



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

IN THE MATTER OF:

COOKE AQUACULTURE USA INC.) ADMINISTRATIVE CONSENT
MULTIPLE SITES) AGREEMENT
PROTECTION AND IMPROVEMENT OF) (38 M.R.S. § 347-A)
WATERS AND SOLID WASTE ACTIVITIES)
EIS DOCKET 2017-142-W)

This Agreement, by and among Cooke Aquaculture USA Inc. (“Cooke”), the Maine Department of Environmental Protection (“Department”), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department’s *Organization and Powers*, 38 M.R.S. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

1. Cooke is a Maine Business Corporation in good standing that operates multiple net pen aquaculture facilities at leased sites with its principle location in Eastport, Maine, with a mailing address of P.O. Box 263, Eastport, Maine, 04631.
2. The Maine Pollutant Discharge Elimination System (MEPDES) General Permit #MEG130000/Waste Discharge License #W009020-6H-D-R – Net Pen Aquaculture (General Permit) was issued on April 10, 2014 and expired on April 10, 2019. However, the license remains in effect until the final Department decision on the renewal application becomes effective.
3. As reflected by the numbered permit/license approvals in the table below, Cooke was approved for coverage by the General Permit for the following corresponding Cooke aquaculture sites discharging into the corresponding receiving waters on the following dates:

	Site Name	Permit/License Approval#	Date of Permit/ License Approval	Receiving Water
A	Black Island	#MEG130026/ W-009113	5/30/2014	Eastern Blue Hill Bay
B	Black Island South	#MEG130023/ W-009065	5/30/2014	Eastern Blue Hill Bay
C	Broad Cove	#MEG130028/ W-009115	5/30/2014	Cobscook Bay
D	Calf Island	#MEG130032/ W-009147	4/11/2016	Eastern Bay
E	Cross Island	#MEG130025/ W-009112	5/30/2014	Machias Bay
F	Cross Island North	#MEG130027/ W-009114	5/30/2014	Machias Bay
G	Cutler West	#MEG130017/ W-008228	5/30/2014	Machias Bay
H	Deep Cove	#MEG130018/ W-009040	5/30/2014	Cobscook Bay
I	Sand Cove	#MEG130029/ W-009116	6/13/2014	Eastern Bay

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

J	Scrag Island	#MEG130024/ W-009066	5/30/2014	Toothacher Bay
K	South Bay	#MEG130020/ W-009042	5/30/2014	Cobscook Bay
L	Spectacle Island	#MEG130030/ W-009117	6/13/2014	Eastern Bay
M	Starboard Island	#MEG130001/ W-008165	6/13/2014	Machias Bay

The individual permits, as identified above, each have site-specific requirements that are enforceable against Cooke.

4. Throughout the periods addressed by this Agreement, Cooke has been subject to the following requirements:

A. General Permit Special Condition E, Authorized Discharges states in relevant part:

A permittee covered under this General Permit is authorized to discharge:

1) only in accordance with the permittee's Notice of Intent;...

B. General Permit Special Condition F, Stocking Notice and Conditions, paragraph 1, Stocking Notice, states in relevant part:

F. Stocking Notice and Conditions

1. Stocking notice. No later than March 1 of each calendar year, the permittee must notify the Department of its intent to stock fish (brood or otherwise) in any facilities that calendar year.

C. General Permit Special Condition F, Stocking Notice and Conditions, paragraph 2, Restocking Conditions, states in relevant part:

F. Stocking Notice and Conditions

2. Restocking conditions. The permittee may not stock fish at the facility until the permittee demonstrates to the Department's satisfaction that sulfide levels within the mixing zone are equal to or less than 4,000 uM based on the mean of all samples at 5 meters...

D. General Permit Special Condition I, Sediment and Benthic Monitoring Requirements and Limitations, paragraphs 1, 3 and Table I.1, state in relevant part:

I. Sediment and Benthic Monitoring Requirements and Limitation

1. Monitoring for sulfide at 35 meters must be conducted at a minimum frequency of once per growing cycle during the period of

July 1 – November 15 during the year of maximum biomass for the facility.

