

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
DOUG SUTHERLAND, Commissioner of Public Lands

REGION FILE

OLYMPIA FILE  
20-B12517  
FIELD FILE

AQUATIC LANDS NET PEN LEASE No. 20-B12517

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**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
DOUG SUTHERLAND, Commissioner of Public Lands**

**AQUATIC LANDS NET PEN LEASE**

**AQUATIC LANDS AQUACULTURE LEASE NO. 20-B12517**

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and AMERICAN GOLD SEAFOODS, LLC, a Washington Corporation ("Tenant").

**BACKGROUND**

Tenant desires to lease the aquatic lands commonly known as Deep Water Bay, which are bedlands located in Skagit County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

**SECTION 1 PROPERTY**

**1.1 Property Defined.** State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes. Except to the extent specifically authorized in Subsection 2.1, below, this Lease does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable

materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

**1.2 Survey, Maps, and Plans.** In executing this lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State. Before taking possession of the Property, Tenant shall have the Property surveyed by a registered land surveyor. The survey map shall be signed and certified by the surveyor. The survey shall be attached to this Lease as Exhibit A.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

## SECTION 2 USE

**2.1 Permitted Use.** Tenant shall use the Property for anchorage, maintenance and operation of Fish rearing pens (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. If at any time the Property ceases to be used for the Permitted Use, this Lease shall terminate and State may reenter and take possession of the Property.

**2.2 Restrictions on Use.** Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, than State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

The prohibitions in this section against damage to natural resources, filling, deposition of any unapproved materials, and waste, shall also apply to protect state-owned aquatic lands adjacent to the Property from any of Tenant's activities related to Tenant's occupation of the Property. All obligations imposed by this section on Tenant to cure any violation of the prohibited activities in

this section shall also extend to state-owned aquatic lands adjacent to the Property when the violation arose from Tenant's activities related to Tenant's occupation of the Property.

**2.3 Conformance with Laws.** Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

**2.4 Liens and Encumbrances.** Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property, unless authorized by State.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is Fifteen (15) years (the "Term"), beginning on the 1<sup>st</sup> day of January, 2008 (the "Commencement Date"), and ending on the 31<sup>st</sup> day of December, 2023 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

**3.2 Renewal of the Lease.** Tenant shall have the option to renew this Lease for Zero (0) additional terms of Zero (0) years each. The initial Term of this Lease, and all renewal terms, shall not exceed Fifteen (15) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

**3.3 Delay in Delivery of Possession.** If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

**3.4 End of Term.** Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

**3.5 Holdover.** If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a

month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property prior to termination of this Lease or at any time thereafter and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe State all amounts due under RCW 79.01.760 or other applicable law.

## SECTION 4 RENT

**4.1 Fixed Minimum Annual Payment.** Tenant shall pay State a Fixed Minimum Annual Payment of Twenty Five Thousand Dollars (\$25,000.00), which shall be due and payable in full on or before the Commencement Date, and on or before the same date of each year thereafter.

- (a) The Fixed Minimum Annual Payment for any lease year shall be a credit against Production Payments computed under Subsection 4.2 and due for the same lease year.
- (b) At the end of each quarter Tenant shall compute the Production Payment due under Subsection 4.2 for that quarter. At the end of the quarter in which the aggregate of all the Production Payments thus computed exceeds the Fixed Minimum Annual Payment already paid, Tenant shall pay State an amount equal to the excess. Thereafter, Tenant shall pay in full each quarterly Production Payment computed under Subsection 4.2.
- (c) In the event that the Fixed Minimum Annual Payment for a particular contract year exceeds the sum of Production Payments for that year, Tenant shall not be entitled to a refund. There shall be no carry-backs or carry-forwards of such excess from one contract year to another.

**4.2 Production Payment.** Tenant shall pay State a Production Payment. The Production Payment shall be computed as follows: the total volume in pounds from the then-current quarterly report, times the average price per pound shown on the quarterly report, times the applicable royalty rate, equals the quarterly Production Payment. The applicable royalty rate shall be determined by reference to Exhibit C, attached, which specifies the royalty rate to be applied against any particular average price.

**4.3 Reporting and Payment.** Tenant shall keep accurate records and accounts of all production of Salmon from or on the Property. Tenant shall provide to State, within thirty (30) days following the end of each quarter and on a form acceptable to State, an itemized account of the production for the preceding quarter. The quarterly report shall be submitted by Tenant to the Washington State Department of Fish and Wildlife listing Tenant's fish production. The fish weight reported shall be "Whole." The price used to calculate the Rental Payment in poundage in Exhibit C of this Lease shall be the "Wholesale Price." The average price per pound reported shall be the average of actual prices received by Tenant during the quarter from Salmon produced from or on the Property. At the time of providing the quarterly report, Tenant shall pay to State the Production Payment due for that quarter in accordance with Subsections 4.1 and 4.2.

**4.4 Payment Place.** Payment is to be made to Financial Management Division. 1111 Washington St SE, PO BOX 47041. Olympia WA 98504-7041.

**4.5 Audit.** State shall be allowed to inspect and audit the books, contracts, and accounts of Tenant to determine whether or not State is being paid the full amount owed to it under this Lease. If the audit discloses that Tenant has underpaid the amount due to State by two percent (2%) or more, Tenant shall pay to State, on demand, the cost of the audit. Any deficiency shall be paid to State within thirty (30) days of delivery of the audit to Tenant.

## **SECTION 5 OTHER EXPENSES**

During the Term, Tenant shall pay the following additional expenses:

**5.1 Utilities.** Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

**5.2 Taxes and Assessments.** Tenant shall pay all taxes and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

**5.3 Right to Contest.** Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

**5.4 Proof of Payment.** Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

**5.5 Failure to Pay.** If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with the provision of Section 6.

## **SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Late Charge.** If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State as a result of the delay.

