsons-Cooke Aquaculture Pacific

As an alternative to contacting me by email or phone to express your intentions and provide any updated information, please complete and return the form below.

Please let DNR know of your intentions for Lease No. 20-B10237:

Your Name: Kevin Bright, Cooke Aquaculture Pacific

- I am interested in continuing to use the site and would like to apply for a new authorization at Rich Passage, Kitsap County.
- I cannot access the application (JARPA) via the internet. Please mail me an application for a new use authorization.
- I no longer wish to use state-owned aquatic lands after my authorization expires. I understand you will contact me to discuss any obligations I may have when the agreement expires. Please see Section "End of Term" of your agreement.

If you have a new address, email or phone number, please enter it below.

New Address: _____

New Phone Number: _____

New Email: _____

Thank you.

Please return this form by 06/15/21 to Bridget Kaminski-Richardson at:

**WA State Dept. of Natural Resources
Aquatic Resources
5310 Eaglemount Road
Chimacum, WA 98325**

or sean.carlson@dnr.wa.gov

If you are interested in continuing to lease state-owned aquatic lands, please submit the signed JARPA application and Attachment E as soon as possible to the mailing address or email address above.

As an alternative to contacting me by email or phone to express your intentions and provide any updated information, please complete and return the form below.

Please let DNR know of your intentions for Lease No. 20-B12356:

Your Name: Kevin Bright, Cooke Aquaculture Pacific

- I am interested in continuing to use the site and would like to apply for a new authorization at Skagit Bay, Skagit County.
- I cannot access the application (JARPA) via the internet. Please mail me an application for a new use authorization.
- I no longer wish to use state-owned aquatic lands after my authorization expires. I understand you will contact me to discuss any obligations I may have when the agreement expires. Please see Section "End of Term" of your agreement.

If you have a new address, email or phone number, please enter it below.

New Address: _____

New Phone Number: _____

New Email: _____

Thank you.

Please return this form by 06/15/21 to Bridget Kaminski-Richardson at:

**WA State Dept. of Natural Resources
Aquatic Resources
5310 Eaglemount Road
Chimacum, WA 98325**

or sean.carlson@dnr.wa.gov

If you are interested in continuing to lease state-owned aquatic lands, please submit the signed JARPA application and Attachment E as soon as possible to the mailing address or email address above.

Exhibit B



**DEPARTMENT OF
NATURAL RESOURCES**

AQUATIC RESOURCES DIVISION

1111 WASHINGTON STREET SE
OLYMPIA, WA 98504

360-902-1100

ARD@DNR.WA.GOV
WWW.DNR.WA.GOV

November 14, 2022

VIA EMAIL AND CERTIFIED MAIL

Kevin Bright
Environmental Permit Coordinator
Cooke Aquaculture Pacific, LLC
P.O. Box 669
Anacortes, WA 98221
kevin.bright@cookeaqua.com

Subject: Application to reauthorize Lease No. 20-B12356—Hope Island

Dear Mr. Bright:

This letter serves as notice to Cooke Aquaculture Pacific, LLC and Glenn Cooke AGS Holdings, Inc. (Cooke) that the Washington Department of Natural Resources (DNR) hereby denies Cooke's application to reauthorize Lease No. 20-B12356 and terminates any holdover tenancy of the property as of December 14, 2022. This decision is based on DNR's determination that it is not in the best interests of the State to reauthorize this lease. *See* RCW 79.130.040 (No re-lease of bedlands unless DNR "deems it to be in the best interest of the state to re-lease the area."). Considerations that went into this determination include:

1. Contract Noncompliance and Failures to Perform

Cooke has been a tenant on state-owned aquatic land since May 2016, when it executed a Notice of Change in Ownership for four commercial finfish aquaculture leases with DNR. Since 2016, DNR has notified Cooke regarding at least six lease defaults including:

- August 25, 2017—Notice of Default under Lease No. 20-B12517, for not keeping and maintaining leasehold improvements in good order and repair;
- September 19, 2017—Notice of Default under Lease No. 20-B12517, for improvements located outside of the leasehold;
- October 20, 2017—Notice of Default under Lease 22-B02777, for not paying rent;
- November 11, 2017—Event of Default under Lease No. 20-B12517, for failure to cure a default under the lease;

- December 15, 2017—Notice of Default and Termination under Lease 22-B02777, for: (i) not replacing unencapsulated flotation material, (ii) improvements located outside of the leasehold, and (iii) not maintaining leasehold improvements; and,
- February 22, 2018—Event of Default and Termination under Lease No. 20-B12517, for: (i) improvements located outside of the leasehold, (ii) installing improvements without prior consent, and (iii) not maintaining leasehold improvements, resulting in catastrophic damage to improvements on the site leading to a significant fish escapement event at the Cypress Island facility in 2017.

These incidents of noncompliance demonstrate that reauthorization of this lease by DNR, allowing Cooke to continue operating at this site, poses risks to Washington State including, but not limited to: (i) environmental harm to state-owned aquatic lands resulting from lack of adherence to lease provisions, and (ii) increased costs to DNR associated with contract compliance, monitoring, and enforcement.

