

United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

**Authorization to Discharge under the  
National Pollutant Discharge Elimination System (NPDES)**

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

**Tribal Marine Net Pen Enhancement Facilities**

**Within the boundaries of**

**The State of Washington**

which are described in Part I of this general NPDES permit are authorized to discharge to Waters of the United States, in accordance with discharge points, effluent limitations, monitoring requirements and other conditions set forth herein.

This General Permit will become effective: **November 1, 2015.**

This General Permit and the authorization to discharge will expire: **October 31, 2020.**

Each Permittee must apply for reauthorization to discharge on or before **April 30, 2020** if it intends to continue operations and discharge from the facility beyond the term of this permit.

Signed this 9<sup>th</sup> day of September, 2015

  
Daniel D. Opalski, Director  
Office of Water and Watersheds

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## Schedule of Submissions

The following is a summary of the items the Permittee must submit to EPA during the term of this permit.

<b>Item</b>	<b>Due Date</b>
<b>Notice of Intent</b>	Existing dischargers must submit an NOI within 30 days of the effective date of this permit. New dischargers must submit an NOI 180 days prior to commencing operations (Part II) and the expiration of this permit. (Part I.D).
<b>Five Day Reporting</b>	The Permittee must report to EPA, in writing, occurrences of water quality problems and the corrective actions being taken within 5 days of becoming aware of them (Part V.B).
<b>Annual Report</b>	Annual reports must be submitted to EPA every year, within 60 days after the release of fish from the net pen enhancement facility at the end of the growing season (Part VI.B).
<b>24 Hour Reporting</b>	The Permittee must report certain occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances.

## **I. PERMIT COVERAGE**

### **A. Eligibility**

1. Facilities eligible for coverage under this permit are marine cold water net pen enhancement facilities raising fish species indigenous to the water body in which the facility is located, that are either:
  - a. Located in Indian country, as defined in 18 U.S.C. § 1151, in the State of Washington, regardless of type of ownership, or:
  - b. Owned or operated by an Indian Tribe.
2. The General Permit applies to those marine cold water net pen enhancement facilities that meet the following criteria:
  - a. Operate thirty (30) or more days per year; and
  - b. Produce between 20,000 and 100,000 pounds final release weight of cold water fish per year; and
  - c. Feed at least 5,000 pounds of food during the calendar month of maximum feeding.
3. EPA may designate a smaller net pen facility as a significant contributor of pollution to Waters of the United States based on other considerations, such as those listed below [40 CFR §122.24(c)]. Under such circumstances, the designated facility is subject to the limitations and conditions of this permit. Considerations include:
  - a. The location and quality of the receiving waters;
  - b. The holding, feeding, and production capacities of the facility;
  - c. The quantity and nature of the pollutants reaching waters of the United States; and
  - d. Any other relevant factors.
4. The General Permit does not automatically apply to discharges from net pen facilities which produce less than 20,000 harvest weight pounds of aquatic animals per year or to net pen facilities which feed less than 5,000 pounds of food during the calendar month of maximum feeding. Such net pen facilities may voluntarily submit the information required in a Notice of Intent (NOI) with a cover letter requesting to be covered by the permit, or submit a NOI if requested by EPA. In these cases, EPA will make the decision regarding coverage under this General Permit.
5. All new net pen enhancement facilities must comply with the siting provisions listed in Part VII.

### **B. Authorized Discharges**

The General Permit authorizes discharges to Waters of the United States from facilities described in Part I.A., above. During the effective period of the permit, authorized discharges are subject to the requirements and conditions set forth in this permit. The

General Permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility, as disclosed in the Permittee's NOI, or any pollutants that are not ordinarily present in such waste streams.

### **C. Limitations on Coverage**

1. The General Permit does not apply to discharges to water designated by the State of Washington or a tribe as a Tier 3 water body (Outstanding National Resource Waters).
2. The General Permit does not authorize discharges to impaired waters unless there is allocated capacity in the TMDL, i.e., for new and increased discharges (40 CFR 122.44(d)(1)(vii), *and* EPA determines that the provisions of this permit are adequate to ensure the discharge will comply with the relevant allocation.

### **D. Permit Expiration**

This General Permit will expire five years after its effective date, as specified on the cover page of the permit. In accordance with 40 CFR §122.6, if the permit is not reissued by the expiration date, the conditions of the General Permit will continue in force and effect until a new General Permit is issued. Only those facilities authorized to discharge under the expiring General Permit and who submit an NOI at least 180 days prior to the expiration date of the General Permit will remain authorized to discharge under the administratively continued permit conditions.