**6.2 Interest Penalty for Past Due Rent and Other Sums Owed.** If rent is not received by State within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the



rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes pursuant to Chapter 82.29A RCW, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

**6.3 No Accord and Satisfaction.** If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

**6.4 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

## SECTION 7 IMPROVEMENTS

**7.1 Existing Improvements.** On the Commencement Date, the following improvements are located on the Property: Each of the net pen sites located in Deepwater Bay consists of a rectangular raft of floating cages and their associated walkways, a mooring system and fish nets that are held by an underwater weighting system. Site 1, contains eight (8) Marine Construction 24 meter by 24 meter square cages; Site 2, contains ten (10) Marine Construction 24 meter by 24 meter square cages; Site 3, contains twelve (12) Marine Construction 24 meter by 24 meter square cages. The associated walkways are made up of a frame work of heavy gauged, galvanized steel box beams with galvanized metal walkway grating welded on top of it. The walkways all have multiple foam filled plastic floats bolted in place underneath the frame work that is used for the floatation of the structure. For further description of the existing improvements refer to Exhibit B. These improvements are the property of Tenant.

**7.2 New Improvements.** So long as this Lease remains in effect, no new improvements shall be placed on the Property without (a) State's prior written consent, which shall not be unreasonably withheld, and (b) Tenant's acquisition of a performance and payment bond, in an amount equal to 150 % of the estimated cost of constructing and installing the new improvements.

**7.3 Unauthorized Improvements.** Improvements made on the Property without State's prior written consent or which are not in conformance with the plans submitted to and approved by the State ("Unauthorized Improvements") shall immediately become the property of State, unless

State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove and dispose of them, charge Tenant rent for the use of them, or both.

**7.4 Removal of Improvements.** All Tenant-owned improvements and all Unauthorized Improvements shall be removed by Tenant from the Property on or before the Termination Date unless State consents that the improvements may remain. If such improvements remain on the Property after the Termination Date without State's consent, State may elect to remove the improvements and Tenant shall, upon demand, pay the costs of removing and disposing of them.

## **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definition.** "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

**8.2 Use of Hazardous Substances.** Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

**8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property. With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.
- (b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
  - (1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;
  - (2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;

- (3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
  - (4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
  - (5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.
- (c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

#### **8.4 Notification and Reporting.**

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
  - (4) Any lien or action with respect to any of the foregoing; or,
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

## 8.5 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;
  - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:
    - (i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,
    - (ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
- (b) In addition to the indemnifications provided in Subsection 8.5(a), Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

**8.6 Cleanup.** If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup,

administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

**8.7 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Tenant.
- (d) Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

**8.8 Reservation of Rights.** The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the

presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

## SECTION 9 ASSIGNMENT AND SUBLETTING

**9.1 State Consent Required.** Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for hazardous substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

**9.2 Event of Assignment.** If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

**9.3 Rent Payments Following Assignment.** The acceptance by State of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

**9.4 Terms of Subleases.** All subleases shall be submitted to State for approval and shall meet the following requirements:

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- (d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;
- (e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,
- (j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

## **SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE**

**10.1 Indemnity.** Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and hold the State harmless for hazardous substances, shall be governed exclusively by Section 8.

### **10.2 Financial Security.**

- (a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Fifty Thousand Dollars (\$50,000.00), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as any change in the payment or payments required under Section 4;
- (2) As a condition of approval of assignment or sublease of this Lease; or,
- (3) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) days after adjustment of the amount of the Bond has been required by State.

- (b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

**10.3 Insurance.** At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

- (1) Commercial General Liability Insurance. Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description:

Each Occurrence	\$1,000,000.00
General Aggregate Limit	\$2,000,000.00

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

- (2) Worker's Compensation/Employer's Liability Insurance. Tenant shall procure and maintain:



- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements;
- (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

	Each Employee	Policy Limit
By Accident	By Disease	By Disease
\$1,000,000	\$1,000,000	\$1,000,000

- (iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements.
- (b) **Terms of Insurance.** The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:
- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
  - (2) Policies shall expressly provide that such insurance may not be cancelled or non-renewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
  - (3) All liability policies must provide coverage on an occurrence basis;
  - (4) Liability policies shall not include exclusions for cross liability;
  - (5) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Tenant.
- (c) **Proof of Insurance.** Tenant shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

**10.4 State's Acquisition of Insurance.** If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

## **SECTION 11 MAINTENANCE AND REPAIR**

**11.1 State's Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

**11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.**

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority.
- (c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

## **SECTION 12 DAMAGE OR DESTRUCTION**

- (a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.
- (b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid.
- (c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in rent during such reconstruction, repair, and replacement.
- (d) Any insurance proceeds payable by reason of damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.
- (e) In the event Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

### 13.1 Definitions.

- (a) **Taking.** The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A total taking occurs when the entire Property is taken. A partial taking occurs when the taking does not constitute a total taking as defined above.
- (b) **Voluntary Conveyance.** The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.
- (c) **Date of Taking.** The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

**13.2 Effect of Taking.** If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

**13.3 Allocation of Award.** State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-owned improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-owned improvements, and (c) in State-owned improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

## SECTION 14 DEFAULT AND REMEDIES

- (a) Tenant shall be in default of this Lease on the occurrence of any of the following:
  - (1) Failure to make any payment or pay any expense when due;
  - (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
  - (3) Failure to comply with any other provision of this Lease;

- (4) Two or more defaults over a period of time, or a single serious default, that demonstrates a reasonable likelihood of future defaults in the absence of corrective action by Tenant; or,
  - (5) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.
- (b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within the applicable cure period after State provides Tenant with written notice of default, which specifies the nature of the default.
- (c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rentals received by it shall be applied to:
- (1) The payment of any indebtedness other than rent due from Tenant to State;
  - (2) The payment of any cost of such reletting;
  - (3) The payment of the cost of any alterations and repairs to the Property; and,
  - (4) The payment of rent and leasehold excise tax due and unpaid under this Lease.

Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. State's reentry or repossession of the Property under this Subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.

#### **SECTION 15 ENTRY BY STATE**

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

#### **SECTION 16 DISCLAIMER OF QUIET ENJOYMENT**

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or

in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

## SECTION 17 NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State:  
DEPARTMENT OF NATURAL RESOURCES  
Northwest Region  
919 N. Township St.  
Sedro Woolley, WA 98284

Tenant:  
AMERICAN GOLD SEAFOODS, LLC  
PO Box 669  
Anacortes, WA 98221

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

## SECTION 18 MISCELLANEOUS

**18.1 Authority.** Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapter 79.90 RCW and the Constitution of the State of Washington.

