



Commercial Finfish Net Pen Aquaculture Rulemaking

January 7, 2025



DNR drone image of collapsed Cypress Island net pen #2 in Deepwater Bay, August 28, 2017.



WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES

dnr.wa.gov

DNR's Responsibilities



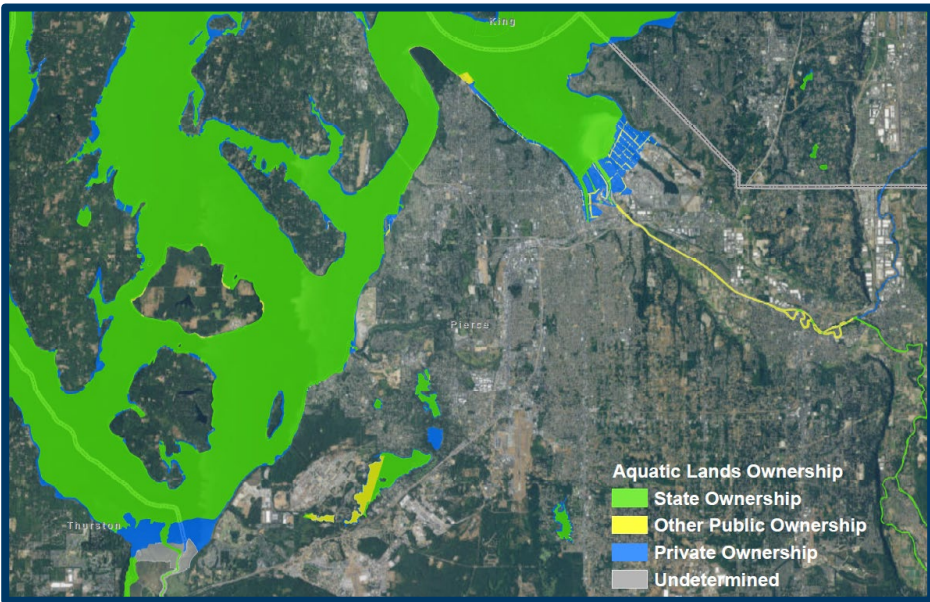
View of SOAL from Washington Park, Anacortes, WA.

- **DNR manages 2.6 million acres of State-Owned Aquatic Lands (SOAL).**
- **DNR is directed by statute to manage state-owned aquatic lands through the following public benefits:**
 - 1. Encourage direct public use and access**
 - 2. Foster water-dependent uses**
 - 3. Ensure environmental protection**
 - 4. Utilize renewable resources**
 - **Generate income from use of aquatic lands, when consistent with the previous 4 public benefits**
- **Unlike DNR State Lands, management of SOAL does not have the same fiduciary responsibility.**