2. Risks to State-Owned Aquatic Land

In reviewing aquatic land use authorization applications, WAC 332-30-122(2)(a) directs DNR to consider whether or not the applicable facility is properly designed, constructed, maintained and conducted in accordance with sound environmental practices, and whether or not the proposed use causes adverse environmental impacts that cannot be mitigated to avoid substantial change to the environment. The commercial marine net aquaculture guidance document, *Commercial Marine Finfish Net Pen Aquaculture in Puget Sound and Strait of Juan de Fuca*,¹ completed jointly by the Washington Department of Ecology, the Washington Department of Fish and Wildlife, and DNR in early 2022 (Guidance Document), notes that commercial net pen aquaculture presents a number of potential risks to state-owned aquatic land. These risks include, but are not limited to, the following:

- Benthic environment—Deposition of organic matter leading to degradation of the benthic environment is a documented risk associated with net pen aquaculture;
- Biofouling—Biofouling impedes water flow through the nets, diminishing dissolved oxygen levels inside the pen and negatively affecting the fish. Biofouling also increases drag on net pens, which can cause stress on the infrastructure, resulting in deformed cages and, in extreme cases, net pen failure. In addition, biofouling can impact the benthic sediments underneath the net pens through the organic buildup of dislodged organisms when the nets are cleaned;

¹ *Commercial Marine Finfish Net Pen Aquaculture in Puget Sound and Strait of Juan de Fuca*, Publication No. 22-06-008, April 2022.

- Water quality—Commercial finfish net pen aquaculture is considered a concentrated animal feeding activity and regulated as a pollution point source. The release of nutrients and organic matter can enrich the surrounding waters, giving rise to increased algae production in the affected areas and potentially leading to reduced dissolved oxygen from decomposition and respiration;
- Fish health—Open net pen finfish aquaculture: promotes the introduction of non-native pathogens, amplifies rate of infection and therefore amplifies pathogen abundance, promotes the increase in virulence of existing pathogens or is the nexus for the emergence of new pathogens, and promotes disease in wild finfish;
- Fish genetics—The consequences of escaped native or endemic species of farmed finfish interacting through reproduction with wild stocks are major concerns with open net pen finfish aquaculture;
- Ecological issues—Risks to wild populations from open net pen finfish aquaculture also include the attraction of wild populations to the net pen facilities and the potential entrapment and inadvertent harvest of wild fish within the net pen cages;
- Escape prevention and response—Fish escapes are a reality of finfish net pen aquaculture due to the dynamic and unpredictable nature of marine environments. Fish domesticated for and raised in a commercial marine operation are not managed or regulated for release into Puget Sound for fishery enhancement.

While some of these risks may be mitigated through, for example, provisions in a lease providing for prevention plans, water quality monitoring, and/or implementing best management practices into daily operations, not all risk can be eliminated even if following the management practices provided in the Guidance Document.

The inherent risks of finfish aquaculture are compounded by additional risks where, such as here, DNR lacks confidence that Cooke will consistently comply with lease mitigation requirements. DNR concludes that the risks to the State's aquatic lands from renewal of Cooke's lease on this site are high, and therefore that Cooke's proposed renewal is not in the best interests of the State.

3. No Renewal Option

Pursuant to Section 3 of the lease, there is no renewal option. Section 3.2 provides that: "Tenant shall have the option to renew this Lease for Zero additional terms of Zero (0) years each. The initial term of this lease, and all renewal terms, shall not exceed Fifteen years (15) in the aggregate." The initial term of the lease was fifteen years, beginning on April 1, 2007 (*See* Section 3.1). Accordingly, Cooke is not entitled to renew this lease.

4. Treaty Rights

In February 2022, the Swinomish Tribe requested that DNR deny Cooke's application for a new net pen lease at Hope Island stating that "*the continued operation of the net pens violates our treaty fishing rights, is contrary to our historic and current tribal use of the area, and is contrary to the best interest of the state.*" In their letter, they indicate that their treaty rights are adversely affected by the net pens through interference with historical access to fishing, including physical displacement and impacts to fishing gear, and given the impacts to fish and fish habitat in Skagit Bay, which is crucial to the cultural, spiritual, subsistence and commercial activities of the Swinomish Tribe. Furthermore, they indicated the net pens are located near Lone Tree Point, a sacred cultural area for the tribe.

Tribal fishing rights under the Stevens Treaties consist of two components: (i) a "fair share" component and (ii) a "geographical," or right of access, component. *See Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504, 1511 (W.D. Wash. 1988); *Northwest Sea Farms, Inc. v. U.S. Army Corps of Engineers*, 931 F. Supp. 1515, 1521-22 (W.D. Wash. 1996). The courts in both *Muckleshoot* and *Northwest Sea Farms* determined that treaty access rights would be impaired by proposals to construct improvements within the tribes' usual and accustomed fishing grounds. Renewal of Cooke's lease here presents a similar problem.

As such, and given DNR's statutory guidance to manage state-owned aquatic lands to provide a balance of public benefits for all citizens, including to ensure environmental protection and encourage direct public use and access (*See RCW 79.105.030*), DNR recognizes the impacts to state-owned aquatic lands as described above may also directly impact treaty rights. Therefore, in considering the appropriate balance of public benefits, which in this case compete with one another, DNR hereby determines the environmental protection and public access use, including but not limited to the Tribes, outweigh the benefits that would be received from authorizing continued use of the site to Cooke for finfish net pen aquaculture use.