**18.2 Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**18.3 Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

**18.4 Entire Agreement.** This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

**18.5 Waiver.** The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

**18.6 Cumulative Remedies.** The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

**18.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.

**18.8 Language.** The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

**18.9 Invalidity.** If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

**18.10 Applicable Law and Venue.** This Lease shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

**18.11 Recordation.** Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense. The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this Subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

**18.12 Modification.** Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

AMERICAN GOLD SEAFOODS, LLC,  
a Washington Corporation,

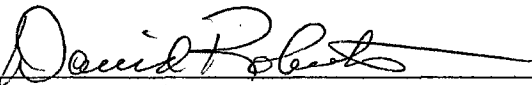
Dated: 11-30-07

  
By: RODGER MAY

Title: President  
Address: PO Box 669  
Anacortes, WA 98221

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: 1-14-08

  
By: DAVID ROBERTS

Title: Assistant Region Manager  
Address: 919 N Township Street  
Sedro Woolley, WA 98284



Standard Aquatic Lands Lease  
Approved as to Form on January 19, 2007  
By: Janis Snoey  
Assistant Attorney General  
State of Washington

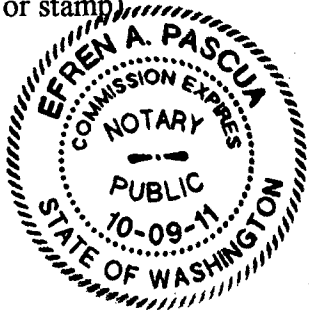
REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
County of )

I certify that I know or have satisfactory evidence that RODGER MAY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of American Gold Seafoods, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11/20/07

(Seal or stamp)



[Signature]  
(Signature)  
EFREN A PASCUA  
(Print Name)  
Notary Public in and for the State of Washington,  
residing at King County  
My appointment expires 10/09/11

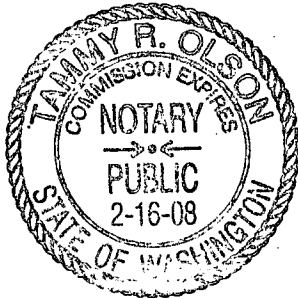
STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
County of King

I certify that I know or have satisfactory evidence that DAVID ROBERTS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Aquatic Lands Assistant Region Manager of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1-14-08

(Seal or stamp)



[Signature]  
(Signature)  
Tammy R Olson  
(Print Name)  
Notary Public in and for the State of Washington,  
residing at Sedro-Woolley  
My appointment expires 2-16-08



# EXHIBIT A

**S.R.A. Data: Section 4, Township 35 North, Range 1 East, W.M. Gov't. Lot 1**  
**Section 33, Township 36 North, Range 1 East, W.M. Gov't. Lot 2**

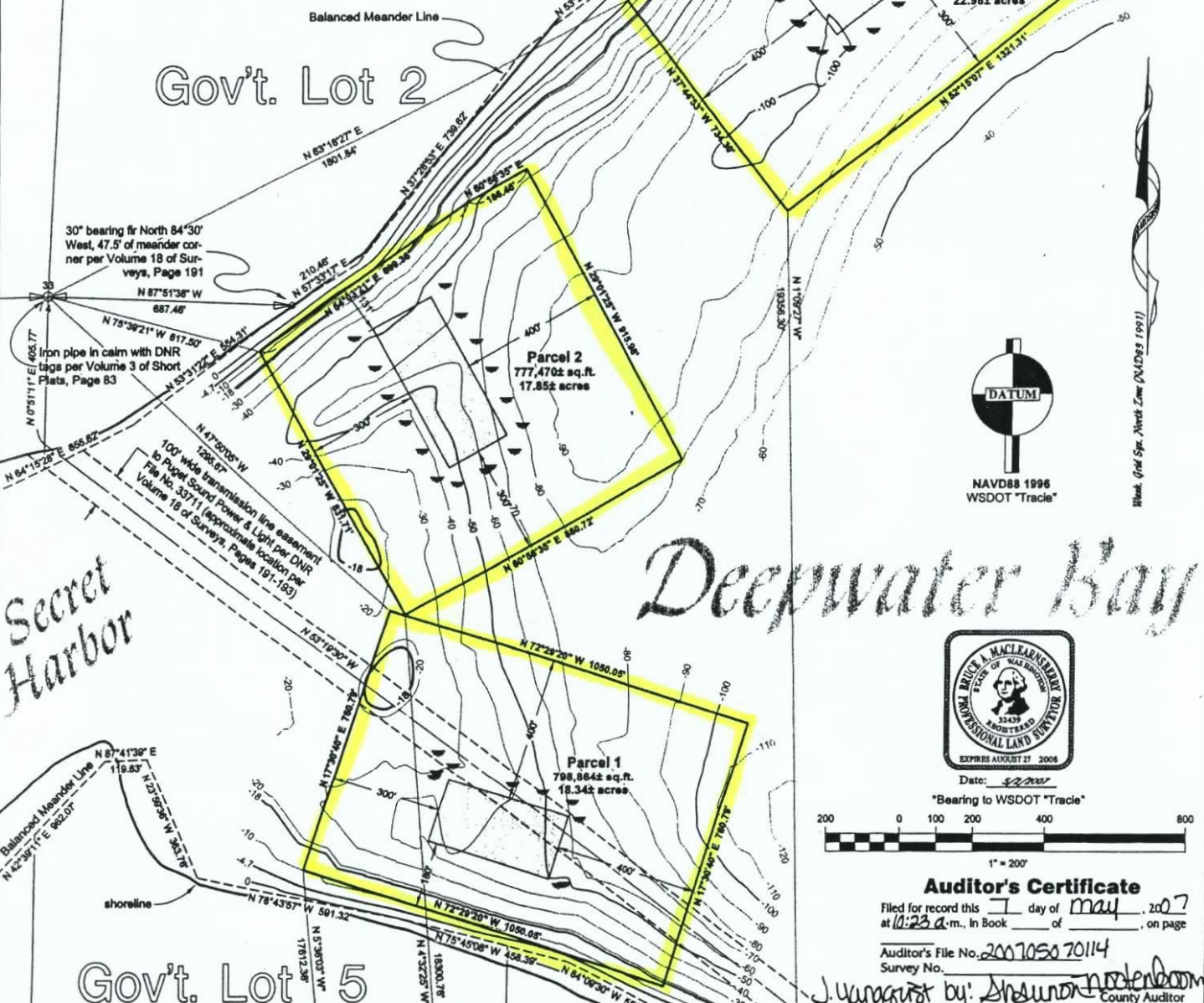


### Survey Field Methods & Instruments

This survey was accomplished with a Leica 500 dual-frequency GPS system using real-time kinematic measurements with WSDOT "Tracie" as a primary base and WSDOT "IS2908" as a secondary reference point. Soundings were measured with a Marinetek Super Max 6, synchronized with a dual-frequency rover.

