

(DRAFT) Meeting Notes

Shellfish Aquaculture Regulatory Committee

October 13, 2008

9:00 a.m. – 3:00 p.m.

Ecology Headquarters Auditorium

Lacey, Washington

Members Present: Blain Reeves, Ward Willits, Dave Risvold, Yongwen Gao, Eric Hurlburt, Nick Jambor, Cyrilla Cook, Diane Cooper, Bryan Harrison, Rich Childers, Laura Hendricks, Sally Toteff

Ecology Staff: Perry Lund, John Dohrmann Tom Clingman, Jeanne Koenings, Jessica Moore

Interested Agency Staff: Adrienne Stuart (Leg. Asst.) Cathy Barker (DOH),

Other Interested Parties: Paul Sparks (WA Council of Trout Unlimited); Marilyn Showalter

Facilitator: Annie Szwetecz, Department of Ecology

Note taker: Candice Holcombe, Department of Ecology

Introductions

Committee Business

(Perry Lund, Ecology)

- **Review Agenda –**
 - No comments - Approved by consensus.
- **Comments and approval of September meeting summary**
 - Were not distributed in time for committee comments. Please review and if any members can fill in gaps, please send to Candice.
- **Quick Announcements**

Discussion of Guidelines Framework Issues (John Dohrmann, Ecology)

Diane: Our comments are combined from Nick and other growers, both Puget Sound and Willapa shellfish industry.

Perry: We've received comments on framework from other interested parties, they will be included in public comment digest.

Annie: John has set out a specific schedule for each topic today. If you have comments on a topic after the allotted time has run out, you can make follow-up comments on the next draft.

John: I tried to judge from the comments the topics we haven't addressed yet, and the areas of strongest disagreement. I would also like to clarify the intent of some of the comments we've received. The PowerPoint is not in the same order as the compiled comments document, but I have included the corresponding page number. Also have included suggested Guidelines

language submitted by Diane on behalf of shellfish industry , that are referenced in her comments.

BMPs – Many commenters expressed support. Ecology will be issuing Guidelines by rule. If that document wants to refer to DNR BMPs or High Health Program, we have to do that by reference to a specific document that's available to public, and that's locked in. SMPs will be written and amended according to the Guidelines, if they want to capture a BMP document in their SMP, they must lock in by reference,. On the other hand, if Ecology suggests an SMP have a statement about the need to address noise or lights for shellfish growing using the current BMPs, then the SMP can refer to current information to make its decision, may not be written into SMP. That's where we've talked about having a guidance document - not by rule, not as rigid in application.

Diane: To consider: natural evolution of industry, we're feeling pressure to evolve quickly, and we also have a lot of science coming in from Sea Grant that needs to be incorporated into our practices somehow. Having a guidance document that's easily updatable and responsive to science is a good idea. I understand the concern some have about its being flexible, not as strict. Locals still have a lot of tools in their toolbox to protect resources, even outside of the guidelines.

Blain: I agree it has to be a dynamic document, and kept out of rule.

Eric: There are probably a few areas clearly within jurisdiction of shorelines, most of them are procedural issues. I see those as general statements, then use a guidance document to use BAS to cautiously provide guidance to growers. I hope we'll get a programmatic EIS on this at some point, we need reasonable confidence there will be no adverse impacts. It should be flexible enough to adjust as science improves.

Annie: In next draft of comments, will you ask people to clarify when certain issues would not be appropriate for rule?

John: My next task is to start putting these comments into a draft recommendations report. The problem is that we won't have single statement that reflects the decision of committee; we'll have "this is an important issue, with a range of position from members." We need to write it up in a way that reflects the range and indicates the center of gravity. I need to stay neutral. We'll get you that document in a couple weeks and you'll have the chance to comments. On a lot of these issues the committee will always have a range of opinions, the downside is that gives Ecology more flexibility on how it handles those issues. If something you hear or see today changes your opinion from what you submitted, let me know and we'll reflect that.

Eric: Yes, you need to be neutral, but I'm not an expert on the SMA. What is actually appropriate to be covered under SMA? For example, areas under DFW's control, not shorelines. And to keep in proportion to other activities. Geoduck aquaculture is not as big of an issue as putting in, say, oil refineries, so we need to make sure it's not 100x as restricted for geoduck as for anything else.

John: Yes, we don't want to end up with geoduck guidelines that are out of scale with the rest of the guidelines, at the same time..... (and SMA does say to consider environmental impacts of actions.)