DNR's Authority Differs from other Agencies

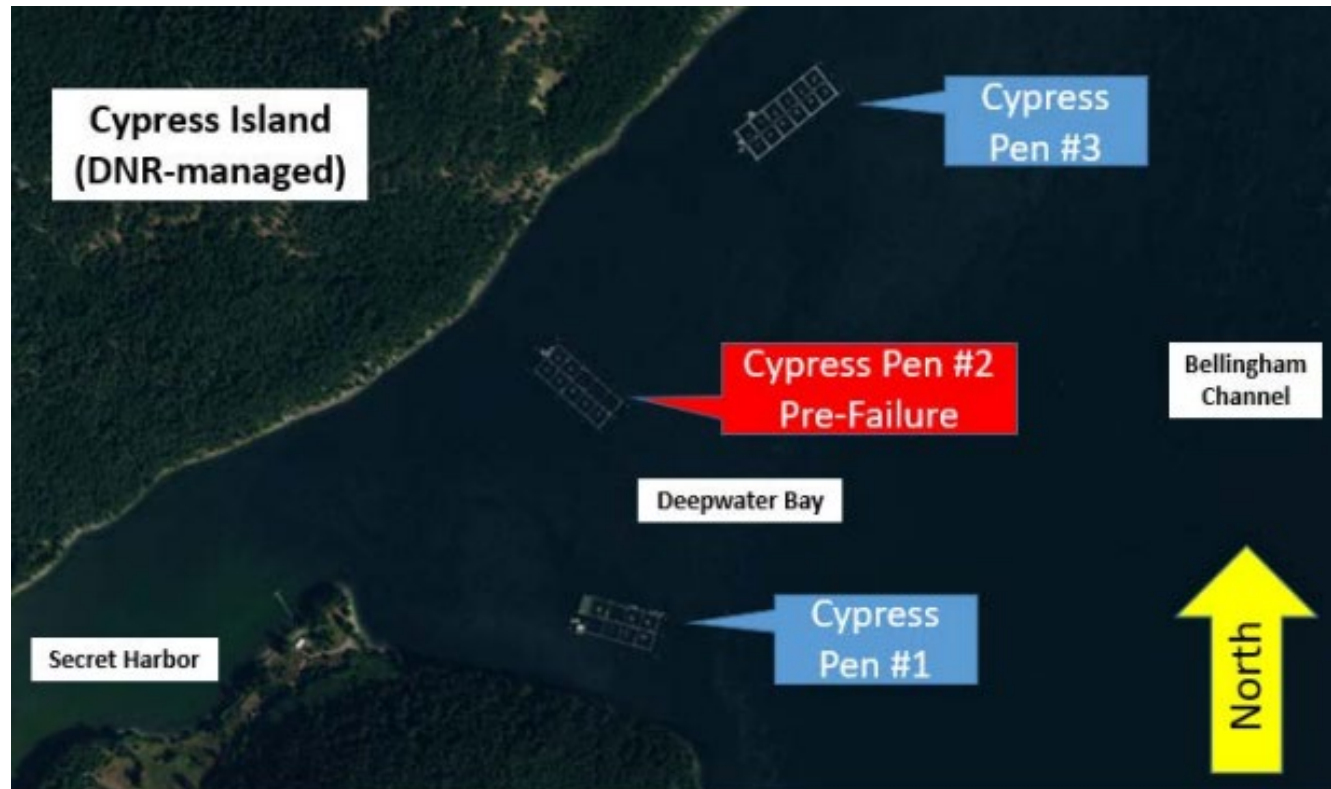
- DNR serves as the proprietary manager of SOAL, which includes authority to determine who and for what purposes it will lease aquatic lands, much like a landlord.
- DNR reviews applications to use SOAL and can deny those that are not consistent with the public benefits.
- DNR's management authority (including rule-making) only applies to SOAL, not to other ownership types.
- DNR has made decisions previously to not lease certain areas of aquatic lands. For example, setting lands aside for conservation as Aquatic Reserves and Kelp and Eelgrass Protection Zone.



South Puget Sound depicting SOAL (green) and other public (yellow) and private (blue) ownership.



Background



Aerial photo of Cypress Island net pens, showing net pen #2 in relation to other net pens.

- August 19, 2017, ~250,000 non-native Atlantic Salmon escaped into Puget Sound near Cypress Island when a commercial finfish net pen collapsed.
- DNR set up, with WDFW and Ecology, an Incident Command Unit on site, spending thousands of hours to contain the facility, capture escaped fish and investigate the collapse.
- An investigative report highlighted the many failures that led to the collapse, including details of an earlier incident that preceded the collapse.



Timeline

- **Prior to 2022** – Extensive Tribal outreach and Government to Governments were held to discuss the future of CFNPA
- **November 2022** – Remaining two DNR CFNPA leases terminated
- **November 2022** – Commissioner Order directing DNR to conduct rulemaking
- **April 2023** – CR-101 Filed
- **March 2024** – Tribal Informational Meeting
- **June 2024** – Tribal Open House Meeting and request for information
- **July 2024** – Tribal Open House Meeting and request for information
- **August – November 2024** – Additional Government to Government Meetings
- **October 2024** – CR-102 and SEPA filed; Science Synthesis updated
- **November 5, 2024** – BNR Board Briefing
- **November 7, 2024** – Public Hearing
- **January 7, 2025** – BNR Board Briefing