5. Best Interests of the State

DNR is aware of and reviewed the recent Supreme Court decision upholding WDFW's SEPA process for Cooke's fish transfer permit. However, the standards DNR is required to consider in evaluating whether a proposed use of the State's aquatic lands is in the best interests of the State necessarily go beyond the procedural requirements of the State Environmental Policy Act (SEPA, RCW 43.21C).

The Legislature delegated the responsibility to manage state-owned aquatic lands to DNR "for the benefit of the public." RCW 79.105.010. DNR is required to "strive to provide a balance of public benefits for all citizens of the state." RCW 79.105.030. DNR manages state-owned aquatic lands in trust for the public by virtue of the Washington Constitution. *Pope Res. v. Dep't of Nat. Res.*, 190 Wn.2d 744, 754, 418 P.3d 90 (2018), and DNR "executes its leasing authority with a view towards the State's duty to protect the public trust." *Id.* Through the aquatic lands statutes, "the State has granted sovereign powers to DNR for protection of the State's interest in

the trust.” *Id.* As such, “DNR is vested with the discretionary, administrative responsibility to reject a bid to lease state lands as the interests of the State or affected trust require.” *Nw. Alloys, Inc. v. Dep’t of Nat. Res.*, 10 Wn.App.2d 169, 185, 477 P.3d 620 (2019). Based on the above considerations, and in light of the applicable statutes and regulations, DNR is denying Cooke’s application to reauthorize net pen aquaculture at Rich Passage, because it is not in the best interests of the State.

Pursuant to Section 3.5 of the lease, DNR hereby notifies Cooke that any holdover tenancy on the Property will be terminated as of **December 14, 2022**.

DNR will contact you separately regarding the next steps in wrapping up operations under the existing lease, and required clean up and restoration of the leasehold (*See, e.g.*, Sections 3.4, 7.4, 11, and 12 of the lease). In the meantime, if you have any questions about this decision or ongoing management of your existing lease, please reach out to Sean Carlson, District Manager, by phone at (360) 301-0422 or by email at sean.carlson@dnr.wa.gov.

Sincerely,



Thomas Gorman
Aquatic Resources Division Manager

- c: District File, TRO File: 20-B10237
Michael Szemerda, Global Chief Sustainability Officer, Cooke Aquaculture Pacific, LLC, mszemerda@cookeaqua.com
Rodney Gould, Chief Legal Officer and Secretary, Glenn Cooke AGS Holdings, Inc., rgould@cookeaqua.com
Philip Kurpiewski, Senior Vice President, DNB Bank, ASA New York Branch, phil.kurpiewski@dnb.no
Ted Callow, Senior Counsel, Washington State office of the Attorney General, ted.callow@atg.wa.gov
Brady Scott, Orca-Straits District Manager, Washington Department of Natural Resources, brady.scott@dnr.wa.gov

Exhibit C



**DEPARTMENT OF
NATURAL RESOURCES**

AQUATIC RESOURCES DIVISION

1111 WASHINGTON STREET SE
OLYMPIA, WA 98504

360-902-1100

ARD@DNR.WA.GOV
WWW.DNR.WA.GOV

November 14, 2022

VIA EMAIL AND CERTIFIED MAIL

Kevin Bright
Environmental Permit Coordinator
Cooke Aquaculture Pacific, LLC
P.O. Box 669
Anacortes, WA 98221
kevin.bright@cookeaqua.com

Subject: Application to reauthorize Lease No. 20-B10237—Rich Passage

Dear Mr. Bright:

This letter serves as notice to Cooke Aquaculture Pacific, LLC and Glenn Cooke AGS Holdings, Inc. (Cooke) that the Washington Department of Natural Resources (DNR) hereby denies Cooke's application to reauthorize Lease No. 20-B10237 and terminates any holdover tenancy of the property as of December 14, 2022. This decision is based on DNR's determination that it is not in the best interests of the State to reauthorize this lease. *See* RCW 79.130.040 (No re-lease of bedlands unless DNR "deems it to be in the best interest of the state to re-lease the area."). Considerations that went into this determination include:

1. Contract Noncompliance and Failures to Perform

Cooke has been a tenant on state-owned aquatic land since May 2016, when it executed a Notice of Change in Ownership for four commercial finfish aquaculture leases with DNR. Since 2016, DNR has notified Cooke regarding at least six lease defaults including:

- August 25, 2017—Notice of Default under Lease No. 20-B12517, for not keeping and maintaining leasehold improvements in good order and repair;
- September 19, 2017—Notice of Default under Lease No. 20-B12517, for improvements located outside of the leasehold;
- October 20, 2017—Notice of Default under Lease 22-B02777, for not paying rent;

- November 11, 2017—Event of Default under Lease No. 20-B12517, for failure to cure a default under the lease;
- December 15, 2017—Notice of Default and Termination under Lease 22-B02777, for: (i) not replacing unencapsulated flotation material, (ii) improvements located outside of the leasehold, and (iii) not maintaining leasehold improvements; and,
- February 22, 2018—Event of Default and Termination under Lease No. 20-B12517, for: (i) improvements located outside of the leasehold, (ii) installing improvements without prior consent, and (iii) not maintaining leasehold improvements, resulting in catastrophic damage to improvements on the site leading to a significant fish escapement event at the Cypress Island facility in 2017.

