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Sheila Roark Miller, DCD Director
Clallam County Dept. of Community Development
223 East Fourth Street
Port Angeles, WA 98362

April 11, 2013

**RE: Comments on Clallam County Draft Shoreline Master Program Update**

Dear Ms. Roark Miller:

American Gold Seafoods ("AGS") would like to submit comments with regard to the aquaculture section of Clallam County's November 2012-Draft Shoreline Master Program ("SMP"). American Gold is a Washington based marine aquaculture company that has been raising and producing fresh salmon from its' marine net pen sites in Puget Sound for over 30 years. For that very reason, we are both very interested in the proposed aquaculture provisions of the Clallam County draft SMP, and we believe we can offer specific knowledge and perspectives for the County's use in updating the aquaculture section of the SMP. We would be happy to meet with you to answer any further questions you may have about this industry, and extend to you an open invitation to tour one of our finfish aquaculture facilities.

American Gold Seafoods owns all of the commercial marine salmon net pens in Puget Sound. We produce approximately 15 million pounds of fresh salmon each year from our marine farms. Our company directly employs over 80 full time people, and another 240 people indirectly through the many support businesses and services we engage. Local businesses such as fish processors, contracted marine vessels, boat builders, net manufactures, marine equipment suppliers, hardware stores, packaging companies, marine repair shops, and trucking companies, all support our successful finfish aquaculture operations. Additionally, through economic activities generated from our business, the tax related revenues bring value to local, state and federal entities. Our business is proud to be supporting local and sustainable jobs in these small communities, while we produce fresh and wholesome Washington grown salmon for the domestic seafood markets.

Over the past several years, we have watched with interest as local county planning and development departments have begun the process of updating their SMP's. We very much appreciate the hard work that has been carried out by Clallam County on the draft Clallam SMP to get it to this point. The update process requires a balance of allowing the consideration for future potential uses and developments in the shoreline area, while also ensuring there are appropriate protections for the ecological functions of the shoreline. In the Shoreline Management Act ("SMA"), the State of Washington recognizes the importance of creating a balanced approach towards future planning and land use regulations. The SMA states this in the

General Policy Goals (WAC 173-26-179), "***The unbridled use of shorelines ultimately could destroy their utility and value. The prohibition of all use of shorelines also could eliminate their human utility and value. Thus, the policy goals of the Act relate both to the utilization and protection of the extremely valuable and vulnerable shoreline resources of the state."*** This clear policy direction demonstrates the SMA was crafted to allow both the thoughtful utilization of this valuable resource, while also protecting it from significant ecological degradation.

The marine fin fish aquaculture industry is fundamentally reliant upon having access to clean water and in the maintenance of a healthy marine ecosystem to produce a healthy seafood product. In other words, we can't grow healthy fish in a polluted environment. Additionally, we can't grow fish in a regulatory environment that becomes polluted with redundant regulations, or with ones that are based on obsolete or incorrect information. In our comments we will try to point out some of the proposed regulations we found in Clallam's current draft SMP that appear to be either relying on outdated information, or possibly a misunderstanding of the current regulatory structure for both private, and public finfish aquaculture in Washington State.

With over 30 years of experience growing fish in Puget Sound, we strongly believe that finfish aquaculture is a water dependent use that is being regulated and carried out correctly. Additionally, there is a growing body of science that shows finfish aquaculture is being accomplished in Washington State without significant ecological impacts or risks. Our position therefore is that finfish aquaculture is a sustainable use that should be fostered in the local SMP's, rather than being indirectly inhibited by duplicitous regulation. Correctly regulated, the aquaculture industry in Washington can create local seafood products, local employment opportunities, generate state-wide economic activity and tax revenues, and sustain viable working waterfronts without adverse ecological impacts. This goal is stated in 3.2.2 of the Clallam SMP Aquaculture Policy section:

1. ***Aquaculture is of statewide interest. Properly managed, it can result in long-term benefit and can protect resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and is a preferred use of the water area when pollution is controlled and damage to the environment is prevented.***