Perry: We've tried not to prejudge anything coming out of here. There are some places where it won't fit, but we've just been deliberately collecting information, so we've been a bit stand-offish about inserting comments and opinions on those things. Sometimes you encounter very helpful perspectives and issues in those discussions. Looking through comments, I've started to see a natural sorting out of these issues, especially some with general statements. Other places may be a general comment with a few ideas for specificity. Then we need to decide if the specificity needs to be in Guidelines or just in guidance.

John: The general statement option can be a general statement including current BMPs. We need to talk about how people said DFW will handle something through HPA, but the attorney general's opinion says DFW does not have authority to do that on geoduck aquaculture. So we will be addressing some issues that might otherwise be deferred to HPA, because it doesn't apply here. Regardless of how people feel about this, it's not something Ecology can change. We can have other recommendations, but can't change HPA through the SMP Guidelines.

Diane: It seems like a lot of things people suggested deferring to DFW were things that they do not have authority over?

John: On genetics and on herring forage fish habitat issues. Laura was quoting Dan Pentilla, but he was speaking as if HPA would apply.

I spent some time thinking about characteristics of a desirable approval process (see slide 1) – the words in parentheses are where I'm capturing people's comments.

Diane: On ensuring compliance with other required approvals, I don't know how locals can do that. I do know from experience there is lot of cooperation between agencies in this discussion, so I don't know there's an insurance policy out there, but certainly coordination is in order.

Eric: In the application process you can require them to show you all those permits, and have this be the last permit that is issued.

Ward: If the bonding is not a real issue, why not drop it?

John: Yes, that is addressed on another slide.

Approval Process Notification (Slide 2)

John: There are mixed opinions on who notification needs to go to – adjacent property owners, or within 300 feet, or 1000 feet. Other comments that it should be variable, that if it's in uninhabited or in commercial/industrial area maybe less need for notice than in residential areas.

Diane: for SDP isn't it 300 feet the requirement?

Dave: That's the number I remember.

Dave: Do you also have to post notice of land use development sign?

Diane: Yes. We put it on the beach – it's boaters, beachwalkers, etc. that need to know, and there's not much road traffic in most of these places.

Nick: In Willapa/Grays Harbor we can't see putting a sign up for offshore work – something to consider.

Mixed on #6 (aquaculture permit recorded so future landowners are aware – not something required for other shoreline permit.

Approval Options (slide 3):

Cyrilla: Clarification on "sometimes" – didn't mean that in any case, something would be completely exempt, I meant that locals need to pick a shoreline permit or conditional use, some process and then all the other ones don't apply. Doesn't mean in some cases you need nothing at all.

Bryan: Would be helpful to lay these options out as issues for locals to consider when considering certain actions on geoduck aquaculture. It's nice to have options, but beyond that, issues to consider.

John: we had one comment there should always be a SDP required. Ecology does have some authority in rule to interpret AG opinion, real interference or structures, critical areas, CUP, that's the range of positions we have.

Eric: Differentiating between going into new areas with no history of aquaculture and places like the middle of Willapa Bay. They are different situations - how to capture that?

John: Response: A lot will play out on local level.

Perry: Eric, are you suggesting we try to make that differentiation? Eric: I'm punting on that.

Bryan: Again should be some discussion in Guidelines of things to consider (i.e., history of use of an area).

Diane: what has to happen is a balancing effects, and Ecology coming in balancing for you may not be appropriate. Dealing with land use conflict (aquaculture) and not the other side is not appropriate, must be done through the public process in that jurisdiction in SMP development.

Laura: With areas where there has been aquaculture in the past, need to consider changing the type of aquaculture. From mussels and oyster rafts to geoduck is a big difference, need to consider scientific issues, environmental effects. In our county we're looking at jurisdiction to

put more restriction on upland development, and we need to put restriction on tidelands development as well.

John: SMPs control uses, whether or not they need a permit. Conditional Use Permit (CUP) can apply to a use even if SDP isn't triggered by development. Another thing with CUP is that locals don't have the final say, goes to Ecology for review and approval, so an extra layer of time, review, and paperwork. In SMP review/approval, Ecology will be looking at no net loss in totality, cumulative impacts of SMP in addition to at the more detailed level.

Laura: With CUPs I have a concern if Ecology has the last word on CUPs and your guideline is the AG opinion, does that mean Ecology will not be looking at no net loss or loss of habitat?