## **II. OBTAINING AUTHORIZATION TO DISCHARGE UNDER THIS GENERAL PERMIT**

### **A. Deadlines for NOI submittal**

Owners or operators seeking coverage under this General Permit must submit to EPA Region 10 a completed Notice of Intent (NOI) by the appropriate deadlines identified below:

1. Existing net pen enhancement facilities seeking coverage under this permit must submit an NOI no more than 30 days following the effective date of this General Permit.
2. New net pen enhancement facilities must submit NOIs at least 180 days prior to initiation of operations. Operations may not commence until permit coverage has been obtained.

### **B. Required NOI Information**

A complete NOI must contain the following information for each facility.

1. The legal name, address and telephone number of the owner and operator of the facility;

2. The name and location of the facility, including the latitude and longitude to the nearest tenth of a second;
3. A chart showing the exact location, average low water depth, and configuration of pen moorings systems and support platforms;
4. The directions of prevailing currents and average current velocity;
5. A description of the number, type, size and configuration of net pens that may be used, along with associated structures, and the minimum clearance to the sea floor;
6. The maximum number, stocking density and total weight of fish at stocking and release to be contained in the facility at any time;
7. A list of all medications that the facility anticipates may be used and duration, how administered and concentration of each application;
8. A description of the bottom type(s), e.g., substrate material and vegetative cover, beneath the net pen, and within 150 feet in all directions.
9. The amount, rate of use and typical additives of fish feed;
10. A description of the system(s) to be used to dispense and monitor the consumption of feed and to detect the loss of uneaten feed;
11. A description of the method(s) used to dispose of fish mortalities;
12. Information showing intended sampling locations with GPS coordinates to meet monitoring requirements of this General Permit.
13. For a new net pen enhancement facility, certification that the facility is sited according to the requirements of Part VII of this permit.

**Failure to submit all required NOI information may result in finding the NOI incomplete, which may delay processing or result in denial of the permit coverage.**

**C. NOI Submittal**

The NOI must be submitted to:

NPDES Permits Unit OWW-191  
Marine Tribal Net Pen Enhancement Facility NOI  
US Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

**D. When the Permittee is Authorized to Discharge**

A discharger will be authorized to discharge on the date that EPA provides written authorization.

### **E. Requirements for an Individual Permit**

1. The EPA Regional Administrator may notify any permittee authorized by the General Permit, or seeking coverage under the General Permit, that it is required to apply for or continue coverage under an individual NPDES permit:
  - a. Whenever the Permittee is not, or is not reasonably expected to be, in compliance with the conditions of this General Permit;
  - b. Whenever a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source, therefore causing limitations of the General Permit to be inappropriate for the control or abatement of pollutants from the point source(s);
  - c. If a water quality management plan, including a Total Maximum Daily Load (TMDL), containing requirements applicable to the point source is approved after the effective date of the General Permit; or
  - d. If circumstances have changed since the time of NOI submittal, so that the Permittee is no longer appropriately controlled under the General Permit, or either a temporary or permanent reduction or elimination of the discharge is necessary; or if the discharge is a significant contributor of pollutants, taking into account the location and size of the discharge and the quantity and nature of the pollutants, as determined by the Regional Administrator.
2. The Permittee may request to be excluded from coverage under the General Permit.
  - a. Applying for an Individual Permit. Any owner or operator required to seek coverage under the General Permit may request to be excluded from coverage under the General Permit by applying for an individual permit. If the reasons cited by the owner or operator are adequate to support the request, EPA may grant the request by issuing an individual permit.
  - b. Requesting termination of coverage. Any Permittee whose production and/or feed levels drop below and are expected to remain below the eligibility thresholds in Part I.B.2, above, may request termination of coverage under this permit by submitting a revised NOI with a cover letter requesting the change and including information on projected levels of production and feed for the following five years.

### **III. EFFLUENT LIMITATIONS**

#### **A. Prohibited Discharges**

The Permittee must not discharge to waters of the U.S.:

1. Visible oil sheen, foam, discoloration, floating solids, or settleable solids that would impair the designated uses of the receiving water.
2. Solid waste. The facility shall collect used feed bags and other solid wastes for transport, recycling and/or disposal at a recycling or disposal facility.

#### **B. Prohibited Practices**

The Permittee is prohibited from engaging in any of the following practices:

1. The use of biocidal chemicals for cleaning nets in the water is prohibited unless prescribed by a veterinarian or so determined by the Northwest Indian Fisheries Commission Fish Health Specialist, pursuant to the policies outlined in *The Salmonid Disease Control Policy of the Fisheries Co-Managers of Washington State*, revised July 2006, as necessary to prevent the spread of disease.
2. No runoff or solids from upland cleaning of nets shall be discharged to surface waters.
3. Fish harvesting is prohibited, other than for the purposes of removing fish to evaluate growth, health or other sub-sampling for evaluation purposes.
4. Fueling, lubrication and other general maintenance of boats and other mechanical equipment are prohibited at the net pen facility, with the exception set forth in Part III.C.2.