3. *Monitoring for sulfide at 5 meters must be conducted at a minimum frequency of once per growing cycle during the period of July 1- November 15 during the year of maximum biomass for the facility.*

Table I.1 Data Submission Deadline: Sulfides by December 31 of the sampling year

- E. General Permit Special Condition O, Protection of Atlantic Salmon, paragraph 3, subsection b, states in relevant part:

O. Protection of Atlantic Salmon

3. *Marking. All fish introduced into net pens at a facility must be marked to designate their commercially-reared origin so that in the event fish are found outside the confines of the facility they may be identified back to the facility*
 - b) *By December 31 of each stocking year for a facility, the permittee must submit a summary of results from a third-party QA/QC audit assessing marking effectiveness and demonstrating compliance with the approved marking plan.*

- F. General Permit Special Condition O, Protection of Atlantic Salmon, paragraph 4, subsections c and d, state in relevant part:

O. Protection of Atlantic Salmon

4. *Stocking notice. No later than March 1 of each calendar year, the permittee must submit to the Department a notice that indicates whether or not the facility will be stocked that calendar year. For stocking of Atlantic salmon, this notice must include the following information.*
 - c) *Evidence that the Services have confirmed all reproductively viable Atlantic salmon proposed for stocking are progeny of fish determined to be of North American origin...*
 - d) *Evidence that the Services have approved the proposed marking plan.*

- G. General Permit Special Condition P, Quality Assurance for Environmental

Monitoring and Containment Systems, states in relevant part:

P. Quality Assurance for Environmental Monitoring and Containment Systems

Prior to any environmental data collection, infauna identification, analysis work, or containment system assessment associated with this permit, the permittee must provide to the Department documentation of the employee's or contractor's demonstrated capabilities to conduct such work. Additionally, sampling techniques and analysis methods that differ from those identified in this General Permit must be provided to the Department for review and approval.

H. General Permit Appendix A, Sediment and benthic monitoring requirements, paragraph 1, states in relevant part:

Appendix A – Sediment and benthic monitoring requirements

- 1. Sediment and benthic infauna monitoring requirements. Sediment and benthic infauna monitoring must be conducted at each of the sampling locations identified in the applicable of Appendices B or C (sulfides only for pre-stocking monitoring). The permittee must collect a minimum of three (3) field replicates from each sampling location. The permittee must report to the Department the mean of all samples collected across the facility as well as the results of individual replicates.*

Sediment sample collection, handling, preservation, storage, and analysis must be conducted in accordance with USEPA approved methods, where available, or as otherwise approved in writing by the Department. The permittee must maintain reference specimens for examination by Department staff or its designee for a period of at least five (5) years following collection.

I. General Permit Appendix F, Summary of Scheduled Permit Reporting Requirements, states in relevant part:

Appendix F – Summary of Scheduled Permit Reporting Requirements

<i>Monitoring or Submission Requirement</i>	<i>Frequency/timing</i>	<i>Report Due</i>	<i>Permit Condition</i>
<i>Sediment and benthic (Sulfides)</i>	<i>1/growing cycle (July 1 – November 15) of max biomass</i>	<i>December 31st</i>	<i>Table I.1</i>

- J. MEPDES Standard Condition D, Reporting Requirements, first paragraph, subsection f(i), (incorporated into the General Permit at p. 4, Action no. 2; *see also* 06-096 C.M.R. ch. 523 § 2(1)(6)), states in relevant part:

D. Reporting requirements

1. Reporting requirements.

(f) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- K. MEPDES Standard Condition D, Reporting Requirements, paragraph 2, (incorporated into the General Permit at p. 4, Action no. 2; *see also* 06-096 C.M.R. ch. 523, § 2(k)), states in relevant part:

D. Reporting Requirements

2. Signatory requirement. All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRS.A, § 349.

- L. MEPDES Standard Condition E, Other Requirements, second paragraph (incorporated into the General Permit at p. 4 Action no. 2), states in relevant part:

E. Other Requirements

2. *Spill prevention. (applicable only to industrial sources) Within six months of the effective date of this permit, the permittee shall submit to the Department for review and approval, with or without conditions, a spill prevention plan. The plan shall delineate methods and measures to be taken to prevent and or contain any spills of pulp, chemicals, oils or other contaminates and shall specify means of disposal and or treatment to be used.*

M. Special Condition K, Best Practicable Treatment, paragraph 7, subsection c, states in relevant part:

Special Condition K. Best Practicable Treatment

7. *Recordkeeping. The permittee must maintain and report monthly, using a method and on a form approved by the Department, the following information.*

c) *The average weight of and total number of fish in each net pen.*

N. The *Application for Waste Discharge License Rule*, 06-096 C.M.R. ch. 521, §§ 5(a)(1) and (b)(1-3), states in relevant part:

Section 5. Signatories to permit applications and reports.