These incidents of noncompliance demonstrate that reauthorization of this lease by DNR, allowing Cooke to continue operating at this site, poses risks to Washington State including, but not limited to: (i) environmental harm to state-owned aquatic lands resulting from lack of adherence to lease provisions, and (ii) increased costs to DNR associated with contract compliance, monitoring, and enforcement.

2. 2019 Maintenance Concerns—Structural Deficiency at Orchard Rocks South Facility

On the weekend of October 19-20, 2019, at the Orchard Rocks South Site, water entered one of the southeastern corner pontoons, reducing the buoyancy enough that the corner of the walkway went under water. This event demonstrated the structural deficiency of the net pen as well as maintenance issues with the net pen, which increase the risk of an accidental fish escapement or structural failure. Cooke's issues with the structural integrity and maintenance of its net pen facilities demonstrates to DNR that reauthorizing this lease poses a risk to Washington State of a pen failure and/or fish escapement.

3. Unpermitted Relocation of Fort Ward Net Pens to Orchard Rocks

In March 2022, Cooke relocated the Fort Ward net pen array to the Orchard Rocks location without first obtaining a shoreline substantial development permit or shoreline exemption from the City of Bainbridge Island. This is a violation of Section 2.3 of the lease, which requires tenants to “keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other governmental rules and regulations regarding its use or occupancy of the property.” Cooke proceeded with this work despite receiving correspondence from DNR, prior to moving the net pen array, informing Cooke that it must comply with all permit requirements. Finally, without all requisite permits, DNR cannot approve Cooke's renewal application under WAC 332-30-122(1)(c).

4. Risks to State-Owned Aquatic Land

In reviewing aquatic land use authorization applications, WAC 332-30-122(2)(a) directs DNR to consider whether or not the applicable facility is properly designed, constructed, maintained and conducted in accordance with sound environmental practices, and whether or not the proposed use causes adverse environmental impacts that cannot be mitigated to avoid substantial change to the environment. The commercial marine net aquaculture guidance document, *Commercial Marine Finfish Net Pen Aquaculture in Puget Sound and Strait of Juan de Fuca*,¹ completed jointly by the Washington Department of Ecology, the Washington Department of Fish and Wildlife, and DNR in early 2022 (Guidance Document), notes that commercial net pen aquaculture presents a number of potential risks to state-owned aquatic land. These risks include, but are not limited to, the following:

- **Benthic environment**—Deposition of organic matter leading to degradation of the benthic environment is a documented risk associated with net pen aquaculture;
- **Biofouling**—Biofouling impedes water flow through the nets, diminishing dissolved oxygen levels inside the pen and negatively affecting the fish. Biofouling also increases drag on net pens, which can cause stress on the infrastructure, resulting in deformed cages and, in extreme cases, net pen failure. In addition, biofouling can impact the benthic sediments underneath the net pens through the organic buildup of dislodged organisms when the nets are cleaned;
- **Water quality**—Commercial finfish net pen aquaculture is considered a concentrated animal feeding activity and regulated as a pollution point source. The release of nutrients and organic matter can enrich the surrounding waters, giving rise to increased algae production in the affected areas and potentially leading to reduced dissolved oxygen from decomposition and respiration;
- **Fish health**—Open net pen finfish aquaculture: promotes the introduction of non-native pathogens, amplifies rate of infection and therefore amplifies pathogen abundance, promotes the increase in virulence of existing pathogens or is the nexus for the emergence of new pathogens, and promotes disease in wild finfish;
- **Fish genetics**—The consequences of escaped native or endemic species of farmed finfish interacting through reproduction with wild stocks are major concerns with open net pen finfish aquaculture;

¹ *Commercial Marine Finfish Net Pen Aquaculture in Puget Sound and Strait of Juan de Fuca*, Publication No. 22-06-008, April 2022.

- Ecological issues—Risks to wild populations from open net pen finfish aquaculture also include the attraction of wild populations to the net pen facilities and the potential entrapment and inadvertent harvest of wild fish within the net pen cages;
- Escape prevention and response—Fish escapes are a reality of finfish net pen aquaculture due to the dynamic and unpredictable nature of marine environments. Fish domesticated for and raised in a commercial marine operation are not managed or regulated for release into Puget Sound for fishery enhancement.

While some of these risks may be mitigated through, for example, provisions in a lease providing for prevention plans, water quality monitoring, and/or implementing best management practices into daily operations, not all risk can be eliminated even if following the management practices provided in the Guidance Document.

The inherent risks of finfish aquaculture are compounded by additional risks where, such as here, DNR lacks confidence that Cooke will consistently comply with lease mitigation requirements. DNR concludes that the risks to the State’s aquatic lands from renewal of Cooke’s lease on this site are high, and therefore that Cooke’s proposed renewal is not in the best interests of the State.