### **C. Discharge Controls**

The Permittee must fully implement all of the following discharge controls:

1. Relevant personnel must be trained on fish husbandry, feeding, and other management provisions stipulated in this permit.
2. Gas powered water pumps used during fish transport from the transportation barge (approximately two weeks) may be refueled on-site as long as refueling takes place within secondary containment. Spill response procedures must also be established and the necessary supplies must be in place at all times.
3. Fish feeding will occur according to protocols that ensure that excess feeding does not occur, through a combination of:
  - a. Calculated feed conversion ratios based on fish size; and
  - b. Direct fish feeding observations designed to immediately cease feeding when the fish are not eating.The protocols must be documented and included in annual reports.
4. Nets and anchoring structures must not impede the current flow or tidal exchange so as to contribute to the deposition of solids that would impair water quality standards.
5. If necessary, when fish are present in the net pens, mechanical cleaning (e.g., brushing and power washing) of nets, frames and anchor structures to remove solids *in situ* is allowed only under conditions that will disperse solids and prevent concentrated bottom settling (i.e., high tide, rapid current). Only biofouling solids are allowed to be dispersed. All other solid wastes must be collected and removed for land-based disposal (see Part III.A.2).
6. To the maximum extent possible, when the net pens are empty, allow the nets to dry over water, and remove them for upland cleaning. If infeasible to move the net pens to an upland location prior to cleaning, *in situ* cleaning is only allowed under conditions that will disperse solids and prevent concentrated bottom settling. Net

cleaning of discreet portions of the net must be phased over a sufficient period of time in order to avoid an influx of material during a single cleaning event.

7. Disease treatment, surveillance and reporting shall be consistent with the requirements of *The Salmonid Disease Control Policy of the Fisheries Co-Managers of Washington State*, revised July 2006.
8. All drugs and pesticides must be used in accordance with applicable label directions (FIFRA or FDA), except under the following conditions, both of which must be reported to EPA in accordance with Part VI.B, below:
  - a. Participation in Investigational New Animal Drug (INAD) studies, using established protocols; or
  - b. Extra-label drug use, as prescribed by a veterinarian.
9. Large quantities of food must be stored off-site and conveyed to the facility only in short-term quantities (e.g., weekly). On-site storage of food must be in covered and locked facilities on the storage barge.
10. Fuel and other potential pollutants must be stored off-site and conveyed to the facility in daily quantities only.
11. Animal mortalities must be removed and disposed of in leak-proof containers at least once per week. Disposal must be to an approved land-based facility/operation, e.g., composting facility, dumpster, incineration facility. No dead fish, fish tissue or fish products shall be released to the water. The chosen mortality disposal method must be described in annual reports. Permittees must have a plan in place for disposal of mass fish mortality, so as not to impact water quality.
12. Water used in the rearing and holding units or hauling trucks that is disinfected with chlorine or other chemicals must be treated before it is discharged to waters of the U.S.

#### **IV. MONITORING REQUIREMENTS**

##### **A. Sediment Characterization**

Once during the permit term, the sediments beneath and in proximity to the net pen must be characterized. The Permittee may choose one of two options:

1. The Permittee will fully cooperate with an EPA-conducted sediment characterization study, or
2. The Permittee will conduct sediment characterization within 30 days prior to release of the fish, during the second full season of operation under this permit.
  - a. Analysis: characterize the sediments beneath the net pens for the following:
    - i. Total organic carbon (TOC)
    - ii. Percent silt-clay particles (percent dry weight)
  - b. Sample type: samples must be grabs or cores. Analysis must be on a homogenization of the top 2 centimeters of sediment.

- c. Sample location: samples must be taken in at least 3 locations beneath the net pens or within 10 meters of the perimeter the net pens in a down-current direction.
- d. Sample information: the following information must be collected for each sample:
  - i. Location: latitude and longitude to the nearest one-tenth second
  - ii. Date and time of day sample is taken
  - iii. Water depth at the location the sample is taken
- e. Standard Methods: standard sampling and analytical procedures (40 CFR §136) must be followed. Record method used for sampling and analysis.  
Results: Compare TOC values to Puget Sound Reference Values [WAC 173-204-412 (3)(b)].

**Puget Sound Reference Total Organic Carbon Values**

Silt-Clay Particles (percent Dry Weight)	Total Organic Carbon (percent Dry Weight)
0-20	0.5
20-50	1.7
50-80	3.2
80-100	2.6

**B. Visual Assessments**

Visual assessments must be conducted either directly through diving, or with the use of underwater photography, or with an underwater viewer when the bottom is easily viewable from the platform at low tide.