The Washington Department of Ecology administers the SMA. Ecology's SMA guidelines require locally adopted SMP's to be both scientifically defensible and realistic regulations for the protection, and the uses, of the state's shorelines. Marine finfish aquaculture is by no means an uncontrolled use of the marine environment. It is actually highly regulated, and undergoes an extremely rigorous environmental permitting process for any new project proposals. There are more than sufficient local, state and federal regulations in place that are ensuring protection of the ecological functions of our state shorelines. Redundant, confusing or overreaching regulations written into local SMP's disingenuously impedes a water dependent use of statewide interest. American Gold respectfully suggests the following regulations in the draft SMP be changed to bring them more in line with the current state, and federal regulatory framework for these types of activities. Proposed suggested deletions will be shown as ~~strikethrough~~ and suggested additions are added as <u>underlines</u>.

**Section 3.2.3, Regulation #6 (d.)** ~~*Floating/hanging aquaculture structures and associated equipment shall not exceed six (6) feet in height above the water's surface. The Administrator may approve hoists and similar structures greater than six (6) feet in height when there is a clear demonstration of need. The six (6) foot height limit shall not apply to vessels.*~~

**Comment:** There is no ecological basis for a blanket height restriction of six (6) feet above the surface of the water. The height limit of 6' appears to be an arbitrary number with no meaningful basis other than to be an impracticably low number that is overly burdensome to the normal operation of many types of floating aquaculture facilities. As an example, a modern marine net pen walkway is typically about three (3) feet above the water's surface to begin with. This leaves only three (3) more feet for the additional "associated equipment" such as feeding machinery, hand railings for employee safety, or any typical support equipment for the aquaculture operation and its' employees. The county does not place a 6' height restriction on any of its' recreational or commercial boat marinas, or on any other types of water dependent uses, so why is it placing this limitation on floating/hanging aquaculture? If visual impacts are a concern, those are site specific and should be addressed on a case by case basis during the initial SEPA process and during the SSD/CUP application process. The County Administrator and Planning Department already have the ability to require a visual analysis be prepared by the applicant, (Section 3.2.3, Regulation #7) that would identify, address and allow for the mitigation of any potential visual impacts or use conflicts. A blanket, and arbitrary height restriction of 6' for all floating/hanging aquaculture is overly restrictive and unfairly applied with regard to other similar water dependent uses. We suggest removing the entire Regulation #6 (d.). Potential visual impacts are addressed in Regulation #7., which is an appropriate means of identifying the site specific visual impacts and developing measures necessary to address any concerns.

**Section 3.2.3, Regulation #9** *The culture of finfish, including net pens as defined in Chapter 7, whether on land or in-water, may be allowed with a conditional use permit.* ~~*subject to the policies and regulations of this Program. Closed upland systems shall be preferred over in water systems.*~~

**Comment 1:** Remove from the first sentence in Regulation #9 "~~*subject to the policies and regulations of this Program.*~~*"* This is redundant. All applicants for shoreline permits are required to meet, and are subject to the policies and regulations of the SMP.

**Comment 2:** Delete "~~*Closed upland systems shall be preferred over in water systems.*~~*"* The statement implies that closed upland systems are comparable to "in water systems" and represent a viable alternative. This is just not the case for marine finfish aquaculture facilities, or for any other types of marine seafood facilities that produce harvestable amounts of biomass. For example, when was the last time anyone has seen an upland oyster farm? There are upland shellfish hatcheries that supply seed stock for intertidal shellfish farms, and there are upland fish hatcheries with similar functions, but neither upland system can cultivate the harvestable amounts of seafood necessary to make them economically viable in the marketplace. The issue of upland aquaculture systems for finfish aquaculture, as opposed to in-water net pen aquaculture, was brought before the Washington State Pollution Control Hearings Board ("PCHB") several years ago. The PCHB issued an Order of Partial Dismissal, concluding that upland alternatives to floating in-water net pens, does not constitute available, known, and technologically reasonable treatment (AKART). In other words, upland aquaculture does not present a realistic alternative to in water net pen aquaculture. Currently, there are no technologically viable alternatives to in water net pen production facilities that are reliable or economically achievable. Stating a preference for something that is a non-existent alternative in the SMP does not make sense.

