

Remaining Issues for Discussion Guidelines for Intertidal and Subtidal Geoduck Aquaculture

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Comments Received

- In response to the information presented at the September SARC meeting we received 12 sets of comments.

BMPs—Guidance—SMPs

- Many commenters referred to BMPs
- Local SMP can only adopt a specific version of a document by reference.
- Details in an SMP aren't easily changed.
- Permit language lasts the life of the permit.
- Ecology guidance (not the guidelines adopted by rule) can change and be used when writing a permit.

Role of WDFW and HPA

- Comments contain several references to having WDFW address ecological functions through HPA or said to defer to WDFW. (see pages 15-16)
- The Attorney General Opinion (AGO 2007 No. 1) says “The Department of Fish and Wildlife may not require hydraulic project approval permits under RCW 77.55.021 to regulate planting, growing, or harvesting of farm-raised geoduck clams by private parties.”
- This could only be changed by legislation
- Need to rely on SMP to protect ecological functions.

Desirable Elements Of An Approval Process (Page 39)

- Elements of a local site-specific approval process:
 - Document local/state approval of a geoduck aquaculture operation under SMA (yes)
 - Provide for public and adjacent landowner notice (yes)
 - Allow for enforcement of local SMP requirements (yes)
 - Allow adaptive management (yes)
 - Ensure compliance with other required approvals (mixed)
 - Provide for bonding (mixed)
 - Ensure compliance with growth management act regarding no net loss of eelgrass and kelp beds, fish and wildlife habitat areas. Special emphasis on maintaining Puget Sound health. (add)

Approval Process Notifications

(Page 40)

- SARC discussed notification options:
 1. *If no shoreline permit is required, then notification of exemption. (yes)*
 2. *Initial responsibility for notification should be on local government. (yes)*
 3. *Ongoing work/operations have different notification needs. (dealt with before-preference for one-time notice)*
 4. *Fact sheet should list activities and timelines. (yes)*
 5. *Clarify who initial notification should go to:*
 - a. *Adjacent property owners*
 - b. *Property owners within 300 feet (1000 feet) (both)*
 6. *Record aquaculture permit so future landowners are aware (mixed)*
 7. *Drop (1)*

Approval Options

- A. Shoreline Substantial Development Permit (when “development”)
- B. Conditional Use Permit (sometimes)
- C. Exemption statement (sometimes)
- D. Enforcement on a complaint basis (No-inadequate)
- E. Document other approvals (Mixed)
- F. Posting a Bond (Not needed)

Approval Option A (Page 43)

A. Shoreline Substantial Development Permit

- Guidelines Options

1. *Call for SDPs in all cases (1)*
2. *Case-by-case factors that trigger a SDP (Most -- per AGO)*
3. *SDP or CUP for all new or expansion in Puget Sound (2)*

- Note the AGO says depends on site-specific conditions

Approval Option B (Page 44)

B. Conditional Use Permit

- Local jurisdictions are required to have a conditional use permit program
- Uses that are not subject to a substantial development permit may be required to get conditional use approvals in some environments or critical areas.

1. *Development in designated critical saltwater habitat is a conditional use—but Geoduck Aquaculture isn't always development*

- Two support always having a SDP or CUP in Puget Sound
- One supports Ecology involvement in no net loss
- Others generally don't support a blanket requirement

Approval Option C (Page 45)

C. Approval as Exempt

■ Guidelines Options

1. *Local jurisdiction issues a finding that a substantial development permit is not required and the use is consistent with the SMP provided the requirements in the SMP are followed.*
2. *Local jurisdiction issues a finding that a permit is not required provided a list of site-specific requirements are met. Could include a specific duration for the approval.*

- Seven support this without a clear preference for 1 or 2—when SDP isn't required
- Two feel permit will be needed in critical habitats
- One prefers a permit in all cases

Approval Option D (Page 47)

D. Enforcement on a complaint basis

- Guidelines Options

1. *If a complaint is filed, the local jurisdiction contacts the grower to ensure that the Shoreline Master Program requirements are followed.*

- Nearly everyone commented that this is not an adequate approach.