5. No Renewal Option

Pursuant to Section 3 of the lease, there is no renewal option. Section 3.2 provides that: “Tenant shall have the option to renew this Lease for Zero additional terms of Zero (0) years each. The initial term of this lease, and all renewal terms, shall not exceed Fifteen years (15) in the aggregate.” The initial term of the lease was fifteen years, beginning on November 11, 2007 (*See* Section 3.1). Accordingly, Cooke is not entitled to renew this lease.

6. Treaty Rights

The Suquamish Tribe expressed opposition to DNR regarding continued fin fish aquaculture in Puget Sound. The Suquamish assert treaty rights in this location as part of their usual and accustomed fishing grounds. Tribal fishing rights under the Stevens Treaties consist of two components: (i) a “fair share” component; and (ii) a “geographical,” or right of access, component. *See Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504, 1511 (W.D. Wash. 1988); *Northwest Sea Farms, Inc. v. U.S. Army Corps of Engineers*, 931 F. Supp. 1515, 1521-22 (W.D. Wash. 1996). The courts in both *Muckleshoot* and *Northwest Sea Farms* determined that treaty access rights would be impaired by proposals to construct improvements within the tribes’ usual and accustomed fishing grounds. Renewal of Cooke’s lease here presents a similar problem.

As such, and given DNR’s statutory guidance to manage state-owned aquatic lands to provide a balance of public benefits for all citizens, including to ensure environmental protection and encourage direct public use and access (*See* RCW 79.105.030), DNR recognizes the impacts to state-owned aquatic lands as described above may also directly impact treaty rights. Therefore,

in considering the appropriate balance of public benefits, which in this case compete with one another, DNR hereby determines the environmental protection and public access use, including but not limited to the Tribes, outweigh the benefits that would be received from authorizing continued use of the site to Cooke for finfish net pen aquaculture use.

7. Best Interests of the State

DNR is aware of and reviewed the recent Supreme Court decision upholding WDFW's SEPA process for Cooke's fish transfer permit. However, the standards DNR is required to consider in evaluating whether a proposed use of the State's aquatic lands is in the best interests of the State necessarily go beyond the procedural requirements of the State Environmental Policy Act (SEPA, RCW 43.21C).

The Legislature delegated the responsibility to manage state-owned aquatic lands to DNR "for the benefit of the public." RCW 79.105.010. DNR is required to "strive to provide a balance of public benefits for all citizens of the state." RCW 79.105.030. DNR manages state-owned aquatic lands in trust for the public by virtue of the Washington Constitution. *Pope Res. v. Dep't of Nat. Res.*, 190 Wn.2d 744, 754, 418 P.3d 90 (2018), and DNR "executes its leasing authority with a view towards the State's duty to protect the public trust." *Id.* Through the aquatic lands statutes, "the State has granted sovereign powers to DNR for protection of the State's interest in the trust." *Id.* As such, "DNR is vested with the discretionary, administrative responsibility to reject a bid to lease state lands as the interests of the State or affected trust require." *Nw. Alloys, Inc. v. Dep't of Nat. Res.*, 10 Wn.App.2d 169, 185, 477 P.3d 620 (2019). Based on the above considerations, and in light of the applicable statutes and regulations, DNR is denying Cooke's application to reauthorize net pen aquaculture at Rich Passage, because it is not in the best interests of the State.

Pursuant to Section 3.5 of the lease, DNR hereby notifies Cooke that any holdover tenancy on the Property will be terminated as of **December 14, 2022**.

DNR will contact you separately regarding the next steps in wrapping up operations under the existing lease, and required clean up and restoration of the leasehold (*See, e.g.*, Sections 3.4, 7.4, 11, and 12 of the lease). In the meantime, if you have any questions about this decision or ongoing management of your existing lease, please reach out to Sean Carlson, District Manager, by phone at (360) 301-0422 or by email at sean.carlson@dnr.wa.gov.

Sincerely,



Thomas Gorman
Aquatic Resources Division Manager

- c: District File, TRO File: 20-B10237
Michael Szemerda, Global Chief Sustainability Officer, Cooke Aquaculture Pacific, LLC, mszemerda@cookeaqua.com
Rodney Gould, Chief Legal Officer and Secretary, Glenn Cooke AGS Holdings, Inc., rgould@cookeaqua.com
Philip Kurpiewski, Senior Vice President, DNB Bank, ASA New York Branch, phil.kurpiewski@dnb.no
Ted Callow, Senior Counsel, Washington State office of the Attorney General, ted.callow@atg.wa.gov
Brady Scott, Orca-Straits District Manager, Washington Department of Natural Resources, brady.scott@dnr.wa.gov

Exhibit D

From: Kevin J. Bright
Sent: Monday, November 21, 2022 3:02 PM
To: Carlson, Sean (DNR); Scott, Brady (DNR); Gorman, Thomas (DNR); Ted D Callow (ted.callow@atg.wa.gov)
Cc: Michael Szemerda; dsteding@nwresourcelaw.com
Subject: November 21st discussion on next steps
Attachments: Harvest plan update; Cooke September 2022 Feed Bio Report.pdf; October 2022 Feed Bio Report.pdf; Cooke Aqua Pacific Harvest Schedule (draft v.2) 10.27.2022.xlsx

Follow Up Flag: Follow up
Flag Status: Flagged

All,

As we discussed on our call today there are a number of logistical issues raised by DNR's decision to terminate the leases by December 14th. We need clarity on these issues as soon as possible. Cooke risks losing the employees that have the skill to wind down its operations, markets for its products, fish processor capacity, and other losses.

