

Shellfish Aquaculture Regulatory Committee Meeting

Tuesday, June 2, 2010

10:00 a.m. – 3:10 p.m.

Washington Department of Ecology, Lacey Headquarters, Rm 32/24

SARC Members Present: Yongwen Gao, Diane Cooper, Rich Childers, Blain Reeves, Laura Hendricks, Bryan Harrison, Eric Hurlburt, Sally Toteff, Dave Risvold, Bruce Wishart

Ecology Staff Present: Cedar Bouta, Perry Lund, Peter Skowlund, Jessica Moore, and Tom Clingman (p.m. only)

Facilitators: Cedar Bouta (a.m.) and Jerry Thielen (p.m.)

Note Keeper: Jackie Chandler

Raechel Waters – Sea Grant Presentation

Raechel gave a brief update on the Geoduck Aquaculture Research Program – Please see Raechel's Presentation on the SARC website.

Post meeting note: The presentations may be found on the SARC website under the June 2, 2010 heading. <http://www.ecy.wa.gov/programs/sea/shellfishcommittee/meetings.html>

Dr. Glenn VanBlaricom – University of Washington

Glenn wanted everyone to keep in mind that this is an ongoing study and there are two other sites that won't be done until the end of summer, but having done the first site they have some patterns that have been identified.

If appropriate with the preliminary status of the data, Sea Grant will be posting the presentations on their website.

Questions:

Laura Hendricks – Are you going to have copies of these slides to send this to us?

Rachael Waters – These are not done yet, we are still working on what we are comfortable putting out there now.

Diane Cooper – If there were a significant impact as opposed to all these variables would we be able to see it?

Glenn VanBlaricom – I think what we are seeing is the harvest is not going to create an unmitigated disaster.

Bruce Wishart – There isn't a lot of baseline information on seasonal patterns in these species, it is clear that there are questions on whether this is seasonal impacts or harvest.

Glenn VanBlaricom – I think it's our responsibility to find the seasonal impacts of these species before it goes to peer review.

Laura Hendricks – perpetual cycles, how can that not be permanent or have long term effects?

Glenn VanBlaricom – I think the issue is semantics if there is a cycle, we show that they do recover and for that reason we can't claim it is permanent damage. I think it comes to ones values.

Eric Hurlburt – On other sites is there seasonal data?

Glenn VanBlaricom – At one of the sites the harvest was spread four of five months and the other site was a spring harvest. We wish we had twenty sites instead of three.

Yongwen Gao – Can South Puget Sound data be applied to the Strait of Juan de Fuca?

Glenn VanBlaricom – There is a risk with going too far.

Bruce Wishart – If it's an ongoing operation for 50 years I think that we need to focus on what the impacts are during the harvest I don't care how it recovers because if they continue harvest there will be no recovery time.

Glenn VanBlaricom – Does it change it yes, does that change construe damage -- that is a tough call to make.

Blain Reeves – You mentioned at the end you would love to have another site. Are we at the point that if another site is attainable you would think about it?

Glenn VanBlaricom – I would say that we would have to beef up our staff but it isn't unobtainable. If there were other sites with a harvest scheduled we would need to have the resources to handle it and at this time we don't.

Dr Carolyn Friedman – University of Washington

Carolyn's presentation was primarily based on disease, and parasites in wildstock, exotic geoduck versus Native Species geoduck.

Questions:

Laura Hendricks – 30% in Totten Inlet, is there any correlation with other shellfish?

Carolyn Friedman – No I have not seen any of these parasites in any other shellfish.

Laura Hendricks – Did you test farm geoduck or wild geoduck?

Carolyn Friedman – Wild

Diane Cooper – Anything else manifested by these?

Carolyn – Not yet

Perry – did you have standard to collect – were they deep water or closer inland?

Carolyn Friedman – I believe they were collected at 30 feet, we had several agencies doing the collections for us but they were using all dive harvest for subtidal.

Yongwen Gao – Any explanation of differences between Totten and other sites?

Carolyn Friedman – Because we have seen this at Totten we have focused on Totten not the other sites.

Sally – Will you be able to assess the age of the geoduck?

Carolyn Friedman – We have all the shells so if someone wanted to check the age then they could but we are not doing that.