1. Benthos: within 30 days prior to release of the fish each season, visually assess the benthos for the following:
  - a. Sediment type and color, including an assessment for anoxic sediments. Provide a descriptive report.
  - b. The presence of feed or other debris originating from the net pen enhancement facility. Provide a descriptive report.
  - c. The presence of *Beggiatoa* or other benthic bacterial/fungal mats. Provide an estimate of the % coverage of these mats beneath the net pen and within 150 feet of its perimeter in a down-current direction.
2. Water Column: at a minimum frequency of once per week, during the entire period in which fish occupy the net pen, the Permittee will evaluate the water column around the nets for floating debris, or other signs of solids, sheens, or discoloration originating from the net pen enhancement facility. Provide a descriptive report, including the source of any identified discharge, consistent with the reporting requirements of Part VI.B of this permit.

**C. Surface Water Monitoring**

At least once per month during the entire period in which fish occupy the net pen, the Permittee will evaluate the water column beneath and around the net pen for dissolved

oxygen. Take at least six total samples at a minimum of two locations and two depths. At least one sample location must be at least 15 feet beneath the water surface.

1. Sample information: the following information must be collected for each sample:
  - a. Location: latitude and longitude to the nearest one-tenth second
  - b. Date and time of day sample is taken
  - c. Water depth at the location the sample is taken
2. Standard Methods: standard sampling and analytical procedures must be followed (40 CFR Part 136). Record method used for sampling and analysis.

#### **D. Evaluation of Monitoring Data**

Monitoring data must be evaluated against the following action thresholds:

<b>Pollutant Indicator</b>	<b>Action Threshold</b>
Sediment Total Organic Carbon	Exceeds relevant reference value
Presence of anoxic sediments	25% or more of the area under the net
Presence of bacterial/fungal mats	25% or more of the area under the net
Water column dissolved oxygen concentration	6 mg/L or less, anywhere in the water column

If at any time indicator pollutants exceed one or more action threshold, the Permittee must take immediate action to address the problem(s), per Part V, Corrective Action. EPA may also request the Permittee to undertake additional monitoring to determine the cause or extent of a water quality-related problem.

#### **V. CORRECTIVE ACTION**

If at any time the Permittee becomes aware, through inspections, observations or monitoring, or when so notified by the EPA, of a water quality problem or suboptimal performance/ implementation of one or more required discharge control(s), the following steps must be undertaken:

##### **A. Problem Identification and Corrective Action**

The source of the problem must be immediately identified. Should net pen activities be the cause of the problem, adequate measures must be taken to abate the discharge of pollutants, including repairing or replacing equipment, modifying procedures or processes, or implementing additional measures. Implementation of corrective actions does not provide enforcement relief.

##### **B. Notifying EPA**

Within 5 days of becoming aware of a problem caused by or contributed to by the net pen operation, the Permittee must notify EPA in writing of the problem, and outline the steps being taken to address the problem. Reports should be sent to the address is Part VI.C.

Permittee must notify EPA and the Washington State Fish and Wildlife if there is a fish disease outbreak or mass mortality at the net pen site, as soon as they are aware of an outbreak or mass mortality. The threshold for notification is 5% mortality of fish on hand.

### **C. Documentation in Annual Reports**

Final resolution of the problem must be documented in the annual report.

## **VI. RECORDKEEPING AND ANNUAL REPORTING**

### **A. Record Keeping**

The following records must be kept and maintained for 3 years:

1. Feed amounts and numbers and weights of fish to calculate feed conversion ratios.
2. All dates of pharmaceutical application, types and amounts of pharmaceuticals applied.
3. The frequency of cleanings, inspections, maintenance, and repairs.
4. All monitoring locations, dates, methods and data as required per Part IV.
5. Any other information necessary to complete the Annual Report per Part B of this section.

### **B. Annual Reports**

Annual Reports must be submitted within 60 days after the release of fish from the net pen enhancement facility at the end of the growing season. All reports must include the following:

1. Name and contact information of the person preparing the report and/or person who can be contacted by EPA if additional information is needed.
2. Date that fish were added to the net pen(s), and date that fish were finally released from the net pen(s).
3. Species of fish in the net pen(s) during the season.
4. Summary of fish mortalities. If mass mortality occurs, the report should include dates, causes of death, and pounds or numbers of fish mortalities.
5. Total weight of the fish when added to the net pen(s) and total weight of the fish when released from the net pen(s).
6. Feeding rates, and total amount of feed used during the season, by week.
7. Dates of pharmaceutical application, types and amounts of pharmaceuticals applied.

8. All monitoring data, including locations, dates collected and methods used for collection and analysis, per Part IV of this permit.
9. Documentation of any spills, discharges or releases not accounted for by feeding or pharmaceutical applications.
10. Documentation and explanation of the use of any chemicals, processes or materials not accounted for by feeding or pharmaceutical applications.
11. All corrective actions taken.