Specifically:

- **Will DNR allow Cooke a reasonable time to continue the harvest of its fish?** As I discussed, we send detailed fish counts to all agencies monthly. Attached is the September monthly summary report and fish inventory sent to DNR that shows 525,000 fish in the water. The October inventory—uploaded on November 4th to Ecology's electronic DMR reporting site but not been sent to the other agencies is attached to this email—shows 440,000 fish in the water. We also send harvest schedules that shows the dates for harvest out harvest for a couple months to the agencies. Attached is the latest copy that was sent to the agencies and the email sent to the agencies. The email states that the "We will be beginning the first harvests of fish from the Clam Bay site around mid-November." The harvest plan is a forecast of the approximate dates and the site location of when we plan to harvest and that is all that is required to be provided to WDFW. A similar harvest plan was sent to the agencies in August as we began planning dates for the first harvest of the Hope Island fish at the end of August. Harvesting at Hope Island first started in early September and we are currently averaging about 80,000 fish a month. We have 360,000 fish left in the water currently between the 2 farm sites. At that pace, it will take at least four months more time to harvest the remaining fish, and possibly longer depending on market conditions and other factors as discussed. It will take months after that time to remove the cages and anchors from the water.
- **What is DNR's position regarding fish in the hatchery?** We have 330,000 fish in the hatchery. As we discussed, a common practice at these farms over the past four decades is to allow them to go into holdover status as the lease applications were pending. Is it DNR's position that Cooke needs to destroy these fish? Will DNR compensate Cooke for that loss?

Please let us know DNR's positions on these points as soon as possible. We would appreciate an answer by tomorrow at the latest so we can communicate with our employees. They are understandably anxious about their jobs and what this means for their families.

-Kevin

Kevin Bright, Permit Coordinator
Cooke Aquaculture Pacific
Kevin.Bright@CookeAqua.com
(360) 391-2409



Exhibit E



**DEPARTMENT OF
NATURAL RESOURCES**

AQUATIC RESOURCES DIVISION

1111 WASHINGTON STREET SE
OLYMPIA, WA 98504

360-902-1100

ARD@DNR.WA.GOV
WWW.DNR.WA.GOV

November 23, 2022

VIA EMAIL AND CERTIFIED MAIL

Kevin Bright
Environmental Permit Coordinator
Cooke Aquaculture Pacific, LLC
P.O. Box 669
Anacortes, WA 98221
kevin.bright@cookeaqua.com

Subject: End of Term and Removal of Improvements
Lease No. 20-B12356—Hope Island, and
Lease No. 20-B10237—Rich Passage

Dear Mr. Bright:

This letter serves as follow up to the November 14, 2022 denial of renewal and end of holdover of Lease No. 20-B12356 at Hope Island and Lease No. 20-B10237 at Rich Passage (the Leases) between Glenn Cooke AGS Holdings, Inc. dba Cooke Aquaculture Pacific, LLC (Cooke) and the Washington Department of Natural Resources (DNR), and addresses the end of term and removal of Improvements as required by the Leases.

In accordance with Sections 3.4 of the Leases, entitled “End of Term,” Cooke is required to *surrender the Property to [DNR] in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.* Further, in accordance with Sections 7.4 of the Leases, entitled “Removal of Improvements,” *all Tenant-owned improvements and all Unauthorized Improvements shall be removed by [Cooke] from the Property on or before the Termination Date unless [DNR] consents that the improvements may remain.*

DNR does not consent to any Improvements remaining on the site and hereby expressly states that Cooke shall remove the Improvements in accordance with the terms of the Leases. However, in meetings on November 21st and November 22nd, Cooke stated it did not believe it could remove the remaining fish and remove all Improvements by December 14, 2021. Though not required by the Leases or applicable law, DNR does hereby in good faith approve the following schedule for the removal of the remaining fish and removal of all Improvements:

- Harvest of Remaining Fish: DNR hereby grants Cooke an additional thirty-one (31) days beyond the end of holdover date of the Leases (December 14, 2022), that is until **January 14, 2023**, to remove all remaining fish from the Properties.

- Removal of All Improvements: DNR hereby grants Cooke an additional one hundred twenty-one (121) days beyond the end of holdover date of the Leases (December 14, 2022), that is until **April 14, 2023**, to remove all the Improvements from the Properties.

This approval is contingent upon the following:

- Cooke shall remain in compliance with all terms of the Leases, including but not limited to remaining in compliance with all laws and permits and remaining in compliance with insurance and financial security requirements.
- Cooke shall provide DNR weekly written updates describing: (i) activities and timeframes related to the harvest of fish, including quantity of fish harvested, quantity of fish remaining and schedule for removal of any remaining fish; and (ii) activities and timeframes regarding removal of all improvements, including description of work completed and planned, and any permit requirements needed for removal thereof.
- Cooke shall notify DNR in writing when: (i) harvest has been completed at each Property, and (ii) when removal of all Improvements has been completed. This written notice shall include documented evidence and reports showing performance thereof.