Laura Hendricks – Are any of these parasite being transferred to humans?

Carolyn – We don't know yet, but our body chemistry is usually not the same so they probably wouldn't be transferred to humans.

Micah Horwith – University of Washington

Micah's presentation was about the effects on an eel bed farm that is bordering an aquaculture site.

Questions:

Eric Hurlburt – It was bare when they started farming or did they actually remove eel grass.

Micah Horwith – No it was bare before there may be a history of cultivation, not geoducks but other shellfish.

Diane Cooper – my understanding it was been bare.

Diane Cooper – the tubes didn't have the sealants could it be the function of no animals in the tubes?

Micah Horwith – I don't know

Blain Reeves – Tidal conditions onsite versus adjacent?

Micah Horwith – there was a peak down the center of the bar.

Laura Hendricks – What was the history of aquaculture at that site.

Laura Hendricks – People sent me information that there was aquaculture in that plot I will get that information and send it to you.

Micah Horwith – During harvest, we also have the foot traffic issue which is significant factor in the size of the eel grass.

Blain Reeves – the temporary impact could be a mitigated impact?

Laura Hendricks – Eel grass that is important to juvenile salmon to protect them from predators.

Diane Cooper – we don't farm in eel grass meadows but its good information to have.

Bruce Wishart – I think the better information is how far away we need to farm away from eel grass beds.

Micah Horwith – Foot traffic would go out a ways.

Bruce Wishart – 15 meters is what you say is impacted.

Diane Cooper – to Rachael – Bruce mentioned the idea of continuation of activities in the area, I think it's a matter of schematics what is "recovery" in science and "recovery" in policy is different. When we are looking at a localized event like the impacts on Puget Sound when we continue to harvest in one localized spot, that doesn't mean we have affected the whole system.

Glenn VanBlaricom – We are imposing changes its clear from data but within the cultured plots and all species in the plots we are not seeing anything even approaching extinction, if that activity is removed, it will restore itself. To me that isn't irreparable damage because all the pieces are still there, although being changed they can fully recover when that activity is removed.

Bruce Wishart – What is full build-out

Glenn VanBlaricom – We don't know.

Bruce Wishart – There is no information on culture species and parasites is what you found unusual?

Carolyn Friedman – we are collecting the baseline data now we have not looked at the health of the seed after planted but the seeds are part of the high health.

Cedar Bouta – this is preliminary there are some initial conclusions we can draw but we have to be careful how we use them. Part of Sea Grant's and Ecology's job is to alert SARC if the scope of work changes.

Perry Lund – 401 Permit Update

- We are always looking for efficiencies and doing our job more effectively and looking for ways of combining information like combining geoduck, JARPA and Debris management and still striving to clearly defined project areas, we are continuing to work on a standard so there is predictability on all sides.
- We haven't issued a lot of permits but have talked to a lot of people.
- The governor made it clear that there is a great interest in the permitting process.

- We are still waiting on actions on the core of the nationwide permit. They have turned those questions back to NOAA and Fish & Wildlife, the new listing on rock fish and Columbia river smelt triggered new consultation secondly more significant to us is the realization the intertidal included dry or wet harvest was not included in the opinion by services, we are back to waiting on that issue until information can be gathered by the core and contracted through literature research.
- On the eel grass question we are still looking at any ways possible to learn more.
- We at Ecology have facilitated and conducted a number of meetings with other agencies, tribes, Local Government, and shellfish growers trying to narrow down some issues so we can determine where we want to go with these permits.
- Public notice has grown to 236 sites for a total 336 acres seeking permitting we have received new operations and DNR issue we are waiting for action from DNR through SEPA which we need before we can do anything on our permit.
- Side story, we have local governments trying to make decisions on their shoreline master programs that piece is very active still and we are trying to maintain these parallel tracks.

Diane Cooper– We in the industry recognize there are all the moving parts we are working with the agency and with the local governments and not moving forward in some sites.

Blain Reeves – Update on DNR we have for the last year we have been progressing in site visits we have a couple SEPA checklists for more than a year now we haven't moved forward on threshold issues because we haven't had enough information yet. Peter Goldberg has asked we do public dialog we did five day stint with an online dialogue to get information we are coming together next week and hopefully we will direction very soon.