## Cypress Island

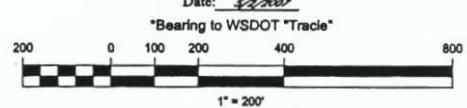
Gov't. Lot 2



Secret Harbor

Deepwater Bay

Gov't. Lot 5



### Auditor's Certificate

Filed for record this 1 day of May, 2007  
 at 11:23 a.m. In Book          of         , on page         

Auditor's File No. 200705070114  
 Survey No.         

Witnessed by: Sharon Mendenhall County Auditor

**American Gold Seafoods, LLC**  
**Aquatic Lease No. 20-A12517**

Drawn By: BAM	Date: May 2, 2007	Job No. 6093
Checked By: BAM	Scale: 1" = 200'	Sheet 1 of 2

**SURVEYOR'S CERTIFICATE**  
 This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of: American Gold Seafoods, LLC in November, 2006

*Bruce A. Macleanberry*  
 Certificate No. 32489

**MACLEANBERRY, Inc.**  
 Land Surveyors • Civil Engineers • Planners

159 Wyatt Way NE Bainbridge Island, WA 98110  
 phone: (206) 842-5514 facsimile: (206) 780-2408

# EXHIBIT A

200705070114  
 Skagit County Auditor  
 6/7/2007 Page 2 of 2 2:10:23AM

**S.R.A. Data: Section 4, Township 35 North, Range 1 East, W.M.  
 Section 33, Township 36 North, Range 1 East, W.M.**



Blank Grid Sys. North Zone (NAD83 1997)

Cypress Island

Bullwhacker Channel

Guemes Island



### Legal Descriptions

#### Parcel 1

That portion of the beds of Deepwater Bay fronting Government Lots 5 and 6, Section 4, Township 35 North, Range 1 East, in Skagit County, Washington, described as follows: Beginning at the north quarter corner of said section, which bears North 88°34'57" East, 2,559.26 feet from the northwest corner of said section; thence South 47°50'05" East 1,295.67 feet to the True Point of Beginning; thence South 17°30'40" West 760.79 feet to a point which bears North 5°36'03" West, 17,612.38 feet from Washington State Department of Transportation GPS control point designated "Tracie"; thence South 72°29'20" East 1,050.05 feet; thence North 17°30'40" East 760.79 feet; thence North 72°29'20" West 1,050.05 feet to the True Point of Beginning. Containing 18.34 acres, more or less.

#### Parcel 2

That portion of the beds of Deepwater Bay fronting Government Lot 1, Section 4, Township 35 North, Range 1 East and Government Lot 2, Section 33, Township 36 North, Range 1 East, in Skagit County, Washington, described as follows: Beginning at the quarter corner common to said sections, which bears North 88°34'57" East, 2,559.26 feet from the west section corner common to said sections; thence South 75°39'21" East 617.50 feet to the True Point of Beginning; thence South 29°01'25" East 831.71 feet to a point which bears North 4°32'25" West, 18,300.76 feet from Washington State Department of Transportation GPS control point designated "Tracie"; thence North 60°58'35" East 880.72 feet; thence North 29°01'25" West 915.98 feet; thence South 60°58'35" West 186.46 feet; thence South 54°03'21" West 699.36 feet to the True Point of Beginning. Containing 17.85 acres, more or less.

#### Parcel 3

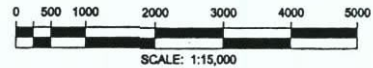
That portion of the beds of Deepwater Bay fronting Government Lots 1 and 2, Section 33, Township 36 North, Range 1 East, in Skagit County, Washington, described as follows: Beginning at the south quarter corner of said section, which bears North 88°34'57" East, 2,559.26 feet from the northwest corner of said section; thence North 63°18'27" East 1,801.84 feet to the True Point of Beginning; thence North 50°13'52" East 1,322.13 feet; thence South 37°44'53" East 780.92 feet; thence South 52°15'07" West 1,321.31 feet to a point which bears North 1°09'27" West from Washington State Department of Transportation GPS control point designated "Tracie"; thence North 37°44'53" West 734.30 feet to the True Point of Beginning. Containing 22.98 acres, more or less.

### Legend

- Public agency GPS station of record as noted
- Buoy
- Fish pens as of this survey

### Notes

For additional information on upland section monuments depicted herein, see Volume 1, Page 13 and Volume 18, Pages 191-193 of Surveys and Volume 3 of Short Plats, Page 83. Tide level data relative to NAVD88 hereon are per the mean of U.S. Army Corps of Engineers values for Sinclair Island, Ship Harbor and Strawberry Bay, published at the time of this survey. They are based on insufficient durations of observations to be of great accuracy.



Grid N: 554588.39  
 Grid E: 1193234.44  
 Latitude: 48°30'20.345"  
 Longitude: -122°40'41.331"  
 Scale Factor: 0.99996514  
 Theta: -1°22'24.606"

WSDOT "GP28020-15A" @  
 WSDOT "TRACIE" @

*Fidalgo*

**American Gold Seafoods, LLC**  
**Aquatic Lease No. 20-A12517**

Drawn By: BAM	Date: March 9, 2007	Job No. 6093
Checked By: BAM	Scale: 1:15,000	Sheet 2 of 2



**MACLEARNSBERRY, Inc.**  
 Land Surveyors • Civil Engineers • Planners  
 159 Wyatt Way NE Bainbridge Island, WA 98110  
 phone: (206) 842-5514 facsimile: (206) 780-2408

## **Exhibit B**

### **American Gold Seafoods, LLC - Deepwater Bay Net Pens Sites 1, 2 and 3 Plan of Development and Operation**

There are three distinct net pen structures (Site 1, 2 and 3) that are all incorporated within this same Aquatic Lands Lease (20-A12517) authorized by the Washington Department of Natural Resources. All three net pen structures are currently owned and operated by the same company, American Gold Seafoods, LLC, and the type of equipment, management strategy, and daily aquaculture practices of each site are similar. In order to simplify and reduce the amount of paper work, only one Plan of Development and Operation was completed for all three of these sites. Individual descriptions of the sites are given only when necessary to describe any of the physical differences between the sites or the improvements on each of those sites.

