

Comments on October 27, 2008 Draft Committee Recommendations Document

Comments were received from:

1. Dave Risvold
2. Eric Hurlburt
3. Laura Hendricks
4. Ward Willits
5. Cyrilla Cook
6. Nick Jambor
7. Rich Childers

Comments were received as documents or e-mails. The comment text has been collected below in the order received.

Comments from David Risvold

I have read through this (once, so far) and find it fairly summarizes the range of opinions expressed by the Committee. My question is: is it supposed to be expressing the range or is it supposed to present some sort of consensus?

I am also wondering if we can clarify one of the more decisive comments provided (page 4: "To meet the overall principle of no net loss of ecological functions, geoduck aquaculture should not be allowed in highly sensitive intertidal habitats". I think this may be a bit too open to interpretation. To some this phrase will mean geoduck farming is not allowed anywhere (since, arguably, all intertidal habitat is sensitive). I believe it was meant to pertain to intertidal habitat with specific critical elements (estuaries, eelgrass, critical salmon habitat, etc.).

Comments from Eric Hurlburt

I will not have my comments by Monday. I had hoped to but got another document to review with higher priority (at least from the Director's view point). I'll try to have my comments to you by Wednesday. I've also got a question about who is reviewing this. The distribution list goes beyond the official members of the SARC. I assume that only the members of the committee will have their comments included unless the committee decides otherwise as a group. Most of these names appear to be alternates who have attended one or more SARC meetings, in which case I expect that there will be only one set of comments for that group (e.g., Lee Faulconer represented me at one meeting, but there will only be one set of comments coming from WSDA).

Comments from Laura Hendricks

Since you have requested our comments about the SARC guidelines that are now being compiled and sent to the Legislature, please include the following:

1. The Problem of Silt

According to the Commercial Geoduck Fishery SEIS (subtidal geoduck) published May 23, 2001, the following was stated by nearshore expert Dr. Charles Simenstad with the University of Washington School of Fisheries:

"The exclusionary principle of not allowing leasing/harvesting in water shallower than -18 ft. MLLW or 200 ft (sic yds) distance from shore (MHW); 2 ft vertically from elevation of lower eelgrass margin and within any regions of documented herring or forage fish spawning should under most conditions remove the influences of harvest-induced sediment plumes from migrating salmon. As the available information indicates that sediment plumes do not enter the nearshore zone, impacts to juvenile salmon habitat and prey resources should also be protected from impact by these policies if effectively regulated."

During the SARC process, industry has continually stated that silt is not an issue and their statements cannot be viewed as fact when developing regulations. The above quote of an expert scientist clearly demonstrates that silt is an impact on fish and their habitat. In the intertidal area, harvesting is done at low tide and sometimes high tide and the increased silt is well documented. The silt in the attached picture of harvesting at the Foss/Taylor site in Pierce County can easily be seen.

Regulations must include setbacks from adjacent property owners so they can protect their own tidelands from being impacted by a neighbor or DNR who is leasing their tidelands for aquaculture. Substantial buffers must be required from critical fish habitat to protect beach life, fish and especially endangered species.

2. Marine Debris from Nets, Rubber Bands and Tubes

The issue of debris was specifically listed by HB 2220 as an item to be addressed. While there are many pictures and testimony from citizens that debris is still showing up on shorelines, this issue has been ignored. Legislators need to be informed that no state agency conducted any new surveys, dives or any other independent measure of marine debris. Industry merely stated that there was no debris problem and that was the end of the discussion.

3. Cumulative Impacts

While cumulative impacts are specifically mentioned in HB 2220, this committee did not deal with this issue. Since no state agency including Ecology ever produced a report that identified current geoduck sites or other aquaculture sites, cumulative impacts could not be addressed. We have repeatedly requested a list of geoduck sites since September 2007 and have never been provided this report.

Legislators should be informed that this issue was not dealt with in the SARC committee and must be addressed by state officials as stated in the September 2007 Sea Grant Bivalve Symposium recommendations from the visiting scientists. While other states like Florida determine the appropriate locations for aquaculture, our state is allowing industry to determine where they want to be with no cumulative impact analysis at the county or state level.