Approval Options E (Page 48)

E. Require documentation of other approvals

- Guideline options

1. *General statement (4 support general requirement)*
2. *Require grower to document and maintain certification by Health for shellfish sanitation (2)*
3. *Require grower to document having a valid Corps permit (not separately called out)*
4. *Don't rely on other permits for critical area protection (2)*
5. *Drop (2)*

Approval Options F (Page 49)

F. Require the posting of a Bond

- Guidelines Options

1. *Legally define when and how bond is called.*
2. *Define activities that would be covered under a bond.*

Note that State lands have specific leasing section that references bonds.

One comment supporting, one limiting scope if used, most don't support.

Application (Page 41)

- Site information—ownership, boundaries, physical and biological characterization, surrounding uses, historic public access, etc. (Broad support, concern about extent of baseline survey)
- “Farm Plan”, including information on seed, predator exclusion, access, planting and harvest cycle, types and duration of predator exclusion devices, etc. (General support, various details)
- Two commented that this is excessive.

Predator Exclusion Devices B (Page 18)

B. Restrictions on predator exclusion devices coverage and duration

- Guidelines options
 1. *General statement (4)*
 2. *Growers should remove tubes and nets as soon as they are no longer needed for predator exclusion. (2)*
 3. *Specify how long tubes can be in the ground. (1)*
 4. *Standards should be established for net sizes. Possible recommendation: Require permit conditions related to net sizes. (note bird interactions) (1)*
 5. *Limit portion (percent) of the site covered at any time. (2)*
 6. *Designed to minimize ecological effects including to birds and mammals. (4)*

Operations B (Page 23)

B. Notifying Shoreline Owners of operations

- Guidelines Options

1. *General statement*
2. *Growers should provide advance notification to adjacent shoreline owners within a defined radius to explain when operations are going to occur and what noise can be expected.*
3. *Explain duration of the work, and where to call with complaints*
4. *Notify nearby shoreline properties five days before harvest (within 300', three parcels either side, ???) or for planting or harvest.*

- One-time, at time of initial permit, around site but variable based on adjacent uses.
- By jurisdiction or by grower?

Operations C (Page 24)

C. Site boundary marking or identification

- Guidelines options
 1. *General statement (Most, survey and marking)*
 2. *Use casenite (??) markers*
 3. *Flexibility when property owners(?) and grower agree (Several)*
 4. *Identify hazard area for boaters*
 5. *Decide if markers are for life of project or not*
 6. *Use durable materials, avoid rebar*
 7. *Consider aesthetic issues and wildlife safety*

- 8. *Drop (1)*
- How much flexibility?

Operations H (Page 29)

H. Restrictions on lights

■ Guidelines Options

1. *General statement (5)*
2. *Standards should be established for flood lights, head lamps, and other lighting used for geoduck operations.*
3. *Growers should use light shields, head lamps, and lighting devices that can be directed downward to minimize impacts. (1)*
4. *Local jurisdiction should have a general program limiting impacts from lights in residential areas.*
5. *Standards for lighting for all shoreline activities, to minimize impacts to adjacent uses and sensitive species (3)*
6. *Night time harvesting activity should not be allowed in residential neighborhoods. (1)*

Operations K (Page 32)

K. Requirements for debris management, including patrolling adjacent shorelines.

■ Guidelines Options

1. *General statement (3)*
2. *Growers should be required to use and maintain equipment and devices so that they do not break free and drift or move away from the site to become litter. (4)*
3. *Growers should label, brand, or mark their tubes and nets so debris problems can be solved at the source. (3)*
4. *Establish a standard for reducing, managing, and penalizing net, tube, and fastener litter and debris. (3)*
5. *Because rubber bands in the environment are a concern, require alternatives to rubber bands or require growers to use attachments that do not easily break and become litter. (3, including prohibit bands)*
6. *Growers should recover all litter or debris. (7)*
7. *Standards should not prevent innovation and better ways to eliminate and reduce litter or debris. Standards should describe the required “performance” or outcome (some call this a “performance standard”). (3)*
8. *Local governments should be a “clearinghouse” for litter reporting that includes alerts to growers of the specific location of litter that has been seen. (2 support, 1 opposes local govt. as debris monitor)*
9. *Require a bond (1)*

Operations G (Page 28)