(a) *Applications. All permit applications shall be signed as follows:*

(1) *For a corporation. By a responsible corporate officer ...*

(b) *All reports required by permits, and other information requested by the Department shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:*

(1) *The authorization is made in writing by a person described in paragraph (a) of this section;*

(2) *The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for*

environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) *The written authorization is submitted to the Department.*

O. 38 M.R.S. § 414, Applications for licenses, paragraph (5) states:

Unlawful to violate license. After the issuance of a license by the department, it is unlawful to violate the terms or conditions of the license, whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.

5. At Starboard Island, permit approval MEG130001/W-008165, Cooke exceeded the maximum fish per pen density at pens #2, #3, #4, #6 and #7 between and including the months of May through August of 2016. With respect to permit approval MEG130001/W-008165, General Permit Operating Condition 3, requires that the maximum density of fish per net pen not exceed 30 kg per cubic meter of fish per pen with a target density of 25 kg per cubic meter of fish per pen. An exceedance of net pen density is a violation of Special Condition E of the General Permit. Cooke exceeded the maximum 30 kg densities for the pens and time periods as described in the table below.

Pen #	Density kg/m ³	Month Violation Occurred	Date Corrected
2	31.02	May 2016	June 18, 2016
3	31.73	May 2016	June 17, 2016
4	30.49 & 32.09 & 32.09	May - July 2016	August 1, 2016
6	31.01 & 32.06	June - July 2016	August 6, 2016
7	30.8	May 2016	June 12, 2016

Cooke violated Special Condition E of the General Permit as detailed in paragraph 4(A) and the paragraph and table above, by exceeding the limit of fish per pen density of 30 kg per cubic meter at Starboard Island in each of that facility's pens 2, 3, 4, 6, and 7 during the 2016 timeframes identified above. Each day of the violation from the date the violation occurred through the date corrected for each pen constitutes a separate violation.

6. Cooke failed to submit complete annual stocking notices prior to the March 1st deadline established by General Permit Special Condition F at the following facilities for the specified years:

	Facility Name	Location	Permit/License Approval#	Year
A	Black Island	Frenchboro	#MEG130026/ W-009113	2016
B	Black Island South	Frenchboro	#MEG130023/ W-009065	2016
C	Broad Cove	Eastport	#MEG130028/ W-009115	2015
D	Calf Island	Jonesport	#MEG130032/ W-009147	2016
H	Deep Cove	Eastport	#MEG130018/ W-009040	2015
I	Sand Cove	Beals	#MEG130029/ W-009116	2016
J	Scrag Island	Swans Island	#MEG130024/ W-009066	2015
K	South Bay	Lubec	#MEG130020/ W-009042	2015
L	Spectacle Island	Beals	#MEG130030/ W-009117	2016
M	Starboard Island	Machiasport	#MEG130001/ W-008165	2017

Cooke violated Special Condition F(1) and O(4)(c-d) of the General Permit, as detailed in paragraphs 4(B), 4(F), and the paragraph and table above, by failing to provide complete annual stocking notices to the Department prior to the March 1st notification deadline at each of the above facility locations for the identified years.

7. Cooke failed to obtain 5-meter sulfide samples and submit complete sample reports prior to restocking as required by Special Condition F of the General Permit at the following facilities for the specified years:

	Facility Name	Location	Permit/License Approval#	Year
I	Sand Cove	Beals	#MEG130029/ W-009116	2016
M	Starboard Island	Machias	#MEG130001/ W-008165	2017

Cooke violated Special Condition F(2) of the General Permit, as detailed in paragraph 4(C) and the paragraph and table above, by failing to conduct the required sampling and demonstrate to the Department's satisfaction that sulfide levels were within the permitted range prior to restocking pens at each of the above facility locations for the identified years.