Tribal Outreach and Consultation

- **2020** Commissioner and DNR together held five G2G with the Swinomish, Jamestown, Makah, Sauk-Seattle, and Squaxin Tribes listening to understand their position on the future of net pen aquaculture.
- **2021** Commissioner and DNR had G2G with 16 Tribes together on the future of net pen aquaculture and they had individual G2G with Jamestown, Quinault, Swinomish, Lower Elwha and Suquamish Tribes on the future of net pen aquaculture.
- **2022** Commissioner and DNR had G2G consultation with Swinomish (2), Suquamish (2), Jamestown (3), Lummi, Lower Elwha, Squaxin, and Tulalip.
- **March 2024** – Tribal Informational Meeting
- **June 2024** – Tribal Open House Meeting and request for information
- **July 2024** – Tribal Open House Meeting and request for information
- **August – November 2024** – Commissioner and DNR held G2G Meetings with Tribes, including Jamestown, Lower Elwha, Suquamish, Swinomish, Stillaguamish, Lummi, Tulalip, Swinomish, and Puyallup.



Science Synthesis

Science Synthesis: *Effects of Commercial Finfish Net Pen Aquaculture on Habitats on Washington SOAL.*

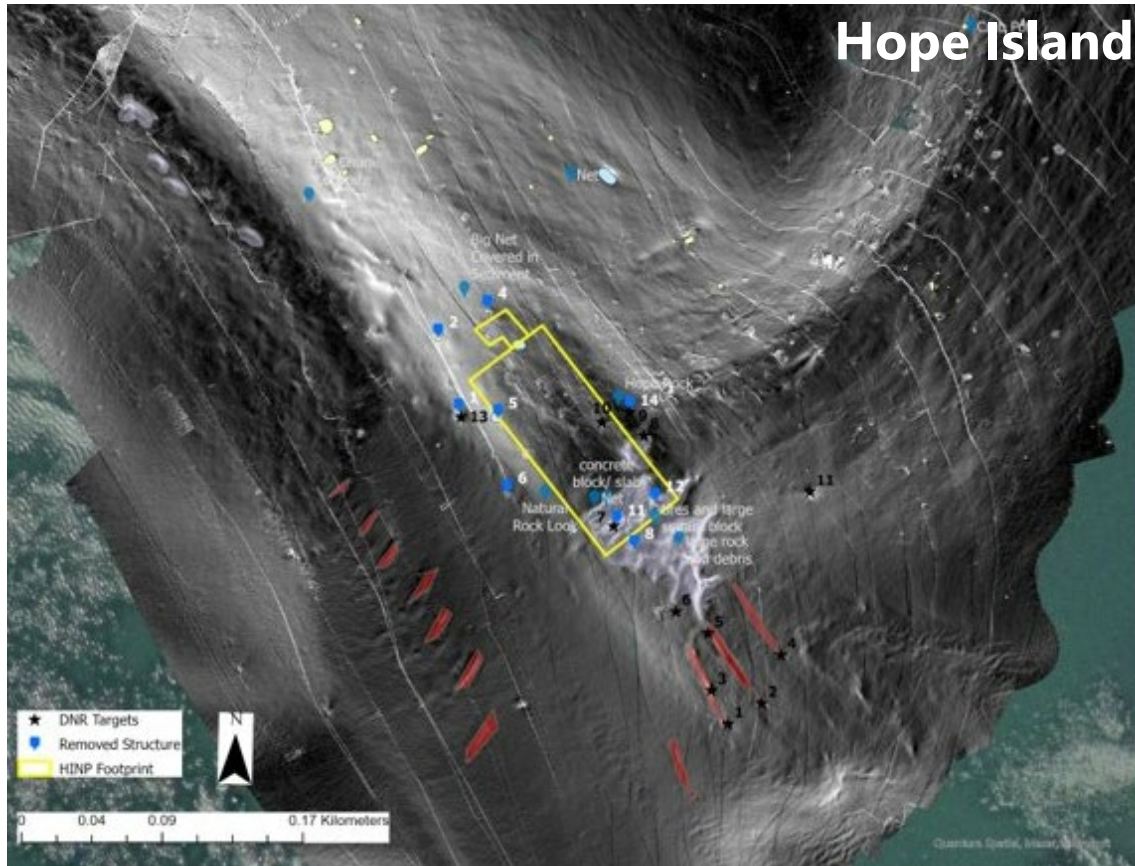


Debris recovered from former leaseholds (Cooke Aquaculture 2023 Report).

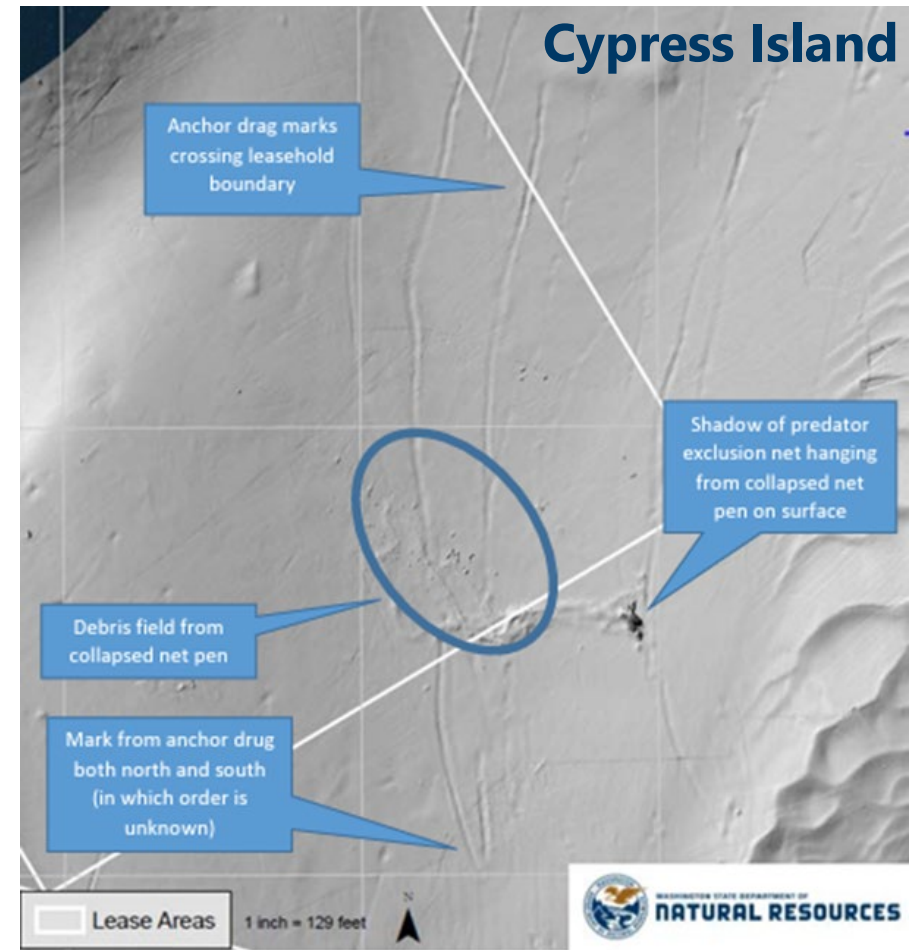
- This document was updated through October 2024 as additional information was provided.
- The findings from this extensive literature review includes >290 citations and informed DNR's decision.
- Reviews potential stressors to the habitat DNR is specifically charged with conserving for future generations. Impacts include:
 - Effluent and nutrient deposition
 - Impacts on the benthic community
 - Marine debris
 - Direct disturbance impacts



Direct Impacts to SOAL



Former Hope Island leasehold viewed with sonar in 2024.



Former Cypress Island leasehold viewed with sonar in 2017.



Research and Restoration



Debris recovered from former leaseholds (Cooke Aquaculture 2023 Report).