John: Ecology wouldn't deny it which would prevent the development, just looking as a second sets of eye to make sure it's consistent with SMP Guidelines and SMA. It can look at impacts of use in addition to just the development.

Laura: So Ecology won't _____?

Diane: A SDP is not required unless there's interference, but locals can require CUPs. SDP can only be required in this situation but locals can always... currently the SMA says no net loss, and SMPs have to include no net loss.

Bryan: I find _____ cumbersome and even distracting to approval and review.....
(something about NNL – clarify)

John: If an SMP has language about aquaculture (and most already do) some jurisdictions still have a fairly sophisticated way of structuring the review process.

Cyrilla: I hope that the EIS or some further discussion will talk about this. If you're not going to have SDP or CUP or exception letter, how does a local government document that the geoduck aquaculture it's allowing is in compliance with SMA. It would behoove a local government to have a piece to paper to show they have checked that. Question to locals: how would you answer the question if someone challenged a development as inconsistent with the SMA? How else would a local government show others that it's consistent?

John: On next slide, option with no paper, geoduck aquaculture is ignored because it doesn't need an SDP until someone wants to file a complaint or raise issues, etc., and then approach on an enforcement basis. I received almost universal comments that people weren't comfortable with that – lack of documentation early on doesn't feel adequate.

Bryan: That makes absolute sense in this case, at some point you've made the decision it's exempt and have taken a look at something and decided activity.... and if some jurisdictions require reporting from growers on tubes, litter, etc. it gives concerned property owners a list of criteria to compare operations against.

Diane: Industry's perspective, we agree with Bryan unanimously. Some sort of review at the local level to cover our good faith effort and protect us from growers operating haphazardly we want a way to put some peer pressure on them to improve their practices.

Are there jurisdictions in which you can start aquaculture without any kind of review? Yes. Mason, Thurston, Pacific, etc.. Not in Pierce.

Diane: We're making light of the fact that SMPs in these jurisdictions have reviewed aquaculture in their planning process, they don't need ... So they have no real on-the-ground knowledge. These are established activities with a long history – they know what's going on. Bryan vouches for this for Pacific County.

Perry: A recent situation, and this points out the downside to this, where in Mason County someone is doing something they've never done before and Mason County wasn't aware, and then it's a compliance issue, but they don't have the tools to deal with it adequately. What do you do when they do it wrong, or do something other than what you thought they were going to?

Annie: I think we're arguing about yes. We all seem to agree that this is an issue to address.

Perry: My question was half rhetorical. Bryan, you said ... I understand the idea of a conditional exemption. Diane says they don't mind some review, where does that conditional exemption with review become a permit?

Bryan: That's a fine line. We handle that thru acknowledgement of exemptions, lay out the reasons it is exempt, hasn't hit threshold for permit. In acknowledging exemption, remind you that local SMP requires the following. Lays out that you are not throwing up a dyke and reging.... Remind that when you hit certain triggers, you do need a SDP. If we change the SMP, those will be incorporated as well.

Eric: In Boston Harbor, where I live, and one of these farms popped up in front of one of my neighbors, the problem was that no one knew what was going on.

Annie: Reminder about SEPA....

Diane: To answer Perry's question, it's a matter of ___ to us, it's review options, what kind of review is needed, notifications, etc. A letter to local government, response from local government is review.

Sally: So in the context of conditional exemptions, need clear standards...If you meet certain conditions, don't have to do anything, so there are examples of how that's done in other areas.

John: If we know how the Corps was going to handle their permits, we might know whether they will want exemption letters for CZM consistency.

Slide 12: Requiring documentation of the approvals.

Rich: On _____, those are sometimes 2-3 year in the process. Timing may not work on that.

Cathy: Also they can do farming activity with Department of Health certification.

Blain: I was thinking along lines of a county issuing an exemption – if there's no review whatsoever, there could be clandestine farms going in without a Corps permit – local jurisdiction at a minimum needs to ensure they have the necessary permits before issuing an exemption. Somebody has to make sure those permits are there.

Perry: Good example. Tough call under our authority with SMA, we don't have authority to tell someone to get somebody else's permit. We can't implement a federal permit program, it's not a condition of our approval. I would think we'd have a general statement, make sure you're doing all these other things, but we can't compel you – exception is CZM – we have authority to make sure of consistency before we can give approval. Without a permit this becomes a slippery issue.

John: (Something about putting Corps on notice so they're aware.)

