

10/15/07 Shellfish Aquaculture Advisory Committee

**Summary of Committee Brainstorm Discussion:
Functions/Values; Current Regulatory Deficiencies; Possible Solutions**

I. What are the functions and values we want to protect?

Environment

- No net loss of farmland, including shellfish farmland
- Environmental impacts
- Water quality
- Air quality
- Geomorphology
- Forage fish issues, aquatic vegetation
- No net loss in marine environment
- Food web
- Cumulative impacts of shellfish density
- Habitat function
- Sea grass
- Salmon survival as ecological indicator
- Ecological carrying capacity of Puget Sound
- Diggable Puget Sound
- Overall quality and health of Puget Sound

Residential

- Aesthetics near neighbors and upland property owners
- Social carrying capacity/residential impacts (especially where aquaculture is new)
- Impacts on nearshore homeowners
- Property rights
- Issues of noise, light, debris.
- Public access to water and land

Culture:

- Indigenous perspective on the value of shoreline, property rights, treaty rights (For example, no net loss calibrated to 1885, not last week.)
- Socioeconomic value to communities.

Industry/Economy

- No net loss of farmland, including shellfish farmland
- Business continuity and expansion
- Healthy shellfish industry

- Sustainable natural resource industries
- Sustainable food production
- Economic development for coastal communities
- Attract capital, invite investment
- Ability of industry to adjust to market, implement innovation, develop new products, etc.
- Economic return to landowners and community in addition to industry
- International trade balance

Regulatory

- Flexibility and predictability together
- Shoreline development
- General public policy/ land use

II. What does NOT work in the current regulatory system?

Environmental

- Few environmental conditions for permits.
- Haven't taken into account that water doesn't stay within jurisdictional boundaries. Affects wider ecosystem and interests.
- Cumulative impacts aren't dealt with well.
- Lack of basic science on environmental impacts.
- Disconnected environmental studies – no funds for proper EIS.
- Lack of baseline data on existing sites and regional information on critical habitat; presence or absence of eelgrass beds, feeder bluffs, etc.
- Lack of mapping in baseline surveys.
- Comment: If shellfish aquaculture were really bad for environment, it would have revealed itself long ago. Need to take into account that aquaculture can actually improve water quality.

Residential

- Lack of notification adjacent property owners.
- Need restrictions on how many feet from residences shellfish aquaculture must be sited. (Comment: in Florida, it's 1000 ft.)
- Unclear how to allow for both incoming residential development and the growth of shellfish industry?

Economic

- Unpredictable timeframes; interferes with business.
- Unclear how to allow for both incoming residential development and the growth of shellfish industry.
- Politics are playing more of a role in permitting projects than is science; this leads to business uncertainties, litigation, etc.

Regulatory

Enforcement

- Lack of enforcement.
- Lack of funding for enforcement.

Inconsistency

- Inconsistency between Comp Plans/SMPs and permit implementation.
- Fourteen different county plans, and most of them are outdated.
- Conflicting conditions and regulations.
- With Nationwide 48, there are conflicts between national, regional, state conditions. Confusing. Which environmental conditions are going to be enforced? Anyone monitoring conditions?
- Requirements to obtain shoreline permits are ambiguous.
- Varying requirements among jurisdictions.
- Variety of permits and permit writers.
- Not sharing information across jurisdictions, bouncing ideas off each other.

Schedules/Sequencing

- Permit review is multilayered between local, state, and federal; each layer has a different timeline; unpredictable sequencing.
- Sequencing of permits – have to get 1 before 2, before 3. Right now it takes too long. Couldn't they all be worked on together?
- Shellfish growth and harvest timelines do not match permit renewal timelines/permit duration.
- Comment: If renewals required for aquaculture, should also examine renewals for other uses (piers, docks).

General vs. Specific Requirements

- Focus is site-specific rather than ecosystem wide.
- Not site-specific enough – permits have too many generic conditions. Boilerplate requirements can mask important site specific issues.
- Public process results in many detailed stipulations, gradual snowballing of requirements.

Other Regulatory Issues

- Conflicts between flexibility and certainty.
- Regulations can get very complex.
- Lack of funding for permit review.
- Lack of input from state agencies—they don't take the opportunity to comment on local permits.
- There needs to be some protective guidance on how to condition permits that are reasonable and effective.