8. Special Condition I and Appendix F of the General Permit establish the deadline for the annual submittal of complete and accurate sulfide sampling/monitoring reports as December 31 of the sampling year. A report is considered late if it is rejected by the Department, sent back to the facility for correction, and re-submitted after the deadline date. Due to inaccuracies and incompleteness, Cooke failed to submit on-time sulfide reports for the following facilities for the specified years:

	Facility Name	Location	Permit/License Approval#	Year
A	Black Island	Frenchboro	#MEG130026/ W-009113	2014
B	Black Island South	Frenchboro	#MEG130023/ W-009065	2014
C	Broad Cove	Eastport	#MEG130028/ W-009115	2014, 2016
E	Cross Island	Cutler	#MEG130025/ W-009112	2015, 2018
F	Cross Island North	Cutler	#MEG130027/ W009114	2015, 2016, 2018
G	Cutler West	Cutler	#MEG130017/ W-008228	2015, 2018
H	Deep Cove	Eastport	#MEG130018/ W-009040	2016
J	Scrag Island	Swans Island	#MEG130024/ W-009066	2014, 2016
K	South Bay	Lubec	#MEG130020/ W-009042	2016
M	Starboard Island	Machiasport	#MEG130001/ W-008165	2015, 2018

Cooke violated Special Condition I and Appendix F of the General Permit, as detailed in paragraphs 4(D) and 4(I) and the paragraph and table above, by failing to submit to the Department by the established deadline complete and accurate sulfide reports for each of the above facility locations for each of the identified years.

9. Special Condition O subsection 3 of the General Permit requires all fish introduced into net pens to be marked to designate their commercially-reared origin. In addition, Special Condition O requires Cooke to submit by December 31 of each stocking year a summary of results from a third-party quality assurance/quality control (QA/QC) audit assessing marking effectiveness and demonstrating compliance with the approved marking plan. Cooke failed to submit on time a summary of results from a third-party QA/QC assessment for the following facilities for the specified year:

	Facility Name	Location	Permit/License Approval#	Year
A	Black Island	Frenchboro	#MEG130026/ W-009113	2016
B	Black Island South	Frenchboro	#MEG130023/ W-009065	2016
D	Calf Island	Jonesport	#MEG130032/ W-009147	2016
I	Sand Cove	Beals	#MEG130029/ W-009116	2016
L	Spectacle Island	Beals	#MEG130030/ W-009117	2016

Cooke violated Special Condition O(3)(b) of the General Permit, as detailed in paragraph 4(E) and the paragraph and table above, by failing to submit to the Department a summary of a third-party QA/QC audit assessment demonstrating

the effectiveness of marking the commercial fish origin on all fish introduced into the net pens at each of the above facility locations by December 31, 2016.

10. Special Condition P of the General Permit requires that the permittee must provide to the Department documentation of a contractor’s capabilities to conduct any environmental data collection, infauna identification, analysis work or containment system assessment. Guidance on the specifics of that documentation were provided to Cooke on February 5, 2016. Cooke provided the Department with an incomplete package of information for contractor’s capabilities on March 15, 2016. Although the complete information required for contractor approval had not yet been received, the Department provided a conditional approval on April 14, 2016 to conduct sampling, as long as Mr. Karpiak was the staff member carrying out the collection of sediment samples or supervising other RAI staff carrying out the sampling; Ms. Couture, Mr. Devereaux or Mr. Karpiak collecting GPS data to locate and mark sites; and all divers have experience at collecting benthic sediment samples.

On April 17, 2016, Cooke undertook sulfide sampling at Sand Cove and Spectacle Island prior to submitting complete documentation of those contractors’ credentials to the Department. On April 25, 2016, Cooke submitted the remaining documentation to complete the required contractor credential information package for the spring sampling event. In 2016, Cooke failed to submit the required contractor documentation by the established deadline for the following facilities:

	Facility Name	Location	Permit/License Approval#	Year
I	Sand Cove	Beals	#MEG130029/ W-009116	2016
L	Spectacle Island	Beals	#MEG130030/ W-009117	2016

Cooke violated Special Condition P of the General Permit, as detailed in paragraph 4(G) and the paragraph and table above, by failing to submit documentation to the Department demonstrating the competency of the contractors taking samples for each of the facility locations identified above prior to samples being taken at such facilities in 2016.

11. Appendix A of the General Permit requires that sediment sample collection, handling, preservation and analysis be conducted using United States Environmental Protection Agency (USEPA) approved methods unless otherwise approved methods are agreed to in writing by the Department.

In 2017, Cooke submitted sulfide sampling reports that included sulfide sediment data produced using an unapproved method by an unapproved lab.

In 2014, 2015, 2016, 2017 and 2018, Cooke submitted sulfide sample analysis reports with multiple Chain of Custody inconsistencies, missing pH documentation, and data

reporting errors that resulted in Cooke's failure to demonstrate or document that many samples were taken, preserved, and analyzed in accordance with an approved method.