#### **1.) Cage Descriptions and Useful Life of Improvements**

The three Cypress Island net pen structures were initially permitted and installed between 1983 and 1986. The cages have undergone several structural improvements or complete replacements since this time. The last replacement cycle, beginning in 1999, saw all three cage structures being completely replaced with new cages manufactured by Marine Construction, AS [www.marineconstruction.com](http://www.marineconstruction.com).

There are currently a total of 30 Marine Construction, SystemFarm 24 Meter cages located within the three (3) site areas under the current Washington Department of Natural Resources (WDNR) Aquatic Lands Lease #20-A12517. Each of the net pen sites located in Deepwater Bay consists of a rectangular raft of floating cages. Site 1 contains eight (8) Marine Construction 24 meter by 24 meter square cages; Site 2 ten contains (10) Marine Construction 24 meter by 24 meter square cages; Site 3 contains twelve (12) Marine Construction 24 meter by 24 meter square cages.

The walkways are made up of a frame work of heavy gauged, galvanized steel box beams with galvanized metal walkway grating welded on top of it. The walkways all have multiple foam filled plastic floats bolted in place underneath the frame work that is used for the floatation of the structure. The walkway sections have hinges welded at junctions through out the system that give it flexibility and the capacity to withstand significant wave heights and energy. Each walkway section has 2 hinge points at each end, and use 1.25" diameter stainless steel hinge pins to couple the walkway sections together. Nylon bushings are used to eliminate metal to metal wear at these hinge points.

The new cages have an average expected service life of approximately 15 years. Life span of a cage structures is variable depending upon exposure to storm energy, wave heights, wave frequencies, the corrosiveness of the marine environment, and operational and maintenance programs of each company. Over the past 25 years, cage manufactures have made significant technological and structural advances in the design and materials utilized to construct net pen structures. These advances have greatly increased the efficiency, durability, safety and life-span of the sea cages. The current cages deployed at these sites are well within the design and engineering capacity for this application.

#### **▪ Maintenance Schedules**

Minor maintenance to the cage structures, anchor lines, and netting occurs through out the year and on a continual basis. The industry standard for major cage maintenance is to

periodically replace the entire cage structures with newer ones. Metal fatigue is a factor because of the constant wave action and flexing. The option of retrofitting older cages that are nearing the end of their life span is logistically problematic and not economically viable. A brand new cage system will achieve a substantially higher level of warranty against catastrophic failure. Because of this there is always the possibility for one or more of the Cypress Island net pen complexes to undergo physical changes with the types of cages currently located at the site. In this event all state, local and federal notifications and permits necessary to complete the project will be carried out prior to any work being performed.

- Mooring System Description

All three sites (Site 1, 2 and 3) utilize similar anchoring designs, equipment and maintenance schedules that have been developed by the Washington, Canadian and Norwegian aquaculture industries. The net pen structures are held into place using numerous steel Danforth type anchors weighing from 2,000 to 10,000 pounds each. Concrete blocks are also used in some locations. Steel chain, shackles, and 1.5 to 2.5 inch diameter polypropylene lines are also utilized to complete the mooring system. Proper scope ratios are maintained in accordance with internationally known and recognized anchoring techniques. Visual inspections of the below water connection are made periodically by divers, while the surface connections can be checked daily by farm staff. The mooring attachments are completely removed, checked and refitted on average every 5 to 7 years.

- Physical Improvements; Fish Nets and Other Physical Structures

The fish are contained in nylon nets that are held by an underwater weighting system. The weights help to maintain the shape of each square net in the water, and during strong tidal flows. The nets are suspended at the surface by the floating cage structures themselves. Differing mesh sizes are used throughout the growing cycle. Smaller meshed netting (0.75" to 1.0" diagonal stretch) is used for the smolts and juvenile fish, while a larger mesh netting (2" to 2.5" diagonal stretch) is used for final grow out pens. Larger mesh size increases the transfer of water through the net wall, and improves the growing conditions for the larger fish.

Some fish nets are treated with approved water based antifoulant paint to reduce the growth of fouling organisms on the net walls. All dipping and net treatments are carried out at an off site land based facility. Nets are inventoried, and log sheets are maintained by farm personnel that record the date of manufacture, type of netting, repairs, and other relevant information. Nets are replaced after approximately 6 years of service.

- Physical Conditions; Wind, Waves, Currents and Substrate

The Cypress Island net pen sites are located within the protected waters of Deepwater Bay, on the eastern shore of Cypress Island. The net pens experience varying degrees of wind strength and direction through out the year. Over the years of operation, new cages have been installed that better meet the physical stresses experienced during major storm events.

Due to their relatively protected location, the maximum wave height is typically less than 4 feet, however waves of greater heights are occasionally observed. The greatest exposure to wind generated waves is during south east to easterly winds. During major storm events, winds can be in excess of 50 knots, but are typically in the 20-30 knot range (personal observation of farm staff). South easterly wind directions have the greatest fetch reaching into Deepwater Bay, and can potentially develop the largest wave heights impacting the farms. Site 3, the northern

most site, has the greatest exposure to wind and fetch from this the southeast direction. The largest wave heights observed over the past twenty years are estimated at 6 feet by farm personnel. The current cage structures located at Cypress Island are designed to withstand maximum wave heights in excess of twelve feet. Sites 1 and 2 are more protected from the prevailing south easterly wind direction, but are more exposed during northerly Fraser River out flows that can occasionally occur in the winter. Wave heights reaching Sites 1 and 2 from this direction are typically no greater than 4 feet.

▪ Tides, Currents and Substrate

The extreme tidal range for the project location is approximately 13.5 feet (2005 Current and Tide Tables for Puget Sound). The maximum current velocity for the Cypress Island site is 0.45 cm/second and average is approximately 0.35 cm/second (J. Rensel, Current Velocity Study, 1996). The site is orientated in an area where tidal action and deep waters help to minimize the build up of biological waste material. The sites have never failed the sediment sampling standards established under the Washington Department of Ecology (WDE) NPDES permits.