Cedar Bouta – Rule Discussion

Cedar gave a presentation on the rulemaking process that introduced the Discussion Draft of Chapter 173-26 WAC. *(Post note: Please see SARC website for presentation)*

Questions:

Laura Hendricks – Basically it's a 10 year permit – if you plant within the last year of the permit then it would take another 5 years until you could harvest.

Cedar Bouta – The proposed conditional use permit covers 5 years of planting and all subsequent harvesting of those plantings, regardless of how long it takes to harvest. Growers would need to come in renew the permit for the next planting cycle.

Perry Lund – Conditional use permits have to come back to Ecology from the local governments for final approval.

Blain Reeves – Is this common practice?

Peter Skowlund – This is a five year review cycle permit.

Perry Lund – It could be that there will be new information, condition changes, new laws and rules etc. so this would give us the opportunity to re-evaluate the permit at this time.

Blain Reeves – At that five year review is there time for public comment and do you open up the SEPA process?

Perry Lund – Yes

Diane Cooper – For clarification the conditional use permit if we apply and it gets approved for five years what is the legal status of that permit after five years?

Perry – it depends on how the permit is written, this comes from the Foss case. There was no timeframe or limits written into your permit before. This is so we will have the opportunity to revisit this after five years while keeping the harvest open.

Diane Cooper – I think there are some details to be clarified for us.

Bruce Wishart – I am having problems with the open end harvesting – That is tricky for me I would like to see conditions in the permit because once you plant it you have the right to harvest. If you don't have conditions in the permit to harvest, then it's under a new permit?

Cedar Bouta – think of it as a two part permit.

Bruce Wishart – I am thinking about other permits – you usually totally rewrite it, are you suggesting that we will lock in as a minimum.

Perry Lund – Once you plant we will know how that crop will be harvested – that is what we want for our permit.

Cedar Bouta – We need to start at the top of the rule and work through so please save those comments for that part of the rule.

Perry Lund – Your concerns are not lost on us.

Page 16 comments section 201

Bruce Wishart – I do have a concern with this section, when Brian and I were on the shoreline guideline taskforce you were going to reserve ecological importance then. My concern is the new language suggests to me you are prioritizing water dependent uses first, that is how I read it. I am worried this is going to perhaps drive aquaculture in areas that would have been set aside otherwise and I think it reverses the order and is a significant change.

Diane Cooper – I am not sure I am following you Bruce I don't read it as water dependent use is prioritized above anything else.

Bruce Wishart – We are going to see incidentally you are going to have clean water and it would be effective to do aquaculture there and we need to identify these pristine areas first and then designate other areas later.

Diane Cooper– I think there was an intention to recognize small areas that were very special and ecologically important that they need to be protected and then you begin to get into the water dependent issues.

Laura Hendricks– We had our council read it and what Bruce is saying was a concern to them also. It does evaluate the water dependent use first especially since Puget Sound Partnerships goal is to protect feeder bluffs; this is a huge issue for us as well.

Peter Skowlund – From the depth of Ecology these are listed in order of preference look above on page 15 how we word subsequent sections these are clearly designed in our of preference. See bottom of page 15. When reserving these areas local government should consider and then it goes into not designated for water use – how I read this is this may be a good place for water dependent uses.

Perry Lund – first priority is to find those pristine areas and preserve them.

Bruce Wishart – What I am saying is geoduck aquaculture could be in the same area as these pristine areas and it could be designated as a water dependent use. I know that is not your intent but I think you can read it that way.

Everyone that commented on this and all sections has been advised to submit written comments.

Page 26-27 Inventories

Dave Risvold– This seemed like a good idea but I feel it gives false assurances to both sides. When it says it's okay for geoduck and you designate its suitable for geoduck – the very last sentence introduces a term should not diminish – I feel diminish is another word to argue – I think we should stay with no-net-loss.

Bruce Wishart – “not” suitable. This is a separate use conflict here; we need more clarity on intent.

Diane Cooper – This is difficult with experience with Pierce County but I think things in this list are going to be hard for local governments to fund. I think the goal is to have a general sense, to know what is in a shoreline, and when you designate areas for aquaculture know what you are limiting.