Laura: Why can't ...require that anyone trying to sell their shellfish without a letter of some kind can't harvest.

Perry: We're looking at this 3-5 years ahead, when they want approval for site.

Laura: Failsafe should be no harvest without proof to Department of Health (DOH) that it's permitted activity.

Cathy: They will _____ before they get _____. Someone was planting _____ of geoduck, wasn't licensed by us to do it. Guy came in with _____ and we denied because it's not certified, and therefore prohibited harvest.

Laura: No one should be able to harvest unless they show DOH they have a legitimate permit. That would be a motivation for people to follow the permitting process. If we make this the guideline, why can't you require that DOH get that jurisdiction?

John: SMP Guidelines can't give DOH authority it doesn't have, and don't think DOH sanitary authority gives them authority to deny shellfish for consumption

Laura: Well someone needs to require a permit of some kind.

Perry: You're welcome to make recommendations in the report for the Legislature to consider certain changes. Just because we put something in Guidelines doesn't mean we can make anyone do that.

Blain: This process shouldn't vary much from the standard: docks, etc. What applies in those cases should apply to geoduck aquaculture.

Dave: We can only say to get a permit from others, but we can't deny on that – it's the grower's responsibility.

Diane: What Perry said: If there's going to be a report to the Legislature to outline recommendations, with recommendations that legislation be changed, I'd like to see that come in the form of minority reports and letters to Ecology during public process for EIS, but not from this committee.

John: Slide 13—bonding.

Cyrilla: We haven't talked about _____. I want to change my answer if it means a critical area is reviewed under Critical Areas Ordinance in the SMP. If someone needs to mitigate, if other development requirements include bond for failure to complete mitigation (for residential, for example?), that should apply to shellfish as well.

Diane: We've gone around and around on the bonding issue, for DNR a bond is required, for areas on private ownership, if ?????? should not require - had thought about critical area mitigation point. That's something we can talk about with the – preface – shellfish farms are critical areas too, and that's different than other developments – something to think about, talk about.

Laura: I agree with Cyrilla – we're talking about pipes, tubes, barges, pools on tidelands, should be included in bond mitigation???

Perry: More context on shoreline side. You're both right. Remember that mitigation means avoiding impact, minimizing when it's there, doing something about unavoidable impacts. That's part of your condition of approval – take steps to prevent litter, if it happens clean it up as quickly as possible. I think we would encourage that they are one and the same – site maintenance is part of the mitigation connect that lets us get to approval.

Eric: How do bonding and liability connect? Seems like a front-end insurance policy.

Nick: to Laura on mitigation: in Willapa, if what we do in harvest is considered scraping...not to take things too broadly- if something is a common and ongoing practice, we need to be careful not to write something that's going to put a industry out of business.

Dave: When I read this I'm thinking of a blanket negative incentive bond to promote good housekeeping on sites; critical areas bond would be a different issue. We wrote this into our interim regulations to address concern about litter floating away, not being taken care of – bond will encourage growers to keep an eye on this and take care of it. You may not have a critical area bond for every shellfish operation.

John: So your jurisdiction routinely requires different types of bonds for certain development? We're back to an area where a local jurisdiction practice should be applied to geoduck aquaculture.

Laura: Pierce County bonds, debris, but also silt – Willapa's different, but if you're having new aquaculture coming in and you decide...siltation of neighboring beach is smothering their tidelands, it is an impact on his beach, in these regulations unless you change setbacks, and there's no way you can't admit that that silt from harvest doesn't move over.

Slide 14: Application (Site Info, Farm Plan)

John: could leave the scope of the baseline survey to locals to determine.

Perry: The farm plan idea, initial site characterization, that looks to me like the kind of information we'd want one way or another. So that's back to a sliding scale, when does a condition exemption become a permit? If someone walks through the door with farm plan that includes good site for aquaculture under existing conditions, good schedule of activities, good set of contingency measures, that's where I start seeing a lot of stuff come together. BMPs, site description, mitigation alternatives get incorporated in that because everyone knows what they need to know to approve/exempt. Is that what you're thinking, Bryan?