- DNR has been conducting surveys at previous leasehold sites to further understand impacts.
 - Multibeam surveys
 - ROV surveys
 - Dive surveys



Comments Received

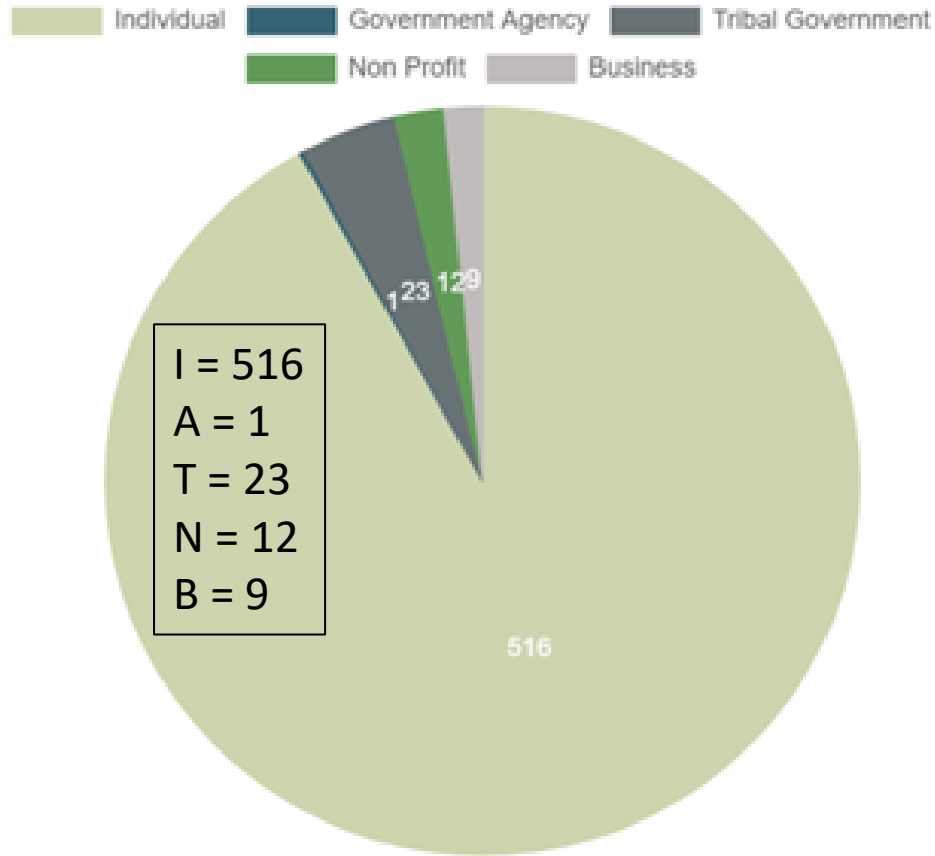


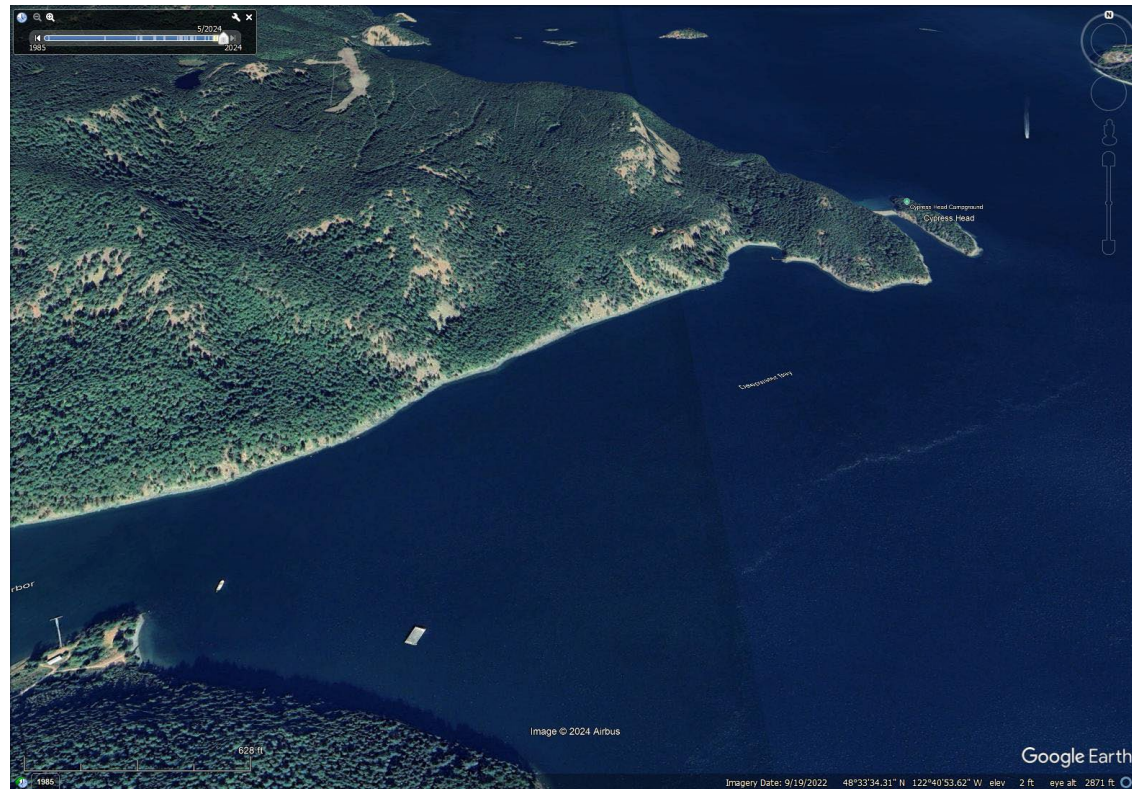
FIGURE 1. COMMENTS RECEIVED BY ENTITY.

DNR received 561 comments.

- Commenters designated, Individual (I), Government Agency (A), Tribal Government (T), Non-Profit (N), or Business (B) (see Figure 1).
- Comments were submitted using various methods:
 - 118 were submitted through SmartComment.
 - 11 were presented orally at the Public Hearing.
 - 432 were submitted via email to netpens@dnr.wa.gov or bnr@dnr.wa.gov.
 - No comments were received via mail.



Comments Received



Aerial image Cypress Island and Deepwater Bay in 2022, showing the area without net pens.