- There are disincentives to update SMPs to address aquaculture under Ecology’s current rules. (Would require comprehensive update, not just a limited amendment.)
- Designations of aquaculture marine and intertidal lands are not made as part of Comprehensive Plan designation of Resource Lands.
- The local government, not industry, should designate aquaculture areas.
- Current rules were written for existing/historical aquaculture, may not fit new practices and locations.
- Local government prerogative to customize SMPs is leading to costly lawsuits.
- Politics are playing more of a role in permitting projects than is science; this leads to business uncertainties, litigation, etc.
- Lack of clarity on definition of “structure” and whether aquaculture fits it or not.
 - Note: A structure under Nationwide 48 includes docks, tubes, net structures (anything a boat can bump into).
- When decisions aren’t made at the planning level, they’re made at permit level. Not an effective way.
- Washington hasn’t explored the option of water column leases, limiting the percentage of water column that can be used.
- Lack of alternative approaches to regulation: BMPs, incentives and disincentives.

III. Possible solutions: What can be done to correct problems?

Environment

1. Develop better science on genetic stocks of geoducks and other issues.
2. Encourage scientific competition to develop applied science that takes regional differences into account.
3. Provide a statewide programmatic EIS for aquaculture, using generic data and BMPs. If a project falls within same parameters, could just use a checklist. One specific proposal would be a programmatic EIS for the DNR intertidal geoduck leasing program. (It should be noted that programmatic/statewide solutions provide consistency, but may decrease flexibility at the county level.)
4. Use the cumulative impacts analysis required for each Shoreline Master Program update to assess full build-out of aquaculture; the SMP will also be required to protect ecological functions and achieve no net loss.

Approach A: Local communities should examine ecological functions and no net loss, using general guidance provided by Ecology. Local communities can determine how best in their particular situation to achieve this overall goal.

Approach B: Ecological functions should be defined by Ecology or an independent entity. Once defined, BMPs should be applied within that framework.

5. Designate aquaculture zones, and have other government programs lined up to help protect water quality in these areas – through higher standards or higher oversights (e.g., septic), closer review cycles.
6. Issue long-term permits with an adaptive management component built in. Provides the stability of a long-term permit, with assurance that there will be re-review and incorporate new science, adaptive management, etc. As time goes on, could increase protection or indicate that less protection is not harmful.

Comments:

- If we don't build adaptation into the process, we will not be able to make use of new science on the ground.
 - If you have a real adaptive management, you don't have certainty or predictability. This approach might create false expectations.
 - Need to ensure the long-term permit has adequate review provisions in it. If the industry is moving into residential neighborhoods and then the permit is adapted, it will affect nearby residential property owners.
7. Link improved regulation of aquaculture with improved oversight of other land use activities that affect habitat conditions and create conflicts between uses – such as bulkheads and residential uses. These other uses should also be required to adapt as our scientific understanding improves over time.

Residential

8. Define separation requirements between new residential/new aquaculture activities. For example, require new residential to be 500 ft from existing aquaculture and new aquaculture to be 500 ft from existing residences.
9. Higher level of permit review and permit conditions for new aquaculture in residential areas, versus new aquaculture in resource land areas.
10. Designate aquaculture areas and create a process to notify buyers of nearby property that aquaculture operations will involve work on the water and on the beach.
11. Adopt higher standards for residential development in aquaculture areas, such as higher standards for septic system installation and operation.

Regulatory Process

12. Adopt statewide guidelines for shoreline permits for aquaculture. This should include determining whether aquaculture is “substantial development” subject to Shoreline permitting.
13. State agencies should identify for local governments what parameters need to be protected and what questions locals must examine and answer before they make decisions under the SMA. Raise the bar on better decisions and more accountability, but do not move the line on local/state roles set in the SMA.

14. State should provide information, training, and research outcomes to local governments, and provide training resources for local planners.
15. Improve sequencing of permit decisions. Make sure the sequence is clear and logical.
16. Normalize requirements for information submittals for all agencies (for example, a “habitat study” and “biological assessment” would have the same requirements).
17. Reduce duplication in permit processes. This could range from two agencies using one form, to making sure we don’t require both permits if they are not necessary to regulatory oversight.
18. Alternative approaches to regulation should be pursued (e.g., BMPs, incentives, disincentives).
19. Borrow “farm plan” model for aquaculture. Involves customized plan to apply BMPs that meet farmer’s intent and protect environment.
20. Conduct gap analysis to show what issues are not consistently covered by existing permits.
21. Aquaculture on Bush-Callow Act Lands should be given special consideration, as these were essentially “zoned” for aquaculture purposes by the Legislature.
22. Water column leases should be considered (such as used in Florida.)