***Section 3.2.3., Regulation #10*** *In evaluating conditional use proposals for in-water finfish aquaculture use/development the County ~~shall consider the recommendations of the 1986 Interim Guidelines (Weston/SAIC), the 1986 Aquaculture Siting Study (EDAW Inc.), the 1988 Use Conflict Study (Boyce), and the 1990 Final Programmatic Environmental Impact Statement - Preferred Alternative (Parametrix) and any additional state-approved guidance. All proposals must be consistent with this section and meet the following specific criteria:~~ will consider how the proposed activity is currently regulated by the state and federal agencies with jurisdiction over in-water finfish aquaculture. The County will use the most recent regulatory information from these agencies to ensure that the provisions of this Program are being met and that the proposal meets all required state and federal water quality and aquaculture compliance standards. The County will also require the proposal to meet the following specific criteria:*

**Comment:** In Section 3.2.3., Regulation #10, the County is proposing to evaluate conditional use proposals for new in-water finfish projects using documents and information from a report written to the Department of Ecology nearly 30 years ago. The **1986 Interim Guidelines** were just that, interim, temporary, short-term recommendations based on the currently available information at that time. The cover letter attached to the 1986 Interim Guidelines by the Department of Ecology states, ***"The guidelines are not designed to be adopted state regulations."*** These temporary recommendations were based on a very incomplete record, with rudimentary amounts of information about a new type of aquaculture that was just beginning to evolve.

Prior to 1980, the idea of a private company cultivating finfish in a floating marine net pen structure was a completely foreign concept to most people, and especially to county planning departments. During the 1980's when applications for new marine net pen facilities began to show up, very few local governments had any idea of how this activity fit into their existing land use regulations. The 1986 Interim Guidelines were very quickly put together to provide some assistance to counties at the time. They were temporary guidelines until Ecology, and the other regulatory agencies could gain more knowledge and scientific information about the potential impacts these facilities may have, and then develop appropriate monitoring requirements and regulations to address the issues. Ecology formed a scientific advisory committee to develop new sediment management standards for the marine net pen industry; developed a new net pen NPDES permit system; created performance based monitoring standards; set discharge limitations; added reporting requirements; and developed other environmental regulations that govern this industry's activities. The NPDES issued to the net pen operators was extensively litigated in front of the Pollution Control Hearings Board ("PCHB"). Every environmental concern brought forward by the appellants was heard by the PCHB and the majority of these issues were dismissed and the permits upheld. Ecology has made changes to these permits over the years by adding additional new monitoring and reporting requirements every five years, each time they are reissued. The NPDES permits that are issued and administered by the Department of Ecology are the most relevant and currently available "state-approved guidance documents" and are the proper regulations that the County should be relying upon for addressing any environmental concerns.

Since the 1986 Interim Guidelines were written, the net pen industry has changed dramatically with new technological advances, new aquaculture equipment and the constant research into improved farming methods and environmental monitoring. Over the past 27 years, there has also been a significant amount of new scientific research performed on the various aspects of net pen farming around the world, and very specific, peer reviewed risk assessments

with regard to the Washington net pen industry in Puget Sound. Those biological assessments were performed by the federal agencies charged with protecting the marine environment, the endangered species and the fisheries of the United States. They point to the fact that there are current regulations that mitigate the risks and that a properly regulated and managed net pen industry poses minimal risk to the ecological functions of the environment. The current body of knowledge about in-water finfish aquaculture has expanded significantly and shaped the current regulatory structures, the best management practices, and the environmental monitoring that now govern how the industry operates. The 1986 Interim Guidelines are obsolete, and holding a rapidly evolving industry to guidelines written 30 years ago negates the new scientific knowledge, and the regulatory structures that have developed since that time.