Benthic sampling carried out over the years by a consultant to the farm, Dr. Jack Rensel, show the substrate found around the Cypress Island net pen facilities to vary widely from site to site, but primarily consist of mud, silt, sand and cobble (J. Rensel pers., comm.). Observations by farm staff during anchor inspections, anchor maintenance projects, and sediment sampling; in addition to the benthic descriptions shown on NOAA navigational charts of the area also support this conclusion.

**2.) Schedule of Development.**

The physical structures for the net pens at Cypress Island have all been developed. Normal and routine activities, such as mooring system maintenance and cage maintenance, are performed on a continual basis. There are no plans for a complete cage replacement at the date of this application.

**3.) Work force at the site.**

The Cypress Island farm site employs a total of 8 full time employees. Typically there are between 4-5 people working during the weekdays at the site, and only 2 or 3 people working at the site over the weekends. Daily activities of raising fish include feed transport, feeding, size grading, mort diving, net changing, net cleaning, density adjustments, size sampling, health screening, fish harvesting and fish planting. Other activities occurring on the site would be the normal day to day maintenance work on the existing facilities. Some examples would be net mending, net replacements, replacing steel cage components, anchor line work, boat maintenance, diving and the maintenance of other support equipment. There is some seasonality to the work such as the size grading, harvesting and anchor line work, but in general all of the above activities occur on a year round basis.

**4.) Number, type and size of boats for site operation.**

The farm will utilize several small outboard powered work skiffs that measure from 12' to 25' in length. The smaller boats are used as transportation and support vessels between the three sites. These smaller skiffs are used on a daily basis. The farm also owns a larger work vessel measuring 62' in length which has a large crane on board. The boat is used to transport

fish feed and equipment from a land based facility in Anacortes to the net pen sites. The vessel is also used for net maintenance, anchor line work and other crane work at the farm. Periodically, the farm employs larger "well boats" measuring from approximately 100 to 160 feet in length. These vessels are used to transfer live fish into and out of the farm site; and to haul the harvest fish to the processing plants. These vessels are used on a more seasonal basis, depending on the operational strategy of the facility (grow out or smolt site) and other timing factors such as market demand.

**5.) Timing of work.**

The work force is spread throughout the week, 7 days per week and twelve months per year. The majority of work is normally performed during normal business hours Monday through Friday, with the bulk of the employees working during those times. A smaller crew works the weekends, and the site has security personnel available overnight. Depending on circumstances the farm may be required to perform increased work during after hours and weekends. Examples would be during an algae bloom, a large mortality event, acceleration in fish harvesting, and/or other emergency situations.

**6.) Use of temporary or short term equipment.**

There is no temporary or short term equipment being used at the site.

**7.) Species to be reared, source of stock and anticipated production levels.**

Atlantic salmon (*Salmo salar*) are currently the only species of fish permitted by the Washington Department of Fish and Wildlife (WDFW) Fin Fish Permits to be raised at the Cypress Island net pen facility. Other species of fish may be raised at these sites in the future, but only after approval by the WDFW and issuance of new WDFW Fin Fish Permits.

Over the past twenty five years with the development of the salmon aquaculture industry, cultured Atlantic salmon stocks have become highly domesticated. Atlantic salmon are the predominant species of salmonid commercially reared in marine aquaculture facilities throughout the world. Atlantic salmon are less aggressive than any of the five Pacific salmon species, a characteristic that makes them well suited for the confined rearing spaces and the intensive culturing practices of an efficient operation.

The brood lines to be used in the net pens originated from Atlantic salmon that were being reared by the National Marine Fisheries Service (NMFS), as part of Federal salmon enhancement projects for the St. Johns, Gaspé and Pennobscott Rivers during the early 1980's. Those three particular stocks of North American Atlantic salmon have subsequently been interbred over the years by Washington's commercial aquaculture industry. The resulting stock of fish used by AGS are genetically different than the original wild strains of Atlantic salmon that NMFS was raising some twenty years ago. Brood selection today, is based primarily on the growth rate, the survival rate and other performance characteristics of the cultured stocks, while maintaining as much genetic diversity in the population as possible.

American Gold's brood stock is reared for four years in the controlled environment of freshwater hatcheries before reaching sexual maturity. After spawning it takes from two and a half to three years to raise the fish from an egg, to a market sized 10-12 pound salmon. Production fish are harvested, processed and shipped out the same day to seafood customers located throughout the United States.

The sites will receive smolts from certified disease free hatcheries throughout the year. Primarily the smolts will come from the American Gold Seafoods (AGS) owned and operated hatchery facilities located near Rochester, Washington. Other privately owned hatcheries may be contracted to grow Atlantic salmon smolts for stocking of the net pens in the future. The smolts receive regular health screenings and are vaccinated against common indigenous bacterial diseases prior to transfer to the net pen site from the hatcheries.

Research has shown that Atlantic salmon are incapable of successfully interbreeding with any of the different Pacific salmon species. Because of this, the risk of escaped Atlantic salmon negatively affecting the gene pool of the Pacific Northwest salmon stocks is considered to be extremely low by most experts. Atlantic salmon aquaculture has been extensively reviewed over the past 20 years. A recent risk analysis performed by the NMFS (Nash, C. E. 2003), and the white paper from WDFW both discuss the relatively low risks associated with escaping Atlantic salmon with regard to impacting Pacific salmon species. Washington State salmon farms operate under regulations that are designed to further reduce the risks of accidental release of cultured fish, and all efforts are carried out in order to minimize the loss of any fish stocks by American Gold.

Anticipated production levels for the three Cypress Island net pen facilities is approximately 2,000,000 Kilograms (4,405,200 pounds) per year. The facilities are presently being used as grow out sites. Juvenile fish from the associated Hope Island net pen facility are entered into the site during the fall and early spring of each year. The juvenile fish weigh approximately 600-800 grams on average when they are transferred from the nursery site into the Cypress sites.

#### **8.) Chemicals, antibiotics, etc., to be introduced into the water.**

No chemicals can, or will be directly introduced into the waters at the sites. Antibiotics, as permitted by the State and Federal regulations are occasionally used, and if so, used only to treat a specific disease event. The use of antibiotics has become very infrequent due to new vaccines and to improved husbandry techniques that have been developed over the years. Antibiotics approved for use in aquaculture in the United States include the following: Terramycin, Oxytetracycline, and Amoxycilin. Other therapeutants can be used under an Investigational New Animal Drug permit issued by the U.S. Food and Drug Administration. The use of any INAD disease control chemicals has been rare in the operation of these net pens and in Washington state salmon aquaculture in general.