**C. Mailing Address**

Annual Reports, Corrective Action Notifications and Non-compliance Notifications should be sent to:

US EPA Region 10  
Attn: ICIS Data Entry Team  
1200 Sixth Avenue, Suite 900  
OCE-133  
Seattle, Washington 98101-3140

## VII. SITING PROVISIONS FOR NEW NET PEN ENHANCEMENT FACILITIES

All new net pen enhancement facilities must comply with the following siting provisions:

### A. Current velocity vs. Depth

Each new net pen enhancement facility must have adequate current velocity relative to depth from the bottom of the net pens to the sea floor in order to avoid degradation of water quality and benthic conditions described in relevant water quality standards and limits contained in this General Permit. The net pens must be situated in a location where the current to depth relationship falls on or above the line in Figure 1. Average current velocity must be measured over at least one tidal cycle under representative conditions at a point one half of the distance between the bottom of the net pens and the sea floor. Additionally, the current velocity shall, in consideration of the physical conditions at individual locations covered by this General Permit, be sufficient to avoid degradation of water quality and benthic conditions described in relevant water quality standards and limits contained in this General Permit.

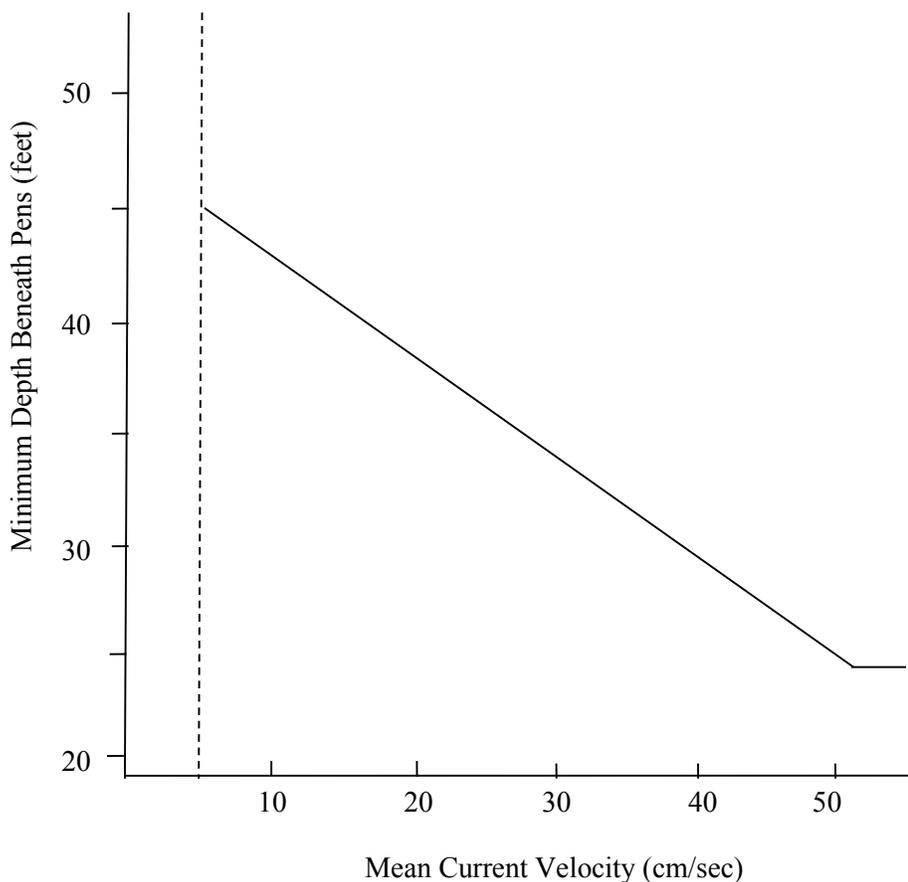


Figure 1. Mean Current Velocity vs. Depth. Adapted from *Recommended Interim Guidelines for the Management of Salmon Net-Pen Culture in Puget Sound*, Washington Department of Ecology, 1986.

## **B. Protection of Special Habitats**

A new net pen enhancement facility may not be located within 300 feet in the direction of prevailing tidal currents, or within 150 feet in any other direction, of any of the following special habitats:

1. Eelgrass (*Zostera marina*) beds having densities exceeding 13 turions (i.e., shoots) per 0.25 m<sup>2</sup> in summer or 10 turions per 0.25 m<sup>2</sup> in winter. These densities should be based on 20 random 0.25 m<sup>2</sup> quadrat samples taken in the eelgrass bed. In addition to these density criteria, no more than 10% of the samples may exceed 20 turions per 0.25 m<sup>2</sup>.
2. Kelp beds: dense beds of attached macroalgae, especially bull kelp *Nereocystis leutkeana*.
3. Rocky reef habitats: high profile rock outcrops colonized by organisms such as hydroids, macroalgae, abalones, sea urchins, sea anemones, starfish and other attached organisms.
4. Geoduck, *Panope abrupta*, populations with densities exceeding 0.4 animals per m<sup>2</sup>.
5. Hardshell clam populations with densities exceeding 1.2 kg per m<sup>2</sup>.
6. Habitats having significant populations of, or which are important to the feeding, reproduction, or other life stages of Dungeness crabs (*Cancer magester*), herring (Clupea), lingcod/greenling (Hexagrammidae), true cod (Gadidae), soles and flounders (Pleuronectiformes), rock fishes (Scorpaenidae), cabezone and other large sculpins (Cottidae), or sea perch (Embiotocidae). The occurrence of these species in a potential area does not necessarily exclude it from consideration of net pen placement.
7. Wildlife refuges and habitats of endangered and threatened species.