Cooke submitted sulfide reports which used unapproved methods or were not collected and documented in accordance with any approved method, which results in those samples being invalidated for the following facilities for the specified years:

	Facility Name	Location	Used unapproved method	Failed to properly collect or document	Permit/License Approval#	Year (FA = fall, SP = spring)
A	Black Island	Frenchboro		X	#MEG130026/ W-009113	FA 2014
B	Black Island South	Frenchboro		X	#MEG130023/ W-009065	FA 2014
C	Broad Cove	Eastport		X	#MEG130028/ W-009115	FA 2014
				X		FA 2016
E	Cross Island	Cutler		X	#MEG130025/ W-009112	FA 2015
				X		FA 2018
F	Cross Island North	Cutler		X	#MEG130025/ W-009112	FA 2015
				X		FA 2016
				X		FA 2018
G	Cutler West	Cutler		X	#MEG130017/ W-008228	FA 2015
				X		FA 2018
H	Deep Cove	Eastport		X	#MEG130018/ W-009040	FA 2016
J	Scrag Island	Swans Island		X	#MEG130024/ W-009066	FA 2014
				X		FA 2016
K	South Bay	Lubec		X	#MEG130020/ W-009042	FA 2016
M	Starboard Island	Machias		X	#MEG130001/ W-008165	FA 2015
			X	X		SP 2017
				X		FA 2018

Cooke violated Appendix A of the General Permit, as detailed in paragraph 4(H) and the paragraph and table above, by failing to use an approved method and/or properly demonstrate and document the application of an approved USEPA or alternatively approved Department method for sample collection, handling, preservation and analysis.

12. MEPDES Standard Condition D(1)(f)(i), requires certain mandatory reporting for non-compliance. Cooke failed to provide the required 24-hour oral notification and the five-day written notification to the Department of the density exceedances in five net pens at Starboard Island in 2016.

On June 16, 2016, Cooke emailed the Department notification that there were several unspecified cages close to or over the 30 kg/m³ limit in May. On July 18, 2016, Cooke emailed the Department a notification that pens #4 and #6 exceeded the limitation in June. In all cases, Cooke failed to provide either the 24-hour oral or the five-day written notification within the date of density exceedance discovery. In July 2016 the Department discovered the continued density violations in pens #4 and #6 and calculated the exact densities after reviewing the emailed Finfish Aquaculture Monitoring Monthly Report. Cooke confirmed the violations after the Department found them, noting that the pens had been reported in previous months, so they did not see the reason to report them again. An oral notification was never received for any of the pen density violations during any of the months.

Cooke violated MEPDES Standard Condition D(1)(f)(i), applicable to all MEPDES permits, as detailed in paragraph 4(J) and the paragraph above, by failing to provide the Department with 24-hour oral and five-day written notification after discovering the density exceedances for five pens in May, June, and July 2016.

13. 06-096 C.M.R. ch. 521 § 5(a-b) requires that Cooke's regular monthly data submissions to the Department be signed by either a responsible corporate officer or a duly authorized representative of Cooke. Cooke's previous manager submitted to the Department a "signatory agreement" that established him as the "duly authorized representative" of Cooke. Some months after the departure of that previous manager on September 1, 2015, the Department requested that Cooke submit new signatory agreements for each Cooke facility establishing the environmental manager as Cooke's "duly authorized representative" for purposes of this signatory requirement. The Department subsequently sent e-mail reminders requesting signatory agreements for Cooke's environmental manager on February 5, 2016 and April 25, 2016. However, Cooke did not submit new signatory agreements for Jennifer Robinson until April 28, 2016. In the interim, Cooke's environmental manager, who was not a responsible corporate officer, continued to sign all of Cooke's monthly data submissions. As a result, Cooke's environmental manager submitted 8 months of improperly signed data (from September 2015 to April 2016) for each of its facilities that were neither signed by a responsible corporate officer nor a duly authorized representative of Cooke, except for Calf Island.

For each Cooke facility, with the exception of Calf Island, Cooke violated MEPDES Standard Condition D(2), applicable to all MEPDES permits, and 06-096 C.M.R. ch. 521, as detailed in paragraphs 4(K) and 4(N) and the paragraph above, by failing to properly sign its monthly data submissions through a responsible corporate officer or a duly authorized representative of Cooke.