***Section 3.2.3, Regulation #10.f***

~~*f. In-water finfish aquaculture facility production capacity shall not exceed 1,000,000 pounds annual production per square nautical mile.*~~

**Comment:** Delete Regulation #10. f. This provision also comes from the 1986 Interim Guidelines and is an arbitrary number that was used by the writer at the time to make rough estimates of the potential carrying capacity of Puget Sound with regard to siting new net pens. There is no scientific basis for this number and this ratio should not be used as a regulatory threshold for the siting of any new net pen proposals. This "one size fits all" approach is not realistic because it forces any new proposed facility to be economically inefficient for no apparent ecological gain. There are sites in Puget Sound that have been operating for well over 30 years now that have continually passed every benthic impact monitoring test performed. The NPDES permits require performance based monitoring of the sediments around fish pens that test for organic waste build up, and for other environmental parameters. The NPDES permits require monitoring for signs of environmental impacts, and if a site cannot meet the performance based monitoring standards, then the facility is required to reduce its' standing biomass. Any new net pen applicant would look very closely at the tidal current velocities, and the depth and substrate characteristics of the potential site to ensure that the facility can be operated sustainably, in balance with the natural environment, and remain in compliance with these performance standards. The siting of a new net pen facility requires the environmental review and approval by numerous agencies that will look at the potential site specific impacts, and then determine whether the physical characteristics of the project area, the proposed facility size, and the regulatory monitoring are in place to ensure that no significant ecological impacts occur.

***Section 3.2.3, Regulation #10.o***

~~*o. Facilities shall be designed and located so that the surface area of individual operations does not exceed 2 acres of surface coverage and no more than one operation per square nautical mile.*~~

**Comment:** Delete Regulation #10.o. Again, this is an arbitrary number that stems from the Interim Guidelines. There is no scientific basis for a 2 acre threshold. This is just a round number picked by the author at the time of writing the Interim Guidelines that has no ecological or scientific basis. At that time a 2 acre site would have been considered a large site. Some of the cages at that time were made of wooden walkways and had 40 or more small cages within them. Modern cage construction now utilizes advanced engineering, steel components and much fewer,

but much larger individual cages to grow the fish in. This is much better for the health of the fish stocks being reared, and more efficient from an energy and economic standpoint.

There is no rational basis for limiting an in-water finfish facility to 2 acres of surface area. For some perspective on this, there are a total of 847 acres of surface area in one (1) square nautical mile. The total surface of a two (2) acre net pen would amount to less than three tenths of a percent (< 0.3%) of the total surface area in a square nautical mile. There are over 2,000 square nautical miles of surface area in the Puget Sound, the Strait of Juan de Fuca and the waters of the San Juan Islands to the Canadian border. The artificial limitation of a facility to two acres of surface area per square nautical mile becomes meaningless when taken in perspective with the total surface area of our marine waters. Now consider that the world's oceans cover over 70% of the earth's surface.

Again, the size of each new project proposal would be site specific and would be reviewed by the various agencies involved in the permitting process for a new net pen facility. The appropriate size of a facility should be left to site specific evaluations, environmental assessments, computer modeling analysis and then vetted through the entire permit process by the numerous resource agencies involved. The ecological functions of Washington's marine waters should not be based on an arbitrary number suggested in a 27 year old report. The existing in-water finfish aquaculture permit process is designed to help ensure that a facility is located in the proper area and that it can be operated with minimal impact to the surrounding environment. There are a multitude of regulatory monitoring, reporting and operational conditions that restrict the types of activities that can be carried out at these facilities. Additionally, there are distinct impact limitations designed to keep the facility in balance with the surrounding environment and corrective requirements if they become out of balance. If a facility doesn't meet the requirements, it has to alter the operations or it will cease to exist, but a properly located, permitted and managed aquaculture facility can create long term local economic opportunities, local jobs, locally grown food sources, and support nearby marine related businesses in rural communities.