- G. Limits on barge and vessel mooring—number, location, duration.
 - Guidelines options
 1. *General statement (6)*
 2. *Geoduck vessels should have defined limits for how long they can be moored at a site. (1)*
 3. *No mooring in less than 18' mllw over submerged vegetation (3 support, 2 oppose or question)*
 4. *Limit beaching vessels (1)*
 5. *Drop (1)*

Operations I (Page 30)

I. Restrictions on noise

■ Guidelines Options

1. *General statement (3)*
2. *Noise standards should be established for geoduck operations, with emphasis on equipment and workers. Standards might include locational standards.*
3. *Committee should look at noise situations that are comparable, and see what we can learn from those situations.*
4. *State noise standards offer a starting point for discussing noise standards for geoduck operations. Standards may vary depending on whether the area is residential, commercial, or another zone. The current residential noise standard is 55 dBA at 200 yards. (3 support basing on state, not just geoduck) (3 support also protecting birds)*
5. *Growers should monitor their noise levels and report noise levels.*
6. *Local jurisdiction should have a general program limiting impacts from ~~lights~~ noise in residential areas.*
7. *No nighttime harvesting (1)*
8. *Drop (1)*

Operations J (Page 31)

J. Limits on work on-site (time of day, frequency, weekends)

■ Guidelines Options

1. *General statement (2)*
2. *Growers should sit down with adjacent shoreline property owners and seek solutions that meet the growers' desire to harvest at certain times and the shoreline homeowners' desire to limit disruptive aquaculture operations.*
3. *On a case-by-case basis, permits could limit hours of operation.*
4. *Criteria should be identified that would trigger a limit operational hours. Evaluation criteria might link to noise levels, light levels, debris volumes, distance from residences, and public access.*
5. *In identified forage fish spawning areas, avoid on-site operations during periods of spawning and incubation (several)*
6. *No nighttime harvesting. (1)*
7. *Drop (1)*

■ Some support for 2, 3 and 4.

Operations N (Page 35)

N. Air, water and sediment pollution

- Guidelines options

1. *General language (3)*
2. *Specific requirements (1)*
3. *Prohibition of spraying of pesticides and herbicides (3)*
4. *Address in BMPs (1)*
5. *Drop (2)*

Operations P (Page 37)

P. Required recordkeeping and reporting

- Guidelines Options

1. *General Statement (5)*

2. *Specific requirements*

- a. *Planting events (2)*

- b. *Placing and removing predator exclusion devices (Inventory 1)*

- c. *Harvesting (2)*

- d. *Site inspections, debris collection*

3. *Drop (3)*

- Detailed planting/harvesting records, tube and net inventory to insure debris control, site inspections

Operations Q (Page 38)

Q. Monitoring, Performance Measures, Adaptive Management

- Guidelines Options
 1. *General Statement (Broad support)*
 2. *Specific performance measures, monitoring and process for taking corrective actions.*

- (Support for baseline surveys and adaptive management, less for setting performance measures)

Planting E (page 14)

E. Standards for planting density (covers tube density)

- Guidelines options
 1. *General statement*
 2. *Generic density limit*
 3. *Basis for site-specific limit? (2)*
 4. *Different for subtidal?*
 5. *Drop (5)*
- consideration of overall carrying capacity of water body and flushing conditions of enclosed bays or inlets (3)
- Carrying Capacity instead of tubes per foot²

Planting F (page 15)

F. Timing of planting to minimize fish and wildlife effects

- Guidelines options

1. *General statement*
2. *In identified forage fish spawning areas, avoid planting during periods of spawning and incubation*

Support for general statement plus WDFW advice to avoid conflicts with fish and birds. Note HPA exemption.

Predator Exclusion Devices A (page 17)

A. Aesthetics of materials used on site

- Guidelines options

1. *General statement (3)*
2. *Because planting tubes are least visible if they are not white, require tubes to be a muted color (not white).*
3. *Require growers to use the best available tubes and nets that minimize visual impacts. Require a permit condition that specifies how growers will demonstrate this.*
4. *Place tubes in straight rows or rectangular blocks*
5. *General Statement plus BMPs (3)*
6. *Prohibit plastics in the intertidal or subtidal (1)*
7. *Drop (4)*

- Ecological impact more important than aesthetic impact

Harvest A (Page 20)

A. Aesthetic and environmental effect of water jets (future methods?)

■ Guidelines Options

1. *General Statement (10)*
2. *Standards for water pump design, operation, intakes, pressure*
3. *Turbidity management during harvest*
4. *Limit on frequency of harvest (X years?) (1)*
5. *Limits on noise, if there are no general noise restrictions (5)*
6. *In identified forage fish spawning areas, avoid harvest during periods of spawning and incubation. (6)*

Note HPA doesn't apply.