14. MEPDES Standard Condition E(2), applicable to all permits, requires that Cooke submit a Spill Prevention Plan to the Department for its review and approval within six months of the effective date of the permits for all Cooke facilities. Cooke failed to do so for each of its facilities. Cooke had shown inspectors evidence of a plan while on site doing an inspection but rejected requests by the Department to officially submit the plan for any of Cooke's facilities.

For each of Cooke's facilities, Cooke violated MEPDES Standard Condition E(2), applicable to all MEPDES permits, as detailed in paragraph 4(L) and the paragraph above, by failing to submit a current Spill Prevention Plan to the Department for its review and approval within six months of the effective date of the permit for each such facility.

15. Special Condition K of the General Permit requires Cooke to submit monthly reports to the Department of specified information, including fish weights and total number of fish in each net pen, by the last day of the following calendar month. Cooke submitted a report of fish weights equal to zero in June 2019 for the Cutler West facility, while fish were in the net pens.

For its Cutler West facility, Cooke violated Special Condition K of the General Permit, as detailed in paragraph 4(M) and the paragraph above, by failing to submit accurate and on-time reports of fish weights.

16. **Cooke violated 38 M.R.S. § 414(5) as a result of each of its violations of the terms and conditions of the General Permit and of the Department's rules, as set forth in Paragraphs 5 through 15 above.**

17. On October 3, 2017, the Department issued a valid Notice of Violation ("NOV") pursuant to 38 M.R.S. § 347-A(1)(B) to Cooke regarding the violations identified in Paragraphs 5 through 16 of this Agreement. The parties agree that this Agreement also constitutes a valid Notice of Violation pursuant to 38 M.R.S. § 347-A(1)(B) for any violations cited in this Agreement but not previously noticed.

18. This Agreement shall become effective only if approved and signed by the Commissioner and the Office of the Attorney General.

19. To resolve the violations set forth in Paragraphs 5 through 16 of this Agreement, Cooke agrees as follows:
- A. Cooke must either:
- a. Pay, immediately upon the signing of this agreement, a civil monetary penalty, payable to the *Treasurer, State of Maine*, in the amount of one hundred fifty-six thousand two hundred thirteen dollars (\$156,213.00) or
 - b. Fund the Marine Rearing Atlantic Salmon Machias River Project Supplemental Environmental Project, as follows:
 - i. Provide at a minimum one hundred fifty-six thousand two hundred thirteen dollars (\$156,213.00) to the Treasurer State of Maine/Department of Marine Resources Atlantic Salmon project for the completion of the Marine Rearing Atlantic Salmon Machias River Project Supplemental Environmental Project ("SEP"). For purposes of this Agreement, the SEP is more fully described in Appendix A; and
 - ii. Any public statement, oral or written, in print, film, or other media, made by Cooke making reference to the SEP described above shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Maine Department of Environmental Protection for violations of *Maine's Protection and Improvement of Waters law and Solid Waste Activities law.*"; and
 - iii. Any payments made by Cooke pursuant to the SEP described above are not tax deductible and are ineligible for certification as tax exempt pollution control facilities pursuant to 36 M.R.S. §§ 105, 211; and
- B. No later than *30 days after signing the Agreement* Cooke shall submit to the Department for the Department's review and approval a written plan as to how Cooke will prevent the exceedance of net pen density limits and how Cooke will resolve net pen density violations if they should occur;
- C. No later than *30 days after signing the Agreement* Cooke shall submit to the Department for the Department's review and approval a plan and schedule for training relevant staff on proper sample collection, handling, preservation, analysis and documentation;
- D. No later than *90 days after submitting the plan for training described in Paragraph 19(C)* Cooke shall conduct a training of relevant staff on the proper sample collection,

handling, preservation, analysis, and documentation of all sampling parameters subject to the permit and shall submit documentation of such training that includes the agenda, date of training, and printed and signed names of participants; and