Bryan: This whole process reminds me of the early 80s when development was encroaching on dairy farm, it smelled, polluted the water, ugly to look at, and the dairy farming industry felt under attack. The farm plan gave some presumption of validity (some parallels with shellfish aquaculture). I support this for some aquaculture activities. Under this approach, some threshold of farm planning approach, but that model if applied ..., presumption is not a two-way street – presumption of validity of right to exist, continue, if you work with an agency to develop a farm plan which essentially leads to BMPs and some monitoring and adaptive management..... in addition, you as an aquaculture partner accept that you're going to work with us and BMP yourself toward protecting the environment and avoiding impacts. Is there a way to integrate that into shoreline management? I think so...does it make sense to shellfish aquaculture folks, and where is the threshold?

Dave: I look at it differently – merely part of our application that says description of project – needs to be very specific to explain what they're going to do, avoiding and minimizing impacts, that's the only place we can get that information, and it's critical.

Laura: Is the farm plan on this slide basically a watered-down plan of site info, or are they two different things?

John: The first is, here are boundaries, here's who owns, here's a map from biologist about eelgrass, forage fish, etc., length of lease. The second is, I expect to cover up to an acre at a time with tubes, nets, etc. (more operational).

Laura: Are we going to be going over baseline requirements?

John: That's in #1.

Laura: BMPs, we already had them in Pierce, they didn't work. Second: we've already talked about monitoring and enforcement and adaptive management, but there's no money for counties to do it. Will the money request be in our recommendations?

Perry: You're welcome to ask.

Laura: I don't want to put something in there that we know there's no money to do correctly. Willapa pesticides, can't equate with Puget Sound, it's a different animal. It is their economy, I'd hate to see us take their model that works for them and put it to Puget Sound when none of those things really apply to us. We're talking about expansion primarily, not moving it into residential areas where it wasn't already there. I haven't seen anything where shoreline owners are protected at all. Industry says they're not willing to compromise on noise, light, even buffers of five feet.

Annie: What I heard was applicable – I heard you say the baseline is too generic, need more details. Your question is whether it's addressed.

John: In the siting discussion, we've captured people's comment on the need for a baseline characterization of a site so the jurisdiction can look at whether it's an appropriate place to site activity or will have too much impact on ecological features. I think this slide is saying that interacts with operational requirements that jurisdictions might into BMPs. Alternative is to ask upfront for an operational plan from the grower to tell how they're going to address SMA requirements.

Diane: We did propose farm planning as an alternative. Taylor did a farm plan in Skagit County, working with local government. It was a large farm, we wanted to do a lot of different things there, and local government didn't know how to deal with that. So we said let's sit down and we'll work out a farm plan, so there is precedent – it works. The difference between Puget Sound and Coast, that gets at the need for locals to be able to address their own circumstance in their SMPs. Our comment and caution would be if you're going to be specific, be specific and let us be able to address it, and not use as means for us not to be able to farm.

Eric: I see this as the application the info you needed to get started. Whether you call it a farm plan or whatever, we'll need some rule and guidance statements; this saying we're conforming to different criteria...? And explaining how you're going to operate the farm, will help discussions at the local level during permitting process so the public knows what to expect. Just need to put information together in a package so they understand what they're going to be dealing with.

Bryan: This would be a new model for Pacific County, far beyond what we've done before. It's just one way of dealing with agriculture and sensitive environments – takes us away from the current permit and let-it-go and rely on enforcement, in favor of more upfront discussion and periodic checks; as much as we've dealt with septic systems next to ____ (aquaculture) changes made to adapt and keep system operating so as little impact as possible, does merit some discussion, would be new and different.

Dave: This is not a generic farm plan with cookie cutter BMPs, just space where they provide info on what they're doing.

Bryan: That's not the way I see it. Intense farm plan development on type of soil, acres, plant coverage, critters there, exactly how they manage their waste, etc. intense level of analysis specific to grower and site.

Diane: It's different from a site plan (critical areas, adjacent land uses).

John: I injected the term "farm plan" here, maybe it's my fault. Don't think we have an analogy to conservation district coming in and looking at soil plants and setting density limits because of science behind it. Dangling ideas that if local jurisdiction has interest in a number of these operational issues, having applicant come in with a narrative of how the activity will occur, site managed, so jurisdiction can compare to BMPs or SMP, that's what I was thinking, as opposed to drawing a boundary survey and chart of forage fish spawn known on site and you issue approval subject to SMP, with no dialogue on operations.

Diane: What we did for the farm plan was took all of our ownership, so not site specific to us, a whole area (Samish Bay) and all Taylor's ownership and all activity; too much for locals to take piece by piece. Allowed locals to look at the whole thing comprehensively as opposed to site by site.