Operations A (Page 22)

A. Notifying Tribes of operations

- Guidelines Options

1. *General statement (7)*
2. *Growers should provide notice to appropriate tribal governments before taking actions of interest to the tribes. (1)*
3. *Specific list of actions needing notice to Tribes*
4. *Drop (2)*

Questioned purpose, redundant to court ruling?

Operations D (Page 26)

D. Allowing public use/access of growing sites

- Guidelines options
 1. *General statement (1)*
 2. *Growers should be encouraged to allow public access to private tidelands. (NO)*
 3. *Growers leasing state aquatic tidelands should allow public access. (2)*
 4. *Drop or no opinion (7)*

Operations E (Page26)

- E. Requirements for worker and equipment access to work on site
 - Guidelines Options
 1. *General statement*
 2. *Paths to geoduck growing tracts that cross private land need specific standards to avoid trespass, added noise and litter, or damage to property.*
 3. *Growers who abuse or damage private roads should be responsible for repairs and the road owners should feel free to deny future use of their road.*
 4. *Access across private lands or using private roads only with prior approval by the owner.*
 5. *Limit operations to avoid harm to established eelgrass beds or known forage fish spawning areas.*
 6. *Vessel operations should avoid propeller wash striking eelgrass or other attached vegetation.*
 - All supported general statement about #4
 - Protections in 5&6 supported (as part of BMPs)

Operations F (Page 27)

- F. Limits on landside parking and on-shore staging areas, require that they be above OHW
 - Guidelines Options
 1. *General statement (6)*
 2. *Growers should have to use designated staging and parking areas to minimize the footprint of impact. (3)*
 3. *Staging and Parking should be located above OHW. (3)*
 4. *Drop (1)*

Operations L (Page 34)

L. Requirements for site maintenance, worker training

■ Guidelines Options

1. *General statement*
2. *Bundle materials for later pick-up and to prevent small items from leaving site.*
3. *Have a sanitation BMP appropriate to the scale of the operation.*
4. *Remove unneeded materials from the beach as soon as possible.*
5. *Train workers about importance of taking care of the nearshore environment while working.*
6. *Other employee training requirements.*

- ### ■ Broad support for a statement that touches on 2 through 5. Also suggestion to have copies of other approvals on site.

Operations M (Page 35)

M. Spill prevention and response requirements

- Guidelines options

1. *General statement (Reference to USCG and Ecology) (1)*
2. *Require spill prevention and response plan (7)*
3. *Include in BMPs (1)*
4. *Drop (1)*

Operations O (Page 36)

O. Equipment maintenance

- Guidelines options

1. *General statement (6)*
2. *Specific requirements to maintain equipment to prevent air or water pollution or excessive noise.*
3. *Include in BMPs (2)*
4. *Require annual maintenance records (1)*
5. *Drop (1)*

IV--Other Guidelines Issues (Page 50)

- Ecology could consider other changes to the existing guidelines for local shoreline master programs related to geoduck aquaculture:
 1. *Definitions of terms related to aquaculture (mixed, concerns)*
 2. *Requirements for local jurisdictions to maintain information on geoduck aquaculture, provide reports to the public covering locations, acreages, monitoring results, litter statistics, ?? (one commenter supported with state compiling info)*
 3. *Adding predator exclusion devices and holding pools to the Shoreline Modifications section of the guidelines. (2)*
- Several comments about developing guidelines

Other SARC Comments (Page 51)

- Is there a minimal size to be a geoduck farm?
- Request for a report that shows the locations by parcel number of all geoduck operations and other aquaculture sites in Puget Sound
- SARC should consider establishing guidelines that respect the existing standards (and preferred use status) pertaining to aquaculture, the existing state and local partnership and structure that has been developed over several decades, and the goals and principles of the “new” SMP guidelines that are yet to be implemented in most counties.
- Zoning for aquaculture activities is problematic

END