

COMMISSIONER'S ORDER

NUMBER 202211

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

COMMISSIONER'S ORDER ON COMMERCIAL FINFISH NET PEN AQUACULTURE

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

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

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

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

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

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

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

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

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

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

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

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

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

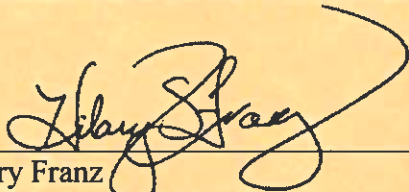
NOW, THEREFORE, I hereby ORDER and DIRECT Department leadership and all staff:

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

Dated this 17th day of November, 2022



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