Peter Skowlund – There are two levels of activities there is planning and permitting, permitting comes subsequent the shoreline master program should come up with designation this is to come up with a plan to manage your shoreline, hopefully they will look at the future and then plan for that and final step is to obtain permits etc.

Diane Cooper – I think the list is limiting the nature of where we can site. We have the bio physical limitation already and then this list is part of that. Those things are important to identify there has to be an understanding on biophysical limitations for you designate where we can grow.

Laura Hendricks – Sediment type – Sand/gravel, feeder bluffs, forage fish, geoduck, how many and where equals cumulative effects.

Bryan Harris – we are identifying potential sites if you establish the criteria of what defines a good geoduck site and the potential within that and it recognizes there are limited areas.

Bruce Wishart– It illustrates there is going to be overlap in ecological areas and that is a conflict this list does not resolve. Laura raises the issues with cumulative impacts I think there is value in doing this but still some decisions to be made by Ecology on how this is going to be done.

Laura Hendricks – at a lot of sites they have clams, oysters, geoducks etc. Are you just going to allow them to have geoducks? At the county we never got it figured out.

Cedar Bouda – You are getting to the core of some of our issues.

Blain Reeves – Many of the shoreline characteristics required under new section xi are already required in sections i-x. I suggest revising this list to include only new requirements for siting geoduck aquaculture to avoid confusion/duplication.

Page 33-34 – Avoiding cumulative impacts –

Bruce Wishart – Add GDA to list of uses

Laura Hendricks – when you use geoduck aquaculture does that include rafts that are over 360 feet long?

Diane Cooper – actually it's a shoreline use permit.

Cedar Bouda – Some are developments so you would have to have a substantial development permit.

Laura Hendricks – Some will be conditional use permit and some won't

Peter – I believe all geoduck aquaculture will be a CUP.

Perry Lund – CUP is originally from Local government it goes through their local process but before it can be finalized it has to come through us and we review and either approve or deny that CUP.

Perry Lund – Is geoduck aquaculture defined as a use?

Bruce Wishart – this is all because we have the AGs opinion?

Page 35 Water quality and quantity

No comments

Page 52 Classify areas with suitable conditions in aquatic environment

Bruce Wishart – Just repeat what I raised earlier it's kind of the tone that you are going to reserve areas for aquaculture and then go look at the ecological areas. I think that it should be the opposite way. It seems like it's backwards

Page 71 Additional species and WDFW added to critical saltwater habitats

Blain Reeves – this is probably the section that a statement about wild stock fishing could go. I think this is where you would get at setting the wild stock fishing designation. I am not sure how this all plays out in SMPs.

Dave Risvold – This is making me wonder what I am supposed to do with these areas now. This leads to confusion.

Perry Lund – we have changed it to clarify this language – Are you looking on page 71 – The critical salt water habitat is called out in the WAC/

Blain Reeves – I was thinking in more terms of water quality not to protect this area now we have the set aside ecological areas and then you have some designation of water dependent use.

Blain Reeves – I think it is confusing.

Perry Lund – Your confusion is around already existing language.

Laura Hendricks – if it's confusing whether it's old or not there is no reason why we can't fix it. We don't want to adopt aquaculture into language that puts it before ecological areas.

Page 98 Conditional use permit required in critical saltwater habitats

Perry Lund – How far do we go requiring something like a CUP – One of the ways we could get in there is conditionally the other big one way back in the language one of the things we were supposed to address is public notice how do we notify people of potential activities. Our problem is if it's not a development and it's not considered a conditional use we are left with the potential of people going in. I think that is one of our biggest motivators is that this is the only way we could find legal and procedural to get

Tom Clingman – AGO Interpretation and predictability

Bruce Wishart – So I don't know if there is a lot of debate around CUP – I was going to thank you for doing this and I think the AGO almost requires you to.

Diane Cooper – From our perspective CUPs aren't in and of themselves. CUPs aren't a bad thing but we are after predictability with permits, I don't know of any that have gone through timely and then some with resistance. If the purpose of a CUP is for public notice there are other ways to get it. A CUP is to look at conditions on activities and uses to protect something else.

Cedar Bouta – There are several things the CUP does it's not just public notice.