Use of approved antibiotics is carried out under consultation with a licensed veterinarian and then ordered from the feed manufacture by the site manager. The feed manufacturer only mixes the prescribed amounts into the fish feed under the prescription from the licensed veterinarian. Strict guidelines and record keeping are adhered to during the medicated feeding process to ensure the each fish receives an effective dosage. Disease Control Chemical Use reports are submitted annually to the Washington Department of Ecology in compliance with the NPDES operational permits at each aquaculture facility. These reports compile the total amount, type and frequency of usage of disease control chemicals and medicated feeds. Log sheets are maintained by farm managers and other personnel as part of record keeping requirements of the permits. The use of antibiotics in the fish feed is infrequent, with typically less than 2% of the annual amount of feed used at the sites ever being medicated. It is the goal of AGS to completely eliminate the use of medicated feed.

## **9.) Harvest, feeding and tending operations.**

### ▪ Growth and Harvesting

The fish take between 16 and 20 months, after saltwater introduction, to reach the market size of approximately 10-12 pounds. At harvest, the fish are pumped from the pens using a vacuum pump and transferred into the hold of a fishing vessel. The fish are then either live-hauled to a processing plant where they are stunned, bled and processed, or they are stunned and bled into the hold of the transfer ship and then later processed at a land based processing facility.

Harvesting is carried out on year round basis depending on the size of fish and fluctuating market conditions. The fish are shipped out fresh from the processing plant to buyers located through out the United States.

### ▪ Fish Feed

The feed used at all three sites is an extruded dry pellet. It is fed out mainly by a computerized automatic feeding system using air blowers, and plastic pipes to distribute the feed into the pens. The feed contains fishmeal, fish oils, vegetable proteins, vitamins, minerals, ash, and pigmentation in the form of Canthaxanthin and/or Astaxanthin.

The fish are fed daily and the amounts supplied to them are closely monitored to prevent either over, or underfeeding, which can both seriously impact the cost of production. The amount and type of feed being administered to each pen is closely monitored and recorded on a daily basis and kept in a data base. Calculated feeding rates and well researched feeding regimes are used to promote the highest efficiency in growth rates for the fish stocks, as well as to minimize any impact to the environment from overfeeding and wasting feed. The water quality is closely monitored at the farm for fluctuations in temperature, dissolved oxygen and harmful plankton, which all play a critical role in the appetite of the fish stocks. Underwater cameras or other devices are used by technicians to monitor the feeding process and the feed response of the fish.

## **10.) Maintenance methods and timing.**

Maintenance of the fish containment nets is carried out on a year round basis. Nets are pulled to the surface, and allowed to air dry; or they are cleaned with an underwater disc, using pressurized sea water to remove any marine growth before it accumulates. Nets have a service life expectancy of approximately 6 years. Cage structures require little daily maintenance, however after 10- 15 years of service they typically are completely replaced with a new structure. Components in the mooring systems are periodically replaced an average every 6 years of service, however repairs are made as needed.

## **11.) Methods of predator control.**

Predator netting is periodically used as a physical barrier to seals, sea lions and river otters. The predator netting encompasses the entire net pen structure and is made of a heavy gauged, large meshed (7" diagonal stretch) nylon material. The net is treated with antifoulant prior to being deployed and is weighted around the perimeter with large diameter steel pipes. Bird netting is used on all pens to deter bird predation on the smaller fish and to keep birds from attempting to consume the fish feed as it is being distributed at the surface of each cage. Bird netting acts as a visual and physical deterrent.



**12.) Waste discharges.**

▪ Washington Department of Ecology-NPDES Permits

Each net pen facility is required to have a National Pollution Discharge Elimination System (NPDES) Permit issued by the Washington Department of Ecology (WDOE). The benthic area surrounding each fish pen perimeter is monitored for Total Organic Carbon (TOC) levels according to the requirements of the NPDES permits. The Benthic Monitoring Reports are sent to WDOE during each permit cycle. Annual Disease Control Chemical Use Reports, which document the amounts of chemicals (antibiotics, disinfectants, anesthetics) used at the site during a year are also submitted.

As part of the NPDES permit requirements, Pollution Prevention Plans have been developed and implemented for each facility. These plans address the daily operating procedures at the site including chemical storage, chemical spill prevention and spill response.

In the event of a significant fish release the farm is to notify the Department of Ecology and the Department of Fish and Wildlife within 24 hours of that event. The American Gold Seafood-Fish Escape Reporting and Response Plans, Fish Escape Prevention Plans, and an Employee Procedure Manual to Minimize the Potential for Escapement, have all been submitted to, and approved by WDOE and WDFW. Both the Pollution plans and the Escape plans require emergency situation, and phone contact numbers will be kept posted on the employee bulletin board.

**13.) Hazardous materials.**

Amounts of hazardous materials are kept to a minimum at the sites, and are generally stored in a centralized area. The combined types and estimated quantities for all three sites are listed below.

Gasoline	100 gallons
Diesel Fuel	250 gallons
Motor oil	4 gallons
Paints/solvents	20 gallons

**14.) Location of public sites to be used as a support facility.**

Currently, the farm leases dock space from the Port of Anacortes located on the Anacortes waterfront. This is a yearly lease and is used for mainly loading the fish feed which arrives by truck, onto the supply vessel for the farms. The facility is also used to load and unload nets, dead fish, and support equipment for the Cypress sites.

**15.) Any subleasing plans.**

There are no plans for subleasing the site as of the date of this application.

**16.) Location of associated activities, processing facilities on state owned aquatic lands.**

Currently, the fish are being processed at a facility located in Seattle on the Duwamish waterway. The ownership of the aquatic lands for this processing facility is unknown. American Gold Seafoods owns and operates three additional net pen sites, and one waterfront pier facility that is located on state owned aquatic lands. Those other site names are Hope Island, Port Angeles and Bainbridge Island. The approximate location of those sites is similar to their names, near Hope Island (Skagit County); in Port Angeles Harbor (Clallam County); and in Rich Passage adjacent to Bainbridge Island (Kitsap County).