## **VIII. COMPLIANCE RESPONSIBILITIES**

### **A. Duty to Comply.**

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

### **B. Penalties for Violations of Permit Conditions.**

1. Civil Penalties. Pursuant to 40 CFR Part 19 and the Clean Water Act, any person who violates CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any permit condition or limitation implementing any such sections in a permit issued under CWA § 402, or any requirement imposed in a pretreatment program approved under CWA §§ 402(a)(3) or 402(b)(8) is subject to a civil penalty not to exceed the maximum

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amounts authorized by CWA § 309(d) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note).

2. **Administrative Penalties.** Any person may be assessed an administrative penalty by the Administrator for violating CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any permit condition or limitation implementing any of such sections in a permit issued under CWA § 402. Pursuant to 40 CFR Part 19 and the CWA, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by CWA Section 309(g)(2)(A) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note). Pursuant to 40 CFR Part 19 and the Clean Water Act, penalties for Class II violations are not to exceed the maximum amounts authorized by CWA Section 309(g)(2)(B) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note).
3. **Criminal Penalties.**
  - a. **Negligent Violations.** The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.
  - b. **Knowing Violations.** Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
  - c. **Knowing Endangerment.** Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
  - d. **False Statements.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not

more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

**C. Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

**D. Duty to Mitigate.** The Permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

**E. Proper Operation and Maintenance.** The Permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

**F. Removed Substances.** Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of water and wastewaters must be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

**G. Bypass of Treatment**

1. Bypass not exceeding limitations. The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Permit Parts VI.G.2 and VI.G.3.
2. Notice.
  - a. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it must submit prior notice, if possible at least 10 days before the date of the bypass.
  - b. Unanticipated bypass. The Permittee must submit notice of an unanticipated bypass as required under Permit Part V.G (“Twenty-four Hour Notice of Noncompliance Reporting”).
3. Prohibition of bypass.
  - a. Bypass is prohibited, and the Director may take enforcement action against the Permittee for a bypass, unless:

- i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and
  - iii. The Permittee submitted notices as required under paragraph G.2 of this Section.
- b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph G.3.a of this Section.

#### **H. Upset Conditions.**

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the Permittee meets the requirements of paragraph H.2 of this Section. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the Permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that the Permittee can identify the cause(s) of the upset;
  - b. The permitted facility was at the time being properly operated;
  - c. The Permittee submitted notice of the upset as required under Part VI.G (“Twenty-four Hour Notice of Noncompliance Reporting”); and
  - d. The Permittee complied with any remedial measures required under Permit Part VI.D (“Duty to Mitigate”).
3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

**I. Toxic Pollutants.** The Permittee must comply with effluent standards or prohibitions established under CWA § 307(a) for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

**J. Planned Changes.** The Permittee must give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR § 122.29(b); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are

subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part VI.I (“Changes in Discharge of Toxic Substances”).

- K. Anticipated Noncompliance.** The Permittee must give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

## **IX. General Provisions**

- A. Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR §§ 122.62, 122.64, or 124.5. The filing of a request by the Permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- B. Duty to Reapply.** If the Permittee intends to continue an activity regulated by this General Permit after the expiration date of this permit, the Permittee must either apply for and obtain an individual permit or submit an NOI to be covered under a new General Permit. In accordance with 40 CFR § 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the Permittee must submit an application for an individual permit or submit a new NOI at least 180 days before the expiration date of this permit.
- C. Duty to Provide Information.** The Permittee must furnish to the Director, within a reasonable time specified in the request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee must also furnish to the Director, upon request, copies of records required to be kept by this permit.
- D. Other Information.** When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or in any report to the Director, it must promptly submit such facts or information.
- E. Signatory Requirements.** All applications, reports or information submitted to the Director must be signed and certified as follows:
1. All permit applications must be signed as follows:
    - a. For a corporation: by a responsible corporate officer.
    - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
    - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
  2. All reports required by the permit and other information requested by the Director must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described above;
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
  - c. The written authorization is submitted to the Director.
3. Changes to authorization. If an authorization under Permit Part VII.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Permit Part VII.E.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
  4. Certification. Any person signing a document under this Section must make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**F. Availability of Reports.** In accordance with 40 CFR Part 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the Permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words “confidential business information” on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the Permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed. Reg. 36924 (September 1, 1976), as amended.