Nick: Said early on – do counties have the experts to review and understand these things, and the wherewithal for enforcement – comes back to what we ask for and what we can actually handle.

Slide 15 – Predator Exclusion: options, mixed responses.

Diane: I don't know how locals could determine how long tubes should stay in – saying they should come out when no longer needed is appropriate. It's not our intent to go out and maximize effects to bird and mammals - we do minimize already, and as we learn more, we continue to try to minimize. That's already our goal.

Slide 16: Shoreline Owner operational notification

Generally, the committee thought operational notification was appropriate, varies on distance from farm required, grower versus jurisdiction issuing notice; once at beginning, or ongoing?

Perry: DNR's requirement for 300 feet, is that in legislation setting up the intertidal lease program?

Blain: It's in statute, from 2220. Specific to DNR.

Perry: What about subtidal?

Blain: I don't think it specified subtidal versus intertidal, just like the bill.

Diane mentioned 300 feet or 3 parcels out.

Blain: I think it should be local jurisdiction's responsibility to notify if they're issuing something as an action. And to field complaint calls as well.

Bryan: That's just a normal part of doing business. You don't get that many calls and complaints. If there's more posting, notification, enforcement, we know who's going to pay for that (we pass costs along).

Laura: example – property owner calls, they're harvesting right next to me, right on the line, silt is coming over to my property – who do you call, who does something about that?

John: There is a harvest method slide, but I think the complain issue is more generic.

Laura: But this isn't generic, this is what people are concerned about. People want know what to do about it. This is just part of the process. When a complaint comes in, who's going to deal with it and what are they going to do about it?

Bryan: If it's a complaint about harvesting in the wrong area, DOH will come in – if people are stealing clams, we call DNR and they come out. Just depends on the issue.

Laura: On this issue – silt – what are you going to do?

Bryan: If it's in the SMP, the county will deal with it.

Cyrilla: When John writes up work things for November, would be helpful to carry options through, if there's an option for local government to decide to have a particular permit, cost associated with permit, those fees can go to fund complaints and enforcement; local government needs to be responsible for those pieces or look for other funding,. Would like to follow that logic train through on various arguments/options. Without permit, have no paperwork to look back to for enforcement.

John: I may have been preoccupied with ___ and not gotten to _____ (response to complaints, enforcement)

Nick: My understanding is that Sea Grant is looking into sediment transport. And to keep it in focus, a storm event moves so much more around sediment than geoduck harvest– can I complain to the county about a storm event?

Perry: local government we will respond to complaints as we do to other issues; if this is put into an SMP, there is a tacit acknowledgement that something must be done about it. Funding is a very real issue. But there's an underlying current there, some interesting data has been put together by Jefferson County, in terms of use of shoreline and people there; pointing out that why local governments have to make these decision estimated (14) per shoreline miles Pierce county (___ residents per shoreline mile). Decisions Jefferson County will make based on those data are very different, and should be. That's what the SMA is all about.

John: There is a later slide on harvest technique and mitigation.

Dave: Most locals have code enforcement and all are underfunded. If we can identify something wrong, we will follow up. If we can't determine something is wrong, we won't follow up. We might go out and not be able to document anything.

Ward: I disagree with notifying property owners – timber company can clear land, farmers, landowners can do the same, shouldn't put an extra obligation on shellfish industry.

Site boundary marking:

Most people supported a general statement calling for survey and marking. I put it in high priority because several people supported **felix** (??) if growers and property owners agree. From a regulatory perspective, how do you do that? What happens if the property owner changes? Can you really recommend to Ecology "if company and owner agree"?

Perry: I think this came from Ward, and said if his neighbors don't care that they're farming on his land, why require marking?

Diane: Given circumstances of late, marking the waterward boundary – adjacent private property, enough civil options to resolve line disputes; marking lines is fine, but actual survey requirements are not necessary.

Perry: Waterward boundary for private and state-owned and is that a fixed point at MLL or Extreme Low tide?

Blain: some of the Bush Callow lands – except for that I'd say yes, it's extreme low, will vary by location, that's why it's impossible and is imperative that it be marked somehow.

Perry: It is a float that stays a few feet above the bottom, not a buoy on the surface, right?

Blain: Land managers need some way to look into trespass claims.