- E. No later than *90 days after signing the Agreement* Cooke shall submit to the Department a detailed list of all data, documents, records and reports required by Services for its 30-day review process, as referenced in Appendix E of the General Permit. The detailed list shall include, with specificity, each individual report, document, record and data that Services require in order to complete its 30-day review process for its approval of Cooke's genetics and marking protocol for its stocking notice. Any changes to the list of materials required by Services shall be reported to the Department within 30 days of Services notifying Cooke of the change.
 - F. No later than *30 days after signing the Agreement* Cooke shall submit to the Department any questions they have regarding compliance with the permit.
 - G. Upon demand by the Department, Cooke shall pay the amount of two hundred fifty dollars (\$250.00) per violation per day for violating any provision of this Agreement, as determined by the Department, and by providing such payment, payable to the *Treasurer, State of Maine*, to the Department.
20. The Department and Office of the Attorney General grant a release of their causes of action against Cooke for the specific violations listed in Paragraphs 5 through 16 of this Agreement on the express condition that all actions listed in Paragraph 19 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release will not become effective until all requirements of this Agreement are satisfied.
21. Any non-compliance with this Agreement, as determined by the Department, voids the release set forth in Paragraph 20 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
22. Actions taken pursuant to this Agreement must be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders, including but not limited to licensing requirements.
23. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of twenty-one (21) pages.

COOKE AQUACULTURE USA INC.

BY: [Signature] DATE: Sept 4, 2019.

Title: COO

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: [Signature] DATE: 9/9/19
GERALD D. REID, COMMISSIONER

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: [Signature] DATE: 9/10/19
SCOTT BOAK, ASSISTANT ATTORNEY GENERAL

Appendix A: Supplemental Environmental Project

COOKE AQUACULTURE USA INC.

Name of Project:

Machias River Marine Rearing of Adult Atlantic Salmon

Project implementer:

This project will be led by the Department of Marine Resources (DMR) Bureau of Marine Science, which includes the Sea-Run Fisheries and Habitat Division. Maine DMR will hold the lease and all permits for the net pen site and Maine DMR will ultimately be responsible for the project. The funds received from Cooke in the settlement of the ACA will be used in the implementation of this project.

Maine DMR contacts:

Dr. Danielle Frechette, Bureau of Marine Service; danielle.frechette@maine.gov

Carl Wilson; Director, Bureau of Marine Science; (207) 633-9538; carl.wilson@maine.gov

Sean Ledwin; Director Sea-Run Fisheries; (207) 624-2394; sean.m.ledwin@maine.gov

Casey Clark; Resource Management Coordinator; (207) 624-6594; casey.clark@maine.gov

SM
Cooke USA contact:

Greg Lambert; (207) 446-6295; greg.lambert@cookeaqua.com

Geographic area to benefit the project:

Machias River Watershed

Enforcement action:

Alleged violations by Cooke Aquaculture USA Inc. in regard to MEPDES Permit MEG130000/Waste Discharge W009020-6H-D-R dated April 10, 2014, as set forth in detail in the Administrative Consent Agreement dated September 4, 2019.

Type of project:

Using the methods and objectives detailed in the “Marine Rearing of Adult Atlantic Salmon” National Oceanic and Atmospheric Agency (NOAA) grant application submitted by the Department of Marine Resources(DMR) to NOAA on November 1, 2018 and approved by NOAA on July 3, 2019, DMR is proposing to expand the project include an additional river (Machias River) of Atlantic Salmon to the project beginning in 2021.

This Atlantic salmon restoration project specifically meets Sections 2-A(A)(3), (5) and (7) of 38 M.R.S. § 348(2-A) as the project is an environmental enhancement projects in the same ecosystem or geographic area of the asserted violations and that significantly improves an area beyond what is required to remediate any damage caused by the asserted violations that are the subject of the enforcement action; will provide scientific research and data collection that advance the scientific basis on which regulatory decisions are made; and in general will provide a direct and measurable benefit to public health.

Project description:

Maine Dept. of Marine Resources (“DMR”) will raise approximately 900 Atlantic salmon in net pens beginning in 2021 for subsequent placement in the Machias River. DMR is raising the salmon to the smolt stage and then Cooke Aquaculture USA Inc. will be growing them to maturity in the saltwater net pens. DMR will be releasing them into the Machias River. Specific net pen designs have not been determined but will likely resemble a scaled down version of commercial net pens and/or those used in Dark Harbor for the Fundy Bay National Park Salmon Restoration Project. Maine DMR will partner with Cooke Aquaculture USA and others to take on the tasks associated with construction, operation, monitoring, and maintenance of the net pens. Once the fish are mature, they will be removed from the net pens and released into priority habitats in the Machias River watershed.

Existing Regulatory Requirements:

This project is environmentally beneficial, primarily benefiting the salmon population in the Machias River, as well as the Atlantic salmon population generally in the State of Maine, all in accordance with 38 M.R.S. § 349(2-A). This project is not required by law and Cooke Aquaculture USA Inc. has not previously planned and budgeted for this project.