Diane Cooper – If a CUP is just a public notice situation then it's an expensive public notice.

Diane Cooper – Bottom line we would like predictability.

Peter Skowlund – the CUP here would require all new geoduck farms to get a shoreline permit so it could be both.

Perry Lund – a very well prescribed condition may also trigger a STP – Peter is right development and substantial development are defined in the statute.

Bryan Harris – I am concerned that it isn't going to enhance predictability and each local government is going to have their own process. If you go down this path I think more guidance in this area to local governments is needed. When you are requiring a conditional use permit this is what it is going to look like and what Ecology is going to look at.

Bruce Wishart – I don't want to preclude what local governments do but I think that we spent more than a year discussing this what bothered me "limits and conditions may include" there are things that are certain conditions that we all agreed on that should be in a conditional use permit.

Bruce Wishart – at the minimum this should say every CUP would have a buffer for eel grass beds/

Laura Hendricks – We have forage fish and eel grass that aren't being protected and no one can tell you what's going on so I do believe that the CUP is required and the CUP should have minimum standards that need to be done.

Diane Cooper – We did go over this a lot in SARC and agreeing on certain standards but I recall what we talked and agreed and what SARC recommended as guidance is little guidance that could reflect science and understanding technology changes because it is dynamic and is revolving and we needed a way to acknowledge that.

Bruce Wishart – I think we hoped (my agency) that there would be both. But if we are in agreement we should have that. Here are the elements that we agreed on and I think there were a few like that that you can make sure they look at like buffers along an eel grass bed. I think there is a way strike a balance and we can get to middle ground along with consistency.

Diane Cooper – I agree with the concept of what you are saying Bruce.

Perry Lund – You said in characterizing the public notice the per power to enhance ecology role – we didn't want that I am happy to do it if that is what we decide on but this is a new universe and I want to make sure.

Bruce Wishart – Is there going to be a definition on grading clearing or significant? I think people are going to read this in very different ways.

Bryan Harris – I don't think we should use "not diminimus" there was a big debate on this a few years ago.

Blain Reeves – Clearing and grading need definitions

Diane Cooper – Clearing and grading is okay but significant is an important word.

Diane Cooper – That is something that is outlined in a plan.

Dave Risvold – The bright line says no alterations. I just know clearing and grading is going to be a concern.

Laura Hendricks – Clearing and grading is a big issue of use – we have pictures of this where they are taking a wheel barrel and clearing it out and on Ecology’s website it says don’t take rocks or shells off the beach.

Perry – Clearing and grading is a term of art. A bunch of people taking stuff off the beach in a wheel barrow is not clearing and grading but getting bull dozers is.

Laura Hendricks – I think that is a level of clearing and grading and we need to list them all and maybe a definition and a glossary and what these words mean to Ecology.

Cedar Bouta – I need to get thoughts on Jefferson County SMP – they did a two part classification.

Page 101 – Jefferson County

Laura Hendricks – Using Jefferson Counties plan when talking about the other three counties and they don’t have much aquaculture in the area. Plus the head of the counsel is a geoduck farmer.

Bruce Wishart – We still have a concern about existing operations. I would like to see the same requirements apply to existing operations.

Cedar Bouta – There are the grandfather issues.

Bruce Wishart – Why don’t we have some sort of requirements for existing operations?

Diane Cooper – There is a grandfathering in and something that is important to us to have our existing farms that we invested in protected, but that doesn’t mean that we can’t incorporate into the existing farms.

Blaine Reeves – If you come in to harvest is that a new activity or an ongoing activity?

Diane Cooper – We talked about this, the scale is 300 farms total and it’s relatively a small footprint, the existing footprint is small if you want to go there Bruce we can but we are willing to move forward in best business practice.

David Risvold. – I think there are good parts of how Jefferson County did theirs but it locks you in and technology changes.

Cedar Bouta – We were trying to find where the gap is and I think that the new and expanding is where we would capture this. The core is looking at a revisit dates on their permit so moving forward we were trying to acknowledge the federal permit.

Bruce Wishart – Shoreline Management trumps all permits.

Bruce Wishart – We don't feel comfortable with federal permits I would like to see the state have the same bar for existing as well as new.