4. Adjacent Landowner Protections

Unless the committee guideline input changes, there are essentially no protections to adjacent landowners provided by this committee. At this point, industry is allowed to put their aquaculture in any residential location and have stated that noise, lights and days/hours of operation are not

negotiable. It is clear that industry Best Management practices will not provide protections to adjacent landowners for silt and disturbance. In addition, unless an adjacent landowner spends thousands of dollars for their own tideland habitat baseline survey, they would not be able to prove damages and will be forced to also spend substantial attorney fees to defend their property rights.

5. Committee Results

We do not feel that a majority report and a minority report would fairly represent the findings of this group. It should be a matter of record that the majority of the members of the SARC committee excluding Ecology and Fish and Wildlife have a financial interest in aquaculture expansion. We would also request that legislators give Fish and Wildlife the authority to use their expertise in developing regulations for the aquaculture industry. We found it disconcerting that Fish and Wildlife felt that they could not even make recommendations on aquaculture guidelines when on this committee when other state's Fish and Wildlife departments are an integral part of this process.

Comments from Ward Willits

Thank you for compiling committee comments. There is one item I would like to see placed into the document. If there is one committee member that disagrees with all or most all of the committee recommendations or wants more restrictive regulations then it should be so stated that there is this single committee member, who objects to most everything.

If you use my name as reference about this or anything else, would you please spell it correctly.

Comments from Cyrilla Cook and Bruce Wishart, People For Puget Sound

Thank for you for the opportunity to provide comments on the October 27, 2008 draft. Overall, the draft is a good start at summarizing the discussion and recommendations of the Shellfish Aquaculture Regulatory Committee (SARC) regarding guidelines for geoduck aquaculture operations. We have a number of concerns related to the draft that are summarized below.

General Comments

We have some discomfort with the use of terms like “some” or “most” of the committee members to reflect where we ended up on these issues. Early on, it was our understanding that this group was intended to operate on consensus and to provide various perspectives to Ecology, rather than operate on a majority vote basis. There was no real attempt in the legislation to create a “balance” between all the interests so that a voting process could be used. The use of the term “most”, however, implies that there is a majority in favor and that the department should favor that approach. Perhaps it would be better if the department identifies interest groups with various positions rather than use “most” or “some” terms.

We are also concerned with the vague nature of the recommendations. While clearly this is the result of the range of perspectives expressed by the group, we urge that the Ecology draft guidelines developed as part of this process will contain specific language on this topic.

Detailed Comments

Page 1, Second paragraph.

Comment:

The last sentence in the Background section states that the Shoreline Management Act is the key state law addressing shoreline land uses, but local shoreline master programs lack provisions to address these conflicts. However, the draft fails to acknowledge that the SMA is also the key state law for addressing protection of critical areas located within shoreline jurisdiction (HB 1933 and RCW 36.70A.480). This information is important to the development of the SARC recommendations, and should be mentioned in the background section of the document.

The introduction issue statement should also provide background on the current SMP guidelines. The current SMP Guidelines (WAC 173-26-241(3)(b)) state that aquaculture is a preferred use of the water area, when consistent with control of pollution and prevention of damages to the environment. You might want to include this excerpt from page 83 of the WAC:

“Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts...Impacts to ecological functions shall be mitigated according to the mitigation sequence established in WAC 173-26-020”.

We support the current SMP guidelines excerpted above, and believe they provide a basic framework for Ecology to build upon by providing specificity for the siting and operation of geoduck operations.

Page 3, Overall Principles

Comment:

It is not clear to what extent “requirements” in the guidance document will be required of local government SMP updates. Several of us on the committee have always advocated for clear rules that will reduce shoreline conflicts, and ensure protection of shoreline critical areas. The rules could be a “compendium of BMPs” that are legally binding. At a minimum, we support regulations that define: 1) explicit BMPs for operations that avoid and minimize impacts on shoreline critical areas and marine critical habitats, and 2) siting requirements which avoid impacts on critical areas and habitat and reduce use conflicts.

Comment:

We have some concerns with the last sentence in this section, which states: “The best management practices should be consistent with those developed by the Department of Natural Resources and updated as new information becomes available.” We currently do not believe that WDNR is requiring science-based buffers between geoduck aquaculture and shoreline critical areas such as eelgrass on state-managed aquatic lands. Local governments should have the option of adopting more protective standards than those established by WDNR.