The time periods provided herein are fair and reasonable. This timeline provides Cooke sixty-one (61) days from the initial November 14, 2022 notice to remove its remaining fish which, based upon the quantity of fish remaining on the site (approximately 360,000), is well within the harvest timeframe parameters provided by Cooke in its past quarterly production reports to DNR. Between 2016 and 2020, Cooke reported harvest rates exceeding 2,000,000 pounds per month.¹ At that rate of harvest the remaining 360,000 fish, estimated at approximately 3,060,000 pounds,² should be harvested in approximately 46 days.³

It is the intent of this letter that the times provided herein for harvest of the remaining fish and removal of improvements constitute a *wrapping-up* period, and remains a valid activity. Moreover, it is Cooke's responsibility pursuant to the Leases to complete such actions.

Given the notices from DNR to vacate the Property, as provided in the letters dated November 14, 2022 and herein, and in accordance with Section 3.5 of the Leases, if Cooke fails to remove the remaining fish and remove the improvements within the times set forth, DNR is prepared to begin charging unauthorized use and occupancy fees under WAC 332-30-127 and RCW

¹ In August 2018, Cooke harvested 2,074,053 pounds of fish from the Hope Island Properties and in June 2017 Cooke harvested 2,476,609 pounds of fish from the Rich Passage Properties.

² Calculated using an average of 8.5 pounds per fish which comes from data Cooke provided to DNR in their October 2022 feed report.

³ DNR recognizes that the harvest rates provided herein were associated with Atlantic Salmon as opposed to Steelhead. While the species and size are different, the same process to harvest the fish is utilized.

79.105.200. Such fees shall begin to accrue as of January 15, 2023 if fish remain on the Properties, and begin to accrue as of April 15, 2023 if Improvements remain. DNR further reserves its rights to take any and all other applicable remedies allowed by law.

If you have any questions about this decision, please reach out to Sean Carlson, District Manager, by phone at 360-301-0422 or by email at sean.carlson@dnr.wa.gov.

Sincerely,



Thomas Gorman
Aquatic Resources Division Manager

- c: District File, TRO File: 20-B10237
Michael Szemerda, Global Chief Sustainability Officer, Cooke Aquaculture Pacific, LLC, mszemerda@cookeaqua.com
Rodney Gould, Chief Legal Officer and Secretary, Glenn Cooke AGS Holdings, Inc., rgould@cookeaqua.com
Philip Kurpiewski, Senior Vice President, DNB Bank, ASA New York Branch, phil.kurpiewski@dnb.no
Ted Callow, Senior Counsel, Washington State office of the Attorney General, ted.callow@atg.wa.gov
Brady Scott, Field Assistant Division Manager, Washington Department of Natural Resources, brady.scott@dnr.wa.gov

Exhibit F

From: Kevin J. Bright <Kevin.Bright@cookeaqu.com>
Sent: Friday, December 2, 2022 3:15 PM
To: Carlson, Sean (DNR)
Cc: Gorman, Thomas (DNR); Scott, Brady (DNR)
Subject: RE: December 2 weekly update - Hope Island and Rich Passage
Attachments: Cooke Harvest Forecast and Remaining Inventory Report to WDNR 12.02.22.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Sean-

December 2, 2022 Update on Fish Harvesting Process and Site Removal

Fish harvesting

The weekly harvest rate (# of fish harvested per week) from the marine sites was more than doubled this past week. As discussed in our conference call, we had been harvesting an average of 20,000 fish per week since the end of October. This week, approximately 47,122 fish were harvested from the Clam Bay site. The increased rate is an attempt by Cooke to meet DNR's timeline of having all of the fish removed from the farm sites by January 14th 2023. We do not know at this time whether the market will absorb the increased volume, or if the increased volume will depress sale prices and cause further economic harm to our company. Even at this accelerated harvest rate, there are other logistical factors that make the feasibility of meeting the January 14th deadline of removing all the fish from the sites impossible, including but not limited to transit times to and from the sites to the processing plant for the harvest vessel, the processing capacity over the holidays when the plants will be closed down and winter storm conditions that can affect the safety of the harvesting operations.

Attached is a harvest forecast that breaks down the number of fish that were harvested this week and the forecast of harvests through January 14th. The report includes the running calculated fish inventory based on the end of November fish inventory and the projected harvest numbers from each site. This report will be updated and sent to you each week and will include updates to the information from the week regarding actual harvest numbers, calculated remaining fish or any changes to the harvest schedule.

Removal of the pens

Contact was made with the US Army Corps of Engineer and the Skagit County, Kitsap County, and City of Bainbridge Island planning departments to discuss removal projects, scope of work, and requested their review of permit or work authorization approvals. The Corps has made a preliminary decision at this time that the removal is not a permit action, but is asking for more information from Cooke so they can evaluate the removal work. The City of Bainbridge Island planning department has made the preliminary determination that the removal of the Orchard Rocks fish pens and anchors will require a Shoreline Substantial Development Permit Exemption including a SEPA and comment period review. The Skagit and Kitsap County planning departments are currently reviewing their shoreline codes to make a determination on how to proceed with the removal project.