Diane Cooper– I hear you Bruce

Laura Hendricks – How do you look a cumulative impacts if you don't already know what is out there? It's not just geoduck but all aquaculture I don't think you can look at existing impacts on just geoduck but need to look at it for all aquaculture.

Laura Hendricks – We still have PVC floating up. Is anybody going to protect the native species?

The sand dollar gets to fish and wildlife over aquaculture – if it's personal use fisheries you are not allowed to take sand dollar etc. In the law it says aquaculture is exempt from that.

Laura Hendricks – how does that come back to no-net-loss?

Laura Hendricks – What is Ecology going to do about taking all the stuff off the beaches?

Laura Hendricks – Say a beach has moon snails, sand dollar, etc. and you get a permit on this, what is Ecology going to do about that?

Laura Hendricks – These are ESA certified species and they are considered salmon habitat.

Cedar Bouta – I think your point in well taken and we need to take a look at that.

Bruce Wishart – I think eel grass beds and site preparations are two big issues with this and I would like to see more conditions around that. Do you have monitoring requirements listed as part of the CUP? Ecology can state that they need to do an initial survey.

Bryan Harris – I think this is where guidance helps.

Laura Hendricks – We see that they are getting ready to apply for a sight and then all of a sudden the sand dollars are gone.

Perry Lund – What can we do about that?

Laura Hendricks – I don't know I just don't know but there is no consistencies.

David Risvold - Page 101 last paragraph – one could read that to say even if a grower violated the conditions of their permit it could stop a grower from harvesting.

Tom Clingman – the harvesting is under the old permit that they would be operating on.

Bruce Wishart – I had the same comment on this.

Tom Clingman – What if you added under the terms of the original permit?

Bruce Wishart – the first sentence is that the only time you can deny the permit. I think that you should spell out our rights.

Perry Lund – If it doesn't meet the laid out conditions we can't approve it.

Diane Cooper – We have some tweaking practical problems with it we are going to provide those in writing.

Diane Cooper – So far as grading and site preparation this is not a big issue for us, there isn't a lot of preparation done by most growers I think we can find common ground but for the record it doesn't help that there are comments on what we do or what we didn't do.

Bruce Wishart – I was trying to complement you.

Eric Hurlburt – I think there are a lot of things here that could be so specific it should go into bmp or something like that so it can be changed easily.

Peter Skowlund – If you have suggested language that would solve your issue with the language, and then please provide it.

Diane Cooper – I think you have done a good job, Cedar, Peter, Tom and Perry it's a huge task and I recognize that and from an industry point we want to get to where you do on this and you have acknowledged some of the big issues.

Bryan Harris – I know this was painful but doing research and talking to invested people. Listening to smart people I know you have a difficult task and you should be complemented for diving in and taking this on and doing it the way you did.

Sally Toteff – The process of these two years and all the engaging through was worth it?

Bryan Harris – Absolutely

Cedar Bouta – If we don't make certain times we go back to square one the rule is automatically withdrawn after six months. We appreciate you coming here today what I feel is short notice we would like to get your comments by October 12th or October 13th. Do you feel its important come back and we would share a summary of comment and key topics with you?

Bruce Wishart – I think the bigger question is, is it useful to you guys?

Cedar Bouta – I don't think that positions are going to shift.

Bruce Wishart – if there is wordsmithing and you need to get us together to help you with that.

3:10 SARC Meeting Adjourned

Public Comment – Paul Sparks

Interested in Cold Water Conservancy.

Page 16 – Confusion on critical areas and designation of critical habitats. Need to measure from top of Bluff to the top of the water. You need to consider quality of water and quality upland.

Secondly on page 25 or 26 I love that language -- The beautiful vague language it is not specific on where geoducks should not be. That goes way back. The environmentalist that pushed this law set the no-net-loss standard and the compromise is to set a bigger high arch of what can happen. The only way you can resolve that is to be specific in what you do want to protect.

The science I raised a question on forage fish but where that got locked up is forage fish spawning habitat but those forage fish emerge from the gravel they need something to eat. For the next six months the food supply near the harvest is significantly reduced. Science is really raw and what is needed to be considered as a specific interaction.

Where can we not safely have geoducks, where can geoducks site without creating bigger problems, expanding ocean of critical habitat and high tide.