Project budget:

The budget for this project includes costs for a net pen (Equipment), fish food (Supplies), and Tags for scientific monitoring (Supplies).

Budget Item	Cost for SEP duration	Cost Covered by SEP funds	Cost Covered by other funding
Nets frame/nets/moorings	\$65,381	100%	0%
Food	\$30,240	100%	0%
Tags	\$25,650	100%	0%
DMR oversight	\$34,942	100%	0%
Contractual Labor	\$105,648	0%	100% (\$105,648, Donated)
Totals	\$261,861	\$156,213	\$105,648

Detail on table above

DMR Oversight and Contractual Labor

Estimates include DMR staff time salary, personnel and fringe, contracted dive time (\$18,648) and care and management labor (\$87,000).

Net frames/Nets

The estimated cost for a net pen is \$25,000 based on current market value and estimates by professional salmon aquaculture industry representatives. Replacement nets are valued at \$10,127 each and we estimate the need for one annually for a total of \$30,381. Moorings and marker floats are estimated at \$10,000 specific to this project.

Feed

The estimated cost for feed is \$30,240 total for a 4 year period. Feeding rates are based on age, and therefore size, of fish and are divided into two categories: 1-sea-winter (1SW) are fish that have been in the ocean for 0-18 months, 2-sea-winter (2SW) are fish that have been in the ocean for 19-30 months. The detail on feeding costs is presented in the table below.

Feed Estimate	rate	total	Detail by feeding rate
Year 1	900	1800	2 months of feed at 1SW rate (May-June 2021)
Year 2	900	10800	12 months of feed at 1SW rate (July 2021-June 2022)
Year 3	900/1070	12960	4 months of feed at 1SW rate (July-October 2022), 8 months of feed at 2SW rate (November 2022-June 2023)
Year 4	900/1170	4680	4 months of feed at 2SW rate (July 2023-October 2023)

Feed costs are estimated based on bioenergetics of salmon and industry estimates. Fish will be stocked into net pens in 2021 and raised for approximately 30 months. This estimate is for 900 fish stocked as smolts and resulting in 800 adults.

Tags

Estimates of tags and analysis for scientific assessment are based on the NOAA Grant, totaling 25,650.

Project schedule:

The corresponding schedule for the Machias River would be as follows.

The net pen permitting and construction would be complete except for the inclusion of an additional, separate pen for the Machias strain fish. The additional net pen structure would be purchased and deployed by 2021.

Rearing and smolting 2021-2023. The USFWS Service will raise approximately 900 smolts for use in the marine net rearing at the Craig Brook and Green Lake National Fish Hatcheries. The target number of adults is the conservation spawning escapement estimate for the Machias River X 1.5 for a total of 800 fish. Approximately 900 smolts would be transferred to the marine rearing cages in 2021.

Transfer to Net Pens 2021
Rearing in Net Pens 2021-2023
Stocking pre-spawn adults 2022, 2023
Spawner Surveys 2023

Expected project benefits:

This project will use marine net pens to raise more adult Atlantic salmon than have been seen in decades in Maine and deliver them to largely underutilized priority habitats in the Machias River initially and potentially other rivers in subsequent years. While net pens are not new in Maine, utilizing net pens for conservation goals is a relatively new idea that is showing promise in the Bay of Fundy (see: www.fundysalmonrecovery.com). If successful, this work will “move the needle” towards recovery by increasing the numbers of natural origin returns and encouraging adaptive traits for improved fitness.

Reporting:

Annually, DMR will submit a brief project update report to the DEP and Cooke.
After year 3, DMR will provide a project summary report documenting the project activities.
There will be dates associated with these deliverables.

First year interim report	February 1, 2022
Second year interim report	February 1, 2023

Certification:


Cooke Aquaculture USA Inc. certifies that this proposed SEP project is not result of substantive planning that occurred prior to this enforcement action.

Cooke Aquaculture USA Inc.

BY:  DATE: 09-11-19
Title COO

Recipient Acknowledgment: State of Maine, Department of Marine Resources
For and in consideration of the payments described herein, the State of Maine, Department of Marine Resources agrees to perform, or be responsible for obtaining performance of, the services, study, or projects described in this document pursuant to the terms set forth herein.

State of Maine, Department of Marine Resources

BY:  DATE: 9-11-19
Patrick Keliher, Commissioner