Perry: It's getting Attorney General opinion specifically (and our definition of development) is the idea of impairment to navigation. Case with buoys and ropes cited, agreed it interfered with navigation. How many buoys does it take to impair navigation? If we review property markers and get to a certain point, and we've forced you into development and you need an SDP, we shouldn't catch ourselves on a silly thing like that - practically, how do we want to document boundaries? It's a real issue in terms of what we're putting into the water and when does it become an impairment. I'm struggling with that and would appreciate five minutes of discussion on this.

Laura: Complete survey from upland to DNR lands ____? Large shellfish company harvesting in front of other people - by the time they go get a survey we have to prove they were out there 3 months ago, needs to have markers on site so we can see whether they're on state lands or on their property. Applicant needs to provide survey (owner or grower?) Part of operation ---- if it

puts farming into an SDP then it should be, it shouldn't require something to be because it might force it into permit situation which we believe it should be in the first place.

Diane: AGO used a few terms; public's normal use of the water, and substantial interference – one or two buoys is not substantial interference – I think that's where we could mark corners and not interfere.

Rich: Now we're getting into the Coast Guard rule of road, would they allow that?

Diane: yes they do.

Eric: If you're navigating over intertidal in anything larger than a kayak you're taking a risk. The idea of an anchored marker with d-ring to fasten buoy on...

Lights (slide 18):

Center of gravity is on a general statement (5); and 3 for standard for all shoreline activities to minimize impacts to adjacent uses and sensitive species.

Debris Management (slide 19) – wide variety of positions

Diane: We had report for DFW when they did fish trawls and they found 11 tubes out there. Last trawl they found 2. Significant improvement. Geoduck growers realize that's an issue, we've jumped on and have been successful – literally every day we're looking at new and improved ways of doing that. 2) This is something the Legislature has told us to specifically address in guidelines – we need to say something, I think the range captures it. 3) We're really trying to move away from use of tubes, shouldn't be long and we hope to be successful.

Sally: There is a statewide litter hotline that links up to the 39 counties.

Blain: Industry has a hotline too.

Perry: Remind folks that DFW already has fishing hotline for derelict gear, even a checkbox for shellfish aquaculture gear.

Rich: It's used but it's somewhat selective – depends on the scale of the litter (e.g., a 200-foot seine vs. one geoduck tube)

Laura: We're still getting lots of reports on rubber bands, nets, and tubes washing up on beaches. Waterfront owners don't know who to call. We have to pick up the litter before next tide comes in, so whoever sees it has to pick it and throw it away. Don't think 7 and 8...

Bryan: I supported 8, but in linking back to previous slide on notification – we had a big problem into single-family residential vacation rentals, lots of complaints until we started permitting and requiring a permit and notification of permit issuance, notify all neighbors that this is run by _____, the manager responsible is _____, the person at Taylor you can call is _____, if not

satisfied, call county at _____. Link to original notification – if you see litter on beach, call the grower, if you're not satisfied with their response, call the county.

John: Perhaps this could be addressed on a fact sheet.

Blain: There was a wonderful clean up recently –worth summarizing the ratio:

Diane: At the first one there was a lot of aquaculture debris, have been doing them biannually sense then. The public's contribution to debris is significant. We are doing our part to reduce it, but keeping Puget Sound litter... reduced all of it.

Annie: Is there some proposed detail that's not reflected in the proposed options?

Barge and vessel mooring:

Perry: Comments on consistency with other shoreline activities—docks, etc. “Don't moor vessels where they'll bottom out on low tides.”

Diane: Can't see where this has been a significant problem. I see more recreational boats out there than aquaculture ones. Why treat industry differently?

Perry: That's valid. One difference: recreational boats rest on side and don't cover much—most boat owners don't want their boats resting on the bottom. Compared to barge—12 x 20.

Diane: We don't rest barges on the bottom—moored instead. Scows may be but not for long.

Cyrilla: Should we recommend temporary mooring buoys?

Laura: This is not a major issue for shoreline owners. At Foss Farm, Taylor beached a barge on a neighbor's beach. Shouldn't be left out in the middle, we are particularly concerned about storms.

Eric: Recreational boats do terrible job at marking their boats. No. 3 isn't practical (18' MLLW). Shading is a non-issue—can't see bottom at that depth.

Blain: 18' is arbitrary – we know in the San Juans that eelgrass extend to (25?) 35+ feet.

Noise: no comments

Time limits on on-site work: variety of comments – including treating the same as other shoreline uses.

Laura: DFW said we need to stay away from spawning areas at all times, but I keep seeing suggestion that they be avoided only during spawning. We oppose activities at spawning sites at all, not just during spawning.