**G. Inspection and Entry.** The Permittee must allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee’s premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

**H. Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.

**I. State Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by CWA § 510.

**J. Oil and Hazardous Substance Liability.** Nothing in this permit shall be constructed to preclude the institution of any legal action or relieve the co-Permittees from any responsibilities, liabilities, or penalties to which the co-Permittees is or may be subject under CWA § 311 or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

**K. Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to the circumstances, and the remainder of this permit shall not be affected thereby.

## **X. Definitions**

**Action Threshold** is a quantifiable measure of a water quality indicator. Action thresholds are both compliance indicators and corrective action triggers.

**Anoxic Sediments** are bottom sediments depleted of oxygen, and consist of dark colored or significantly darkened sediment in comparison to natural conditions in the area, and/or the formation of hydrogen sulfide or methane gas as characterized by emission of gas bubbles, “pimpled sediments” or odors in the sediment.

**Enhancement Facility**, for purposes of this permit, is a finfish rearing operation that releases fish to supplement the native fish populations. Fish are not harvested from the net pens.

**EPA** is the United States Environmental Protection Agency.

**Existing Net Pen Enhancement Facility** is a facility that is operated in the same location and by the same operator as it was prior to the effective date of this permit.

**New Net Pen Enhancement Facility** is a facility that commences operation after the effective date of this permit, and is either (1) deployed at a site where no other facility has been located for at least five years, or (2) is substantially independent of an existing facility at the same site.

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## Appendix A: Notice of Intent Format

### Notice of Intent

for

Tribal Marine Net Pen Enhancement Facilities in the State of Washington

#### I. Owner and Operator Information

<b>Owner Name:</b>	
<b>Mailing Address:</b>	<b>Contact person:</b>
	<b>Title:</b>
	<b>Phone No:</b>
	<b>E-Mail address:</b>

<b>Operator Name:</b>	
<b>Mailing Address:</b>	<b>Contact person:</b>
	<b>Title:</b>
	<b>Phone No:</b>
	<b>E-Mail address:</b>

#### II. Facility Information

<b>Facility Name:</b>	
<b>Tribal Organization:</b>	
<b>Mailing Address:</b>	
<b>Location address:</b>	
<i>Show latitude and longitude to the nearest tenth of a second</i>	
<b>Latitude</b>	<b>Longitude</b>

*Attach an Area Map showing the exact location of the facility, and configuration of pen moorings systems and support platforms. Indicate the directions of prevailing currents.*

**Describe the number, type and size of net pens, along with associated structures, and the minimum clearance to the sea floor.**

**Describe the bottom type(s), e.g., substrate material and vegetative cover beneath the net pen and within 150 feet in all directions.**

**Mean Low Water Depth:**

**Average Current Velocity:**

**During What Months of the Year Does the Facility Operate:**

### III. New and Existing Facilities

This enhancement operation is (check one):

- An Existing Net Pen Enhancement Facility.** A facility that is operated in the same location and by the same operator as it was prior to the effective date of this permit.
- A New Net Pen Enhancement Facility.** A facility that commences operation after the effective date of this permit, and is either (1) deployed at a site where no other facility has been located for at least five years, or (2) is substantially independent of an existing facility at the same site.

If this operation is a new net pen enhancement facility both of the following requirements must be met in order to obtain coverage under this permit. By checking the boxes below you are certifying that the operation meets these requirements:

- The facility is sited in a location that meets the current velocity vs depth ratio requirements of Part VII.A of the permit.
- The facility is not located within 300 feet in the direction of prevailing tidal currents, or within 150 feet in any other direction, of any of the special habitats described in Part VII.B of the permit.

### III. Production

*List the species grown or held at your facility and provide estimates of the maximum numbers, stocking densities and weight of fish at stocking and at release. The estimate can be a range over the next five years, if appropriate.*

Species	Date Stocked	Date Released	Maximum Number Stocked	Maximum Stocking Density	Fish Stocked (pounds)	Fish Released (pounds)
<b>If fish are released anywhere other than to Puget Sound, indicate the location and waterbody:</b>						

#### IV. Feed

*Describe your facility's use of feed. This may be a range expected over the next 5 years.*

Use of Feed			
Feed Type	Typical Additives	Maximum Monthly Feed Use (lbs)	Average Annual Feed Use (lbs)
<b>Describe the method(s)/system(s) used to dispense and monitor the consumption of feed and to detect the loss of uneaten feed:</b>			

#### V. Medications

*Describe your facility's use of medications, including feed additives or other ingested drugs, immersion or injected treatments.*

Use of Medications				
Medication	Reason for Use	Method of Application	Maximum Daily Amount Used	Frequency of Use

**VI. Disposal of Fish Mortalities**

*Describe how fish mortalities are disposed. Quantity can be characterized in number, weight or volume.*

<b>Fish Mortalities Disposed</b>			
<b>Method of Disposal</b>	<b>Typical Quantity Disposed</b>	<b>How Frequently</b>	<b>Where</b>

**VII. Monitoring**

**Sediment Characterization (check one):**

- The operator of this facility is opting to fully cooperate with an EPA-conducted sediment characterization study, per Part IV.A.1 of the permit.
- The operator of this facility is opting to conduct sediment characterization per Part IV.A.2 of the permit.