- >80% of Comments were supportive of the rule change.
- Comments opposed to the rule change:
 - Questioned DNR's authority.
 - Suggested the process was inadequate.
 - Suggested the science was inadequate.
 - Suggested mitigation was overlooked.



Tribal Comments on Proposed Rule Language

DNR received comments from 9 Tribal Governments during the comment period:

- **6 Tribes concurred with the rule language as written.**
- **1 Tribe concurred and requested a slight modification.**
- **1 Tribe initially raised concerns as to how the rule might apply to the rearing of native fish stocks. A follow-up comment clarified this Tribe's support for the rule language.**
- **1 Tribe disagreed with the rule language.**

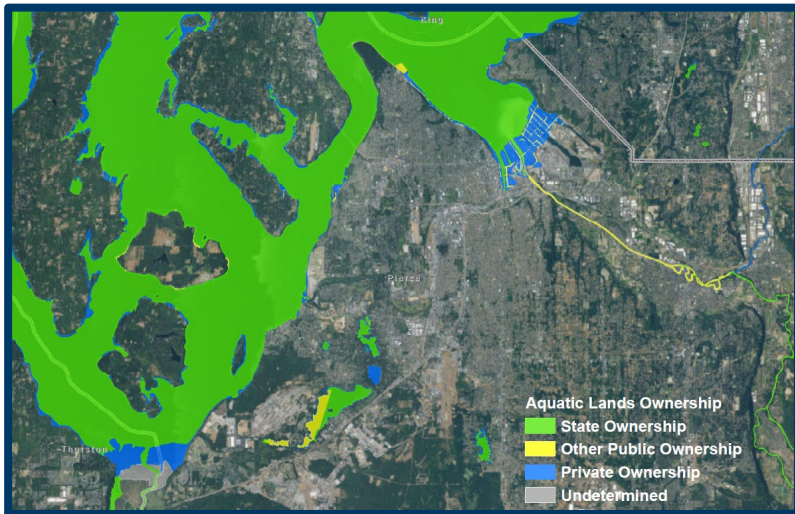


Comment Responses

RCW 79.105.360

Adoption of rules.