**17.) Additional information on salmon pens proposals:**

- a.) Site 1 = 8 pens; Site 2 = 10 pens; and Site 3 = 12 pens.
- b.) Maximum pen depth is approximately 15 meters.
- c.) Maximum total pen volume is approximately is 8,640 cubic meters.
- d.) Compressed surface area of cage walkways:
  - Site 1 = 18,242 sq. ft.
  - Site 2 = 21,952 sq. ft.
  - Site 3 = 25,851 sq. ft.
- g.) Total surface area covered by surface structures:
  - Site 1 = 68,418 sq. ft.
  - Site 2 = 84,672 sq. ft.
  - Site 3 = 101,115 sq. ft.
- h.) Maximum weight of fish held at any one time.
  - Site 1 = 1,600,000 lbs.
  - Site 2 = 1,700,000 lbs.
  - Site 3 = 2,600,000 lbs.
- j.) Rearing density or pounds per cubic yard, varies with the average size of the fish being held in each pen. Larger fish can be reared at higher densities (biomass/volume) than can the smaller fish. The following are industry standard density levels used for rearing Atlantic salmon in net pens. Fish with an average size of 1.0 kilogram (2.2 pounds) or less, can be reared at densities up to 17 pounds per cubic yard (approximately 10 Kilograms per cubic meter). Fish greater than 1.0 kilogram (2.2 pounds) can be reared in densities that can go up to, and at some times exceed 50 pounds per cubic yard (approximately 30 Kilograms per cubic meter). Typically grow out densities are kept at no more than 20 Kilograms per cubic meter in order to maximize the growth performance and promote the overall health of the fish being reared.
- k.) Anticipated production levels for the three Cypress Island net pen facilities is approximately 2,000,000 kilograms per year (4,405,200 pounds). The facilities are presently being used as grow out sites. Juvenile fish from the Hope Island net pen facility are entered into the site during the fall and early spring of each year. The juvenile fish weigh approximately 600 grams on average when they are transferred into the Cypress sites.
- l.) Antibiotics are periodically used to treat specific disease events and never used as a prophylactic treatment. The amount of feed containing antibiotics is less than 2% of the total feed used at the sites on an annual basis. Some of the sites go the entire year without the use of antibiotics depending upon fish health and environmental factors. Antibiotics approved for use in aquaculture in the United States include the following: Terramycin, Oxytetracycline, and Amoxycilin. Other therapeutants can be used under an Investigational New Animal Drug (INAD) permit issued by the U.S. Food and Drug Administration. The use of any INAD disease control chemicals has been rare in Washington State's salmon aquaculture industry. Antifoulant net treatments are used to keep the nets from becoming heavily fouled with marine fouling organisms. New nets are treated with antifoulant at the net manufacturing facility. Antifoulant treatments last approximately 2 years before needing to be re-treated. Nets are removed from the facility and shipped back to the net manufacture for cleaning and re-dipping with antifoulant. No

antifoulant treatments are carried out at the farm sites. Antifoulant use has been approved by the Washington Department of Ecology and is a copper containing, water based paint.

## **Compatibility of Adjacent Land and Water Uses**

### **1.) Distances from the closest shore at MLLW:**

Site 1 ~ 200 feet; Site 2 ~ 175 feet; Site 3 ~ 300 feet from the nearest shore.

### **2) Character and density of development within view of the sites:**

The cages are located in Deepwater Bay adjacent to the eastern shore line of Cypress Island. They are approximately 3.5 miles west of Anacortes. The adjacent upland areas are primarily owned by the State of Washington and are managed by the Washington State Department of Natural Resources.

### **3.) Public use and access:**

- a.) The marine waters around Cypress Island has been designated an Aquatic Reserve by the Washington Department of Natural Resources (WDNR) and approximately 95% of those tidelands are owned by the State of Washington. Upland areas around Cypress Island also are primarily owned (~85%) by the State of Washington. Most of the Cypress upland areas are designated Natural Area Preserves and Natural Resource Conservation Areas by WDNR. There is some private ownership of uplands scattered throughout the island. The shoreline around Cypress Island is designated Conservancy by the Skagit County Master Plan. There are several parks located on Cypress Island and some of the adjacent smaller islands, such as the Cone Islands and Strawberry Island. None of the parks are located within one-quarter mile of the net pen sites in Deepwater Bay.
- b.) The net pen operations in Deepwater Bay do not significantly impact the recreational use of the state owned lands adjacent to the site. The net pen structures are located offshore and do not encumber, or impede the public use of any of the nearby shorelines. The sites are also located a significant distance away from any of the park areas located on or near Cypress Island, and as such these operations do not disturb the quiet enjoyment of those facilities by the public.

### **4.) Navigation:**

The net pens are registered with the U.S. Coast Guard Private Aids to Navigation (PATON) Program. PATON is a federally operated program that allows for the private maintenance and operation of navigational lights on private property located in navigable waters. Proper navigational warning lights, as permitted by the USCG- PATON program are maintained by the farm personnel, and are periodically inspected by the Coast Guard Auxiliary. The net pens and their marking lights are also shown on all NOAA Navigational Charts, which are periodically being updated by the agency. The sites were purposely located within Deepwater Bay and away from any designated navigational shipping lanes.

- a.) There is recreational navigational use of the waters around Cypress Island and within Deepwater Bay. There is no commercial navigational use of the project site. The net pen facilities are located well inside of Deepwater Bay, and far away from the designated commercial shipping lanes of Rosario Strait, Guemes Channel and Bellingham Channel.

b.) There is no impact to the commercial navigational use in Deepwater Bay because this area is not used for commercial navigation. There is recreational boating around Cypress Island, and within Deepwater Bay, and because of this there is potential for minimal impact to recreational boating of the area occupied by the net pen structures. There is however, ample area around the net pen structures for the safe passage of recreational boaters, and the sites are well marked with navigational devices to aid in navigation. There is some added benefit to nearby recreational boaters to the presence of the net pen facilities and farm employees because of the resources available (first aid kits, boats, pumps, radios, etc.,). Because the farms are manned 7 days a week, farm personnel have been called in, or volunteered to perform numerous vessel rescues over the many years these sites have been operating. The net pen sites and some of the larger farm work boats are equipped with VHF radios which monitor the normal emergency distress channels.

#### **F. State Environmental Policy Act Compliance**

The facilities have been in existence since approximately 1985. All necessary permits from state and local agencies were acquired for the development. Copies of these various historical permits can be made available upon request.