The following describes the current environmental review process and the permits required for any new marine finfish aquaculture proposal in Washington State. It is outlined to show the multiple environmental regulatory safeguards that are already in place to ensure the proper siting and the proper operation of floating finfish aquaculture operations:

**Shoreline Substantial Development Permit / Conditional Use Permit (Local Counties/Cities)**

- The local county or city in which a new net-pen facility plans to operate is responsible for issuing a Shoreline Substantial Development Permit (SSDP) under the *Shoreline Management Act.* The SSDP allows for the construction and operation of the net-pen facility and any associated structures.
- The local jurisdiction also issues a Conditional Use Permit, which allows site-specific issues to be mitigated and minimized through the placement of specific conditions on the issuance of the SSDP/CUP. For example, conditions on a SSDP/CUP may address lighting or noise limitations to ensure compatibility with nearby upland uses.
- The Department of Ecology ("Ecology") performs the final review of all types of shoreline permits issued by the local agency to ensure any environmental concerns are adequately addressed.

**State Environmental Policy Act (SEPA) review and determination.** A proposed new net pen aquaculture facility requires a SEPA threshold determination and, if necessary, a full environmental analysis to evaluate impacts and identify required mitigation.

**Joint Aquatic Resource Permit Application (Various Agencies)** A new finfish aquaculture facility is required to submit a Joint Aquatic Resources Permit Application (JARPA) to all agencies involved in the permit process related to the use of state or federal waters.

- This process facilitates agency coordination in addressing the overall potential impacts of a proposed development project. The JARPA creates a public process, numerous agency notifications and a thorough permit review process by state, local and federal agencies, Tribal resource agencies, and interested groups and citizens.

**U.S. Army Corps of Engineers Section 10 Permit (Various Agencies)**

- Any federal permit approval requires an Endangered Species Act (ESA) review and Section 7 consultation with the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS) and Tribal governments with respect to any potential impacts on endangered species in the project area.
- A Biological Assessment/ Biological Evaluation (BA/BE) of the proposed project must be performed by an approved consulting firm with expertise in the fisheries, aquatic biology and/or habitat conservation fields. The BA/BE analyzes the project with a specific focus on the potential impacts of the project on ESA listed species in the area. The applicably expert agency (USFWS and NMFS) reviews and approves the BA/BE.
- The federal *Coastal Zone Management Act* requires that all projects in the coastal zone be certified by the Department of Ecology before a federal agency such as the Corps of Engineers grants its permits. This certification ensures that federally-permitted projects are consistent with the state Coastal Zone Management Program, which has federal approval. This applies to all shoreline activities in or affecting Washington's 15 coastal counties.

**Washington Department of Fish and Wildlife Aquatic Farm Permit and Registration (WDFW)**

- Registration is required with WDFW for each individual aquatic farm location and the type of species being reared within the State. The registration requires annual renewal and quarterly reports on the production from the facility.

**Aquaculture Finfish Permit (WDFW)**

- WDFW has the authority to approve, deny or condition the type of aquaculture finfish species being reared in a facility. WDFW considers the specific facility location, the type of species reared, the rearing methods, potential biological risks, best available science and the best available technology in rendering its decision.

- The WDFW permit requires the development of a facility operations plan that addresses Best Management Practices (BMP's), Best Available Technologies (BAT's), and the development of Fish Escape Prevention Plans, Fish Escape Reporting Procedures and Accidental Fish Escape Recapture Plans.

**Fish Transport Permit (WDFW)**

- WDFW is responsible for enforcing the fish health laws and disease control regulations within the State. Private finfish aquaculture facilities are subject to the same laws and regulations that state, and Tribal finfish enhancement hatcheries are subject to. Any findings of regulated pathogens must be reported to fish health authorities with WDFW.
- WDFW requires annual facility disease health certifications. Periodic health screenings of captive brood stock and smolts screen for regulated pathogens.
- There are very strict Washington State disease control regulations and requirements for the importation or interstate transport of live finfish and/or gametes. Additionally, the importation or interstate transfer of live finfish falls under the jurisdiction of the US Fish and Wildlife Service. Testing, certification and disease free status of the fish stocks is carried out by a Title 50 Certified Fish Health Veterinarian.