Cooke's priorities continue to be its employees' safety and the safe operation of its facilities. As we discussed on the telephone, we are concerned that these artificially short deadlines imposed by DNR create safety risks in addition to financial harm to Cooke. Our employees work outside and on the water and winter storm events require flexibility to the daily operations and forecasted schedules of work. We will continue to manage our facilities with employee safety as a priority and not the arbitrarily short deadlines being imposed by DNR.

Kevin Bright, Permit Coordinator
Cooke Aquaculture Pacific
Kevin.Bright@CookeAqua.com
(360) 391-2409



From: Carlson, Sean (DNR) <Sean.Carlson@dnr.wa.gov>
Sent: December 2, 2022 11:10 AM
To: Kevin J. Bright <Kevin.Bright@cookeaqua.com>
Cc: Gorman, Thomas (DNR) <Thomas.Gorman@dnr.wa.gov>; Scott, Brady (DNR) <Brady.Scott@dnr.wa.gov>
Subject: December 2 weekly update - Hope Island and Rich Passage

This message originated from outside your organization.

Good morning Kevin,

As outlined in DNR's November 23rd letter to Cooke, DNR would like to request Cooke's weekly update for activities at Hope Island and Rich Passage. Specifically, DNR is looking for the following information.

- Quantity of fish harvested this week at each site;
- Quantity of fish remaining at each site;
- An updated harvest schedule that includes harvest dates through January 14, 2023;
- Any updated timeframes concerning the removal of Improvements at each site;
- Status updates on the required permits to remove Improvements.

We would like to receive these reports by COB Friday of each week. Please let us know if you have any questions about this request.



Sean Carlson
Straits Unit District Manager
Aquatic Resources Division, Orca-Straits District
Washington State Department of Natural Resources (DNR)
360-301-0422
sean.carlson@dnr.wa.gov
www.dnr.wa.gov

Exhibit G

From: Kevin J. Bright <Kevin.Bright@cookeaqua.com>
Sent: Friday, December 9, 2022 4:46 PM
To: Carlson, Sean (DNR); Scott, Brady (DNR); Gorman, Thomas (DNR)
Subject: December 9, 2022 weekly update - Hope Island and Rich Passage sites
Attachments: Cooke Aquaculture Harvest Forecast and Remaining Inventory Report to DNR 12.09.22.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Sean-

December 9, 2022 Update on Fish Harvesting Process and Site Removal

Fish harvesting at both Hope Island and Clam Bay

Attached is a copy of the updated Harvest Forecast and Remaining Fish Inventory Report for the week ending December 9, 2022. Approximately 49,000 in total were harvested from both sites this week. This is the second week of the substantially accelerated harvesting rates and the volume of fish being processed. We have tried to harvest more fish to meet DNR's schedule and are running into multiple issues. First, the processing plant is limited by the number of fish it can handle, process, and package per week. In addition to the physical handling constraints, the processing plant is scheduled to close for several days during the holidays which limits our ability to harvest fish during those weeks. We have adjusted the harvest schedule around the holidays to accommodate the plant closures and theirs as well as our employees scheduled time off. Second, Cooke had to notify its customers that it would not be delivering fresh fish in Q1 2023 as it had agreed to do, which resulted in the cancellation of those customer contracts. Cooke has no contracts in place to deliver more fresh fish to customers now—so it is being forced to freeze the fish and sell them into foreign markets as frozen product at a lesser value. It is doing so at price of around \$2 per pound versus \$4.5 per pound for the sale of fresh fish.

We are continuing to evaluate the safety of the harvesting rate and the ability of our staff to maintain this level of harvesting while continuing to care for the remaining fish stocks and the farm facilities. Cooke continues to focus on worker safety in response to DNR's mandate to remove fish and equipment on an accelerated schedule. We will not be able to meet this schedule and need flexibility in both the harvest plans and the removal of equipment timelines that DNR is expecting to do both of these substantial tasks safely. Continued accelerated harvest of fish, while continuing to conduct normal fish farming and maintenance, combined with equipment removal at the same time, is impossible. We have lost some experienced and trained employees already who have decided to pursue other careers after DNR's announcements in November. Retaining the experienced employees at these farm sites will be even more challenging in the weeks and months to come.

Removal of the pens and permitting requirements

Conference calls with Kitsap County planning department on Clam Bay removal project. The county is carrying out further reviews and has discussed this with Ecology shoreline contacts. Cooke expects to hear back from Kitsap next week on a recommended course of action. Discussed the project and confirmed with DFW Habitat Biologist from Kitsap county, and included in correspondence with the Skagit area DFW Habitat Biologist, that the net pen removal projects is exempted from an HPA permit. Cooke is carrying out further reviews and discussion regarding the Corps permitting process and types of authorizations that may be needed for the proposed net pen removal work.

Cooke's priorities continue to be its employees' safety, health and well-being during the challenges they face especially at this time of year. Cooke will continue to manage their facilities with employee safety as a priority.

-Kevin

Kevin Bright, Permit Coordinator
Cooke Aquaculture Pacific
Kevin.Bright@CookeAqua.com
(360) 391-2409