<b>Notes:</b>
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### VIII. Signature and Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly evaluate and gather the information submitted. Based on my inquiry of the person or persons, who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

<b>Signature</b>		<b>Date</b>
<b>Printed Name</b>	<b>Title</b>	

### IX. Submittal Information

<p><i>Send the completed, signed information, along with required attachments to at the following address.</i></p> <p>NPDES Permits Unit OWW-191</p> <p>Marine Tribal Net Pen Enhancement Facility NOI</p> <p>US Environmental Protection Agency, Region 10</p> <p>1200 Sixth Avenue, Suite 900</p> <p>Seattle, WA 98101-3140</p>
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**Appendix B: Annual Report Format**

<b>ANNUAL REPORT OF OPERATIONS FOR YEAR _____</b> <i>Tribal Marine Net Pen Enhancement Facilities in the State of Washington</i>						
<b>I. Facility Name:</b>				NPDES #		
Operator Name ( <i>Permittee</i> ):				Phone:		
Address:				E-Mail:		
Owner Name ( <i>if different from operator</i> ):				Phone:		
Address:				E-Mail:		
<b>II. Annual Production</b>	Species of fish in the net pen(s) during the year:					
	Date Fish Stocked:			Date Fish Released:		
	Total Weight Stocked (lbs):			Total Weight Released (lbs):		
<b>Feed Summary</b>  <i>(Attach additional pages as necessary)</i>	<b>Week (Dates)</b>	<b>Feed (Pounds)</b>	<b>Week (Dates)</b>	<b>Feed (Pounds)</b>	<b>Week (Dates)</b>	<b>Feed (Pounds)</b>
	1		10		19	
	2		11		20	
	3		12		21	
	4		13		22	
	5		14		23	
	6		15		24	
	7		16		25	
	8		17		26	
	9		18		27	

*If method(s)/system(s) used to dispense and monitor the consumption of feed and to detect the loss of uneaten feed differ from what is described in the Notice of Intent, please describe:*

**IV. Medication Usage**

Date	Medications used, number of days used, and maximum concentration in effluent.	Yearly Total

**V. Chemicals, Processes or Materials (other than feed and medications)**

Type of Chemical, Process of Material	Describe usage, including locations, frequencies, and likelihood for discharge/release to surface waters

**VI. Fish Mortalities**

*Describe Method of Mortality Disposal. If standard disposal method(s) differ from mass mortality disposal method(s) please clarify:*

*Summarize standard mortality rates, i.e., approximate number per week, causes:*

*Mass Mortalities: include description & dates of mass mortalities (more than 5%/week), the reasons for each incident, and the steps taken to correct the problem. Attach additional pages, if necessary. Include total mortalities from all causes.*

Date	Cause of deaths	Pounds of fish

*Notes:*

## VII. Monitoring Results

**Sediment  
Characterization**  
  
(Part IV.A of the  
Permit)

*Was the sediment characterization study conducted in this reporting year:*

- No, study was completed in \_\_\_\_\_ (calendar year)
- No, study to be undertaken in a future year
- Yes, study conducted by EPA
- Yes, study conducted by Permittee (answer next 2 questions)

*If Permittee conducted the study this year, check here to indicate that the characterization study is attached and includes all of the elements required in Part IV.A.2 of the permit*

*If study was conducted this year, did any of the samples exceed Puget Sound Reference Total Organic Carbon Values?*       Yes       No

*If yes, provide additional information in Part VIII.*

**Visual Assessment**  
  
(Part IV.B of the  
Permit)

*Describe sediment type and color, including a percent coverage assessment for anoxic sediments:*

*Do anoxic sediments occur at 25% or more of the area under the net?*

- Yes       No

*If yes, provide additional information in Part VIII.*

*Describe the presence of feed or other debris originating from the net pen:*




*Do any water samples have a concentration of less than 6 mg/L dissolved oxygen?*

Yes       No

*If yes, provide additional information in Part VIII.*

### **VIII. Noncompliance and Corrective Action Summary**

*Include description & dates of spills, discharges, releases, exceedances of monitoring pollutant indicator action thresholds or permit noncompliance, the reasons for such incident, and the steps taken to correct the problem. Attach additional pages, if necessary.*

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**X. Signature & Certification**

*“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure the qualified personnel properly gather and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

<i>Signature:</i>	<i>Title/Company:</i>
<i>Print Name:</i>	<i>Date:</i>

Mail to: US EPA Region 10  
Attn: ICIS Data Entry Team  
1200 Sixth Avenue, Suite 900  
OCE-133  
Seattle, Washington 98101-3140