Page 4, Designation Tools

Back in September, the SARC discussed the option of using critical areas designations to better identify where geoduck aquaculture may be allowed. Since many local governments have not yet

updated their SMPs pursuant to HB 1933, this seemed to make sense. However, given the Supreme Court's recent decision in *Futurewise v. Western Washington Growth Management Hearings Board*, the discussion about pros and cons may need further expansion. By reinstating the Board decision, the Supreme Court ruled that critical areas within local shoreline jurisdiction are to be regulated by local shoreline master programs (many of which have not been updated since the 1970's) rather than critical areas ordinances, which were required to be updated using best available science. Ecology should clarify in this draft whether reliance on GMA is a viable option in light of this decision.

Page 6, Requirements for Siting and Operation

The statement "A baseline habitat survey may be necessary to determine what ecological features are present at the proposed site" really downplays the importance of this issue. Baseline information is fundamental to decision making here. As the authors note at the bottom of page 4, many jurisdictions have not mapped their shorelines and, even under the new Guidelines, jurisdictions are not required to gather new data for development of SMP's. Lack of data or use of outdated data will cause the whole scheme proposed under these rules to collapse. We believe that Ecology must require baseline data to be gathered at the front end of this process and define the mechanism for doing so. One approach, which is already required in the Marine Critical Areas section of the SMA Guidelines, is to have project proponents pay for this survey.

Page 8, Timing of Planting or Harvest to Minimize fish and Wildlife Effects

We support guidelines that limit operations that would otherwise disturb marine bird congregating and nesting.

Page 14, Approval Options

Ecology needs to develop rules for geoducks that will ensure compliance with WAC 173-26-241(3)(b)). That is, the guidelines should require that local government SMPs updates contain adequate policies and regulations to ensure siting and operations for geoduck aquaculture does not result in: a net loss of ecological functions, adversely impact eelgrass, water quality, or critical areas habitat. The guidelines should include an approval option that will accommodate a baseline survey, comprehensive review of potential impacts to shoreline critical areas, attachment of siting and operational standards to avoid impacts and mitigation measures to ensure no net loss, and enforcement and monitoring provisions to ensure compliance.

Comments from Nick Jambor

Page 3: I have asked for a clear definition on "no net loss of ecological functions". Exactly how is the term 'net' defined. In other words if a shellfish farm is creating structure and habitat does that compensate for a certain loss of other functions?

Page 3. I do not remember any type of consensus on the idea that best management practices be consistent with those developed by DNR. In fact, I do not believe that we even reviewed all of DNR's BMP's.

Page 4: What is definition of 'highly sensitive intertidal habitats'?

Page 6: Siting, the first consideration needs to be whether the ground is currently or will meet clean water standards by DOH.

Paragraph 2, page 6: Need to define a threshold on amount of eelgrass and what constitutes salmon habitat. Is anywhere a salmon might swim considered habitat for salmon?

Paragraph 5: Is it in the best interest of the health of Puget Sound to put high density upland development in front of geoduck farming?

Page 7: last paragraph: The committee did not say driving tractors should not be allowed. In fact, what was implied was that there were bulldozers on the beach. Our industry has used soft tire tractors with virtually no impact upon the beach. I am not sure what dragging barges refers to.

Page 9: What type of survey will be required. Surveys can be very expensive in the intertidal areas.

Page 10: I thought we felt that there are already rules for vessel mooring?

Page 12: Three committee members also spoke to be careful about limiting use of herbicides/pesticides. Refer to comments by Brian Harrison, Diane Cooper and Nick Jambor regarding eradication efforts against Spartina.

Page 13: Approval process. As a shellfish farmer I would argue strongly that having shellfish farming within our waters is essential to maintaining the health of Puget Sound.

Page 14: We talk about recovering Puget Sound, to me that means clean water, which means we need shellfish to help remove the tremendous amount of nutrients being placed into the system by the upland users.

General Statement: I feel that by presenting this report you tend to note member opinions more when they are in the minority. I feel that if you poled the group a majority would be in favor of shellfish/geoduck farming as long it is done in a responsible manner. I don't get that feeling by the way this report has been drafted.

Comments from Rich Childers

Provided edits to the Issue Statement, the description of the Shellfish Aquaculture Regulatory Committee, and the description of the Washington Department of Fish and Wildlife shellfish transfer permitting system.