**National Pollutant Discharge Elimination System (NPDES) Permit (Ecology)**

- The Dept. of Ecology is responsible for issuing and regulating the NPDES Waste Discharge Permit under the authority of the federal *Clean Water Act* and Washington State equivalent. An NPDES permit is required for each individual net-pen site.
- The NPDES Permit sets limits on the allowable discharges from a finfish aquaculture operation in State waters and prohibits discharge of unauthorized chemicals.
- The NPDES Permit requires a sampling plan with specific permit requirements be developed, including a monitoring cycle to be carried out by a third party consultant. All sediment monitoring reports are submitted to Ecology and the Dept. of Natural Resources.
- Sediment monitoring of benthic impacts are carried out around a 100' perimeter from the farm sites. Impact limits are set for the organic enrichment of sediments to distinct threshold values. Mandatory mitigation and monitoring is required if sediment standards exceed the limits. Monitoring is required of any stations that exceeded the threshold limits until they return to the reference levels.
- The NPDES Permit calls for the mandatory reporting of approved chemical use, reporting incidence of sea lice infestations, reporting of emergency disease occurrences and the reporting of accidental fish escapes.
- The NPDES Permit requires the development and use of Best Management Practices and Best Available Technology to minimize pollution.

- The NPDES permit requires the development and use of site-specific Pollution Prevention Plans, Accidental Fish Escape Prevention Plans, Fish Escape Reporting Procedures and Accidental Fish Escape Recovery Plans in coordination with WDFW.

**Aquatic Use Permit Application and Aquatic Lands Lease (WDNR)** The State owns most aquatic lands, including tidelands, harbor areas and the sub-tidal lands of navigable waters. An Aquatic Lands Lease is required for a finfish net pen facility. Aquatic Lands Leases are issued and regulated by the Washington Dept. of Natural Resources.

- Aquatic Lands Leases have strict guidelines, rules and allowable use activities on the facility operations within the lease area. Leases are written to protect State resources, including ecological resources.
- Any vacated lease sites must have all physical improvements completely removed from them and require any contaminants be removed from them.
- Quarterly lease payments are based on a flat annual rate (regardless of production) plus an additional royalty amount based on the production from the facility.

**U.S. Coast Guard Private Aids to Navigation (PATON) Permit**

- Floating structures permanently moored in the navigable waters of the U.S. must obtain a PATON permit to operate navigational lights.

**US Food and Drug Agency**

- Aquaculture facilities must comply with the rules and regulation pertaining to the production of food fish for human consumption. Only USFDA approved disease control chemicals are allowed to be used. Periodic random inspections of aquaculture products are carried out by the USFDA. Fish processing plants are inspected by USFDA and must meet current regulations. A Hazards Analysis and Critical Control Points (HACCP) plan and strict record keeping are required to be licensed to process fish products.

In conclusion, Clallam County is blessed with the beauty and the natural resources the marine shore lands and marine waters provide to the citizens of Washington State. Aquaculture represents a sustainable way to utilize this renewable resource when properly sited and regulated. In-water floating aquaculture may be a contentious issue for various reasons, but it is by no means under regulated. This industry continues to demonstrate that it can be practiced in a way that minimizes environmental impacts, while also creating opportunities for new jobs, increasing the domestic seafood supply and supporting working waterfront communities. As stated before, the SMA requires locally adopted SMP's to not only protect the shoreline environment, but to also encourage water dependent uses in that shoreline environment. Those uses include economic, recreational and restoration activities that can create positive opportunities for every citizen of Washington State. The changes we've presented to the County's draft SMP were done with the intent of achieving that goal.

Thank you for your consideration of our comments and we look forward to answering any further questions you may have.

Sincerely,

Kevin Bright- Environmental Permit Coordinator
American Gold Seafoods

Cc: Ms. Hannah Merril-Callam DCD; Mr. Jeffree Stewart-WDOE; Mr. Zach Hiatt-Graham & Dunn LLP