The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.105...



South Puget Sound depicting SOAL (green) and other public (yellow) and private (blue) ownership.

Authority

- DNR acts in a proprietary capacity in the management of state-owned aquatic lands. This rulemaking is within the authority the Legislature granted to DNR through RCW 79.105.360 and only applies to the management of SOAL.
 - It would not prevent this activity on lands not managed by DNR (e.g., there is a CFNPA facility on the Columbia River, on lands not managed by DNR).

Process

- DNR complied with all required rule making timeframes. As previously mentioned, DNR also did extensive outreach to Tribal partners on this topic for several years.



Comment Responses

Science

- DNR's science was questioned in several comments. However, the science is clear - CFNPA has impacts on aquatic habitats.
 - DNR conducted a detailed and thorough assessment of the science citing >290 references and reviewing many more scientific studies.
 - The 2022 Net Pen Guidance and the 2022 NOAA Biological Opinion, mentioned in a few comments, both highlight the many impacts of this activity. Where there is a difference, it is on whether these various impacts can be mitigated and the degree of mitigation.
- DNR's analyses support that CFNPA facilities cause significant impacts to SOAL and it is in the best interest of the resource to avoid rather than attempt other forms of mitigation.
- DNR's proposed rule would make our management of SOAL consistent with how the other Pacific states manage this practice.



Comment Responses

Limits of Mitigation other than Avoidance

- Proponents point to mitigation measures as the solution to known impacts. DNR's review and experience with this activity paint a different picture of the success of these mitigation measures.
- For example, the collapse, debris fields, and anchor scars.
 - In fact, sonar images demonstrate the existence of debris fields and anchor scars from CFNPA on habitat in lease areas that did not suffer a net pen collapse.
- DNR manages SOAL in trust for the public by virtue of the Washington Constitution. As the manager of SOAL, DNR has an obligation to protect these lands. DNR's proposed rule is an effort to avoid harmful impacts to SOAL.



Final Rule Language

In WAC 332-30-106 Definitions, add a new definition to define commercial finfish net pen aquaculture and renumber the remaining definitions accordingly.

