

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

COOKE AQUACULTURE PACIFIC,  
LLC,

Defendant.

CASE NO. C17-1708-JCC

ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 2. “CONFIDENTIAL – 17CV01708” MATERIAL

2 “Confidential material” may include the following documents and tangible things  
3 produced or otherwise exchanged:

- 4 • Financial information, including balance sheets, budgets, profit and loss  
5 statements, and summaries of the same, regarding Defendant and Defendant’s  
6 parent companies. Such materials shall be marked “CONFIDENTIAL –  
7 17CV01708”;
- 8 • Production information of Defendant, including fish growth and mortality rates,  
9 feed conversion rates, information regarding mortality cause and fish health  
10 (except to the extent that such information is required to be reported to state or  
11 federal agencies). Such materials shall be marked “CONFIDENTIAL-  
12 17CV01708”;
- 13 • The identities of vendors and customers, including lists of the same. Such  
14 materials shall be marked “CONFIDENTIAL – 17CV01708”;
- 15 • Plaintiff does not concede that any documents in the above categories are  
16 confidential simply by virtue of falling in such categories, and reserves the right  
17 to challenge the confidentiality designations of specific documents pursuant to the  
18 procedure set forth in Paragraph 6.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential material (as  
21 defined above), but also (1) any information copied or extracted from confidential material; (2)  
22 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
23 conversations, or presentations by parties or their counsel that might reveal confidential material.

24 However, the protections conferred by this agreement do not cover information that is in  
25 the public domain or becomes part of the public domain through trial or otherwise.

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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
5 the categories of persons and under the conditions described in this agreement. Confidential  
6 material must be stored and maintained by a receiving party at a location and in a secure manner  
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL – 17CV01708” Information or Items. Unless  
9 otherwise ordered by the Court or permitted in writing by the designating party, a receiving party  
10 may disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees  
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the  
14 receiving party to whom disclosure is reasonably necessary for this litigation;

15 (c) experts and consultants to whom disclosure is reasonably necessary for  
16 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
17 A);

18 (d) the Court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of  
20 confidential material, provided that counsel for the party retaining the copy or imaging service  
21 instructs the service not to disclose any confidential material to third parties and to immediately  
22 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is  
24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
26 transcribed deposition testimony or exhibits to depositions that reveal confidential material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this agreement;

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
6 referencing such material in court filings, the filing party shall confer with the designating party  
7 to determine whether the designating party will remove the confidential designation, whether the  
8 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
9 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
10 standards that will be applied when a party seeks permission from the Court to file material  
11 under seal.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
14 or non-party that designates information or items for protection under this agreement must take  
15 care to limit any such designation to specific material that qualifies under the appropriate  
16 standards. The designating party must designate for protection only those parts of material,  
17 documents, items, or oral or written communications that qualify, so that other portions of the  
18 material, documents, items, or communications for which protection is not warranted are not  
19 swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
21 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
22 unnecessarily encumber or delay the case development process or to impose unnecessary  
23 expenses and burdens on other parties) expose the designating party to sanctions.

24 If it comes to a designating party's attention that information or items that it designated  
25 for protection do not qualify for protection, the designating party must promptly notify all other  
26 parties that it is withdrawing the mistaken designation.

1           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
2 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
4 be clearly so designated before or when the material is disclosed or produced.

5           (a)     Information in documentary form: For such information (*e.g.*, paper or  
6 electronic documents and deposition exhibits, but excluding transcripts of depositions or other  
7 pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL –  
8 17CV01708” to each page that contains confidential material. If only a portion or portions of the  
9 material on a page qualifies for protection, the producing party also must clearly identify the  
10 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

11           (b)     Testimony given in depositions or in other pretrial proceedings: the parties  
12 and any participating non-parties must identify on the record, during the deposition or other  
13 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
14 testimony after reviewing the transcript. Any party or non-party may, within thirty days after  
15 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
16 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
17 confidential information at trial, the issue should be addressed by a pre-trial motion.

18           (c)     Other tangible items: the producing party must affix in a prominent place  
19 on the exterior of the container(s) or folder(s) in which the information or item is stored the word  
20 “CONFIDENTIAL – 17CV01708.” If only a portion or portions of the information or item  
21 warrant protection, the producing party, to the extent practicable, shall identify the protected  
22 portion(s).

23           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the designating party’s  
25 right to secure protection under this agreement for such material. Upon timely correction of a  
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1 designation, the receiving party must make reasonable efforts to ensure that the material is  
2 treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
11 regarding confidential designations without court involvement. Any motion regarding  
12 confidential designations or for a protective order must include a certification, in the motion or in  
13 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
14 conference with other affected parties in an effort to resolve the dispute without court action. The  
15 certification must list the date, manner, and participants to the conference. A good faith effort to  
16 confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
18 intervention, the designating party may file and serve a motion to retain confidentiality under  
19 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
21 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
22 other parties) may expose the challenging party to sanctions. All parties shall continue to  
23 maintain the material in question as confidential until the court rules on the challenge.

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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL –  
5 17CV01708,” that party must:

6 (a) promptly notify the designating party in writing and include a copy of the  
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is  
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued  
12 by the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
15 material to any person or in any circumstance not authorized under this agreement, the receiving  
16 party must immediately (a) notify in writing the designating party of the unauthorized  
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
19 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
20 Agreement to Be Bound” that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the  
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
26 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. The parties  
2 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving  
5 party must return all confidential material to the producing party, including all copies, extracts  
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
7 destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
9 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,  
10 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
11 work product, even if such materials contain confidential material.

12 The confidentiality obligations imposed by this agreement shall remain in effect until a  
13 designating party agrees otherwise in writing or a court orders otherwise.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: 9/5/2018

s/ Brian A. Knutsen  
s/ Kevin Cassidy  
Attorneys for Plaintiff

17 DATED: 9/5/2018

s/ Diane Meyers  
Attorney for Defendant

19 PURSUANT TO STIPULATION, IT IS SO ORDERED

20 It is further ORDERED that pursuant to Federal Rule of Evidence 502(d), the production  
21 of any documents in this proceeding shall not, for the purposes of this proceeding or any other  
22 proceeding in any other court, constitute a waiver by the producing party of any privilege  
23 applicable to those documents, including the attorney-client privilege, attorney work-product  
24 protection, or any other privilege or protection recognized by law.

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DATED this 7th day of September 2018.

A handwritten signature in black ink, reading "John C. Coughenour". The signature is written in a cursive style and is positioned above a solid horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on [date] in the  
7 case of *Wild Fish Conservancy v. Cooke Aquaculture Pacific, LLC*, W.D. Wash. No. 2:17-cv-  
8 01708-JCC. I agree to comply with and to be bound by all the terms of this Stipulated Protective  
9 Order and I understand and acknowledge that failure to so comply could expose me to sanctions  
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
11 any information or item that is subject to this Stipulated Protective Order to any person or entity  
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: \_\_\_\_\_

17 City and State where sworn and signed: \_\_\_\_\_

18 Printed name: \_\_\_\_\_

19 Signature: \_\_\_\_\_