John: This is an added protection for fish that might be passing through, even it's not a spawning area. We've addressed the issue of planting/harvesting at spawning site in operations.

Diane: We don't support limits on time of day, or days. We work with tides, different from other shoreline activities. SHB has spoken to this and will again in a couple of months. There will be judicial review of this coming up.

Annie: So you wouldn't support a general statement even?

Diane: No, it should be dropped.

Yongwen: 5 years ago DFW looked at not every beach as spawning area, all geoduck beaches may not have had one; only 18 herring spawning areas in all of Puget Sound.

Cyrilla: This is talking about other kind of forage fish too (sandlance, etc.)

Diane: On limits on work time and such, we believe forage fish spawning issue can be addressed adequately –can't specify times you can work and say "if there's herring spawn there or fish there – because that might not be the same time...it can be addressed through BMPs.

Slide 23: Other Pollution

Bryan: #3 (prohibition of pesticides) I think this is mission creep – water quality, Dept of Agriculture, EPA, this is a kitchen sink issue introduced from some folks in the audience – it's regulated in a different context for a different reason. Admittedly there are pros and cons, but I can give many examples of herbicides being beneficial to sensitive species, etc. We need to be silent on this issue.

Nick: I agree.

Laura: We believe you must prohibit pesticides and herbicides – have seen growers spraying oyster bags ...it kills oyster drill. If you're telling upland owners not to spray, must apply to tidelands too.

Eric: This is heavily regulated already –cannot spray without EPA review, water quality permits, etc. If you know of people doing this, that is a big deal. Call me if no one else. I will look into it.

Perry: We don't have authority to put it in our Guidelines.

Annie: But there is not consensus in leaving it out completely. Have you heard differently from comment letters?

John: I didn't elevate herbicides/pesticides as separate slides.

Cyrilla: Land use conflict – could want to spray in area that has an organic farm upland.

Record Keeping/Recording (Slide 24):

How much growers should report to jurisdictions, how much jurisdictions should maintain and tabulate information. Here are the issues: what a company should be recording, what they should be reporting, and what the jurisdiction should be compiling.

Blain: There needs to be some level of recordkeeping – spelled out in adaptive management section, at least a framework.

Diane: Most companies do keep pretty good records of most of these elements. We're not opposed at all to providing this to locals governments – can you accept it all, what will you do with it, is it useful? Agree with adaptive management part. We want to show our improvement over time, and the only way to do that is to have the records kept outside of our possession. Who's going to keep it, and can you?

Dave: yes. The operator will provide data to local government, and it will be stuck in a file (maybe organized, maybe not) and will sit until there's a complaint. It's handy to have info at hand when complaints come in. But if they contest the records, they're not useful.

Diane: We've already agreed we should remove debris and keep track of it, so this would be unnecessary.

Dave: Useful info, should be included.

John: There are other regulatory situations (from agricultural to industrial) where they will keep records, but not report to avoid being at competitive disadvantage.

Diane: For us, there isn't a lot of proprietary info necessarily, but for everything else out there, is this info required from them? We've picked up a lot of debris that hasn't been aquaculture.

Nick: But if I report it to the county it's public record, so a competitor could see what we've harvested and how much?

Annie: You can request that it be considered proprietary and withheld. There's an exemption for that (may or may not apply). For ___ for example, we do require ___ to be on site. Don't have to submit, but must be available if inspector does a site visit.

Blain: I don't think counties should be the repository for that. There will be complains about sedimentation. You would need to be able to establish when you harvested.

Slide 25:

Laura: I have a problem with adaptive management being used in this report – requires baseline monitoring – show that at this time, it's not able to be used because you don't have components of it and you don't have the funding. If counties don't require a permit and don't have baseline info, how do you do adaptive management? We don't have the tools or the money to do it. In those situations where you do have those, I support it.

Yongwen: Sea Grant – none of the projects involve monitoring and performance.

John: let me speculate that if Sea Grant studies should show there's an impact from harvest, but it depends on scale, you could set a target for what's acceptable and monitor it based on that science; then could test that with performance management.

Yongwen: Scientist background...areas...agriculture, we have project with DNR and DFW we submit very comprehensive project information for chemical and geological monitoring, ___ not performance.

Cyrilla: I agree with Laura – we all want adaptive management process based in science – would suggest that at the local level might say “as we learn more, we will _____” . what is learned might be at the administrative/