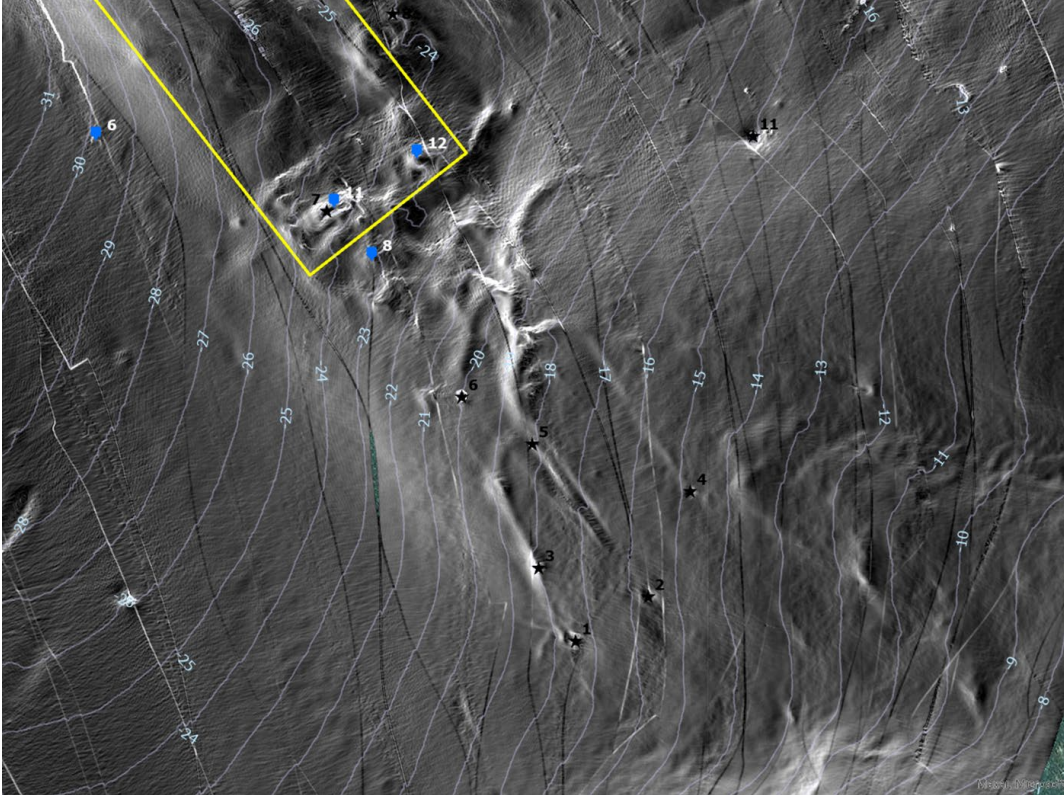
- *“Commercial finfish net pen aquaculture” means a system of nets, cages, or other containment systems in open water used to cultivate, feed, and raise “finfish” (as defined in WAC 220-370-050(3)) to marketable size for the purpose of harvesting and selling the same as a crop. Commercial finfish net pen aquaculture does not include operations and containment systems used to raise finfish for open-water release or used to raise finfish solely for tribal ceremonial and subsistence uses.*

In WAC 332-30 add a new section.

- *Commercial finfish net pen aquaculture shall not be authorized on state-owned aquatic lands.*



Next Steps



2024 DNR multibeam imagery of former Hope Island net pen lease site.

- The finalized rule language was presented to the BNR today for consideration.
- If approved by the BNR, DNR will file the CR-103 along with the final rule language to the Code Reviser and implement the rule 31 days after filing.



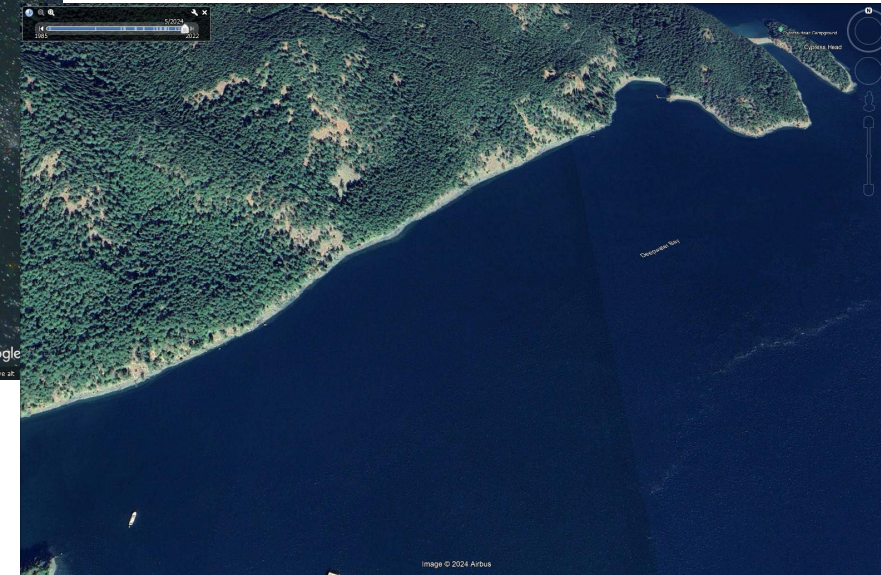
QUESTIONS?



July 2017



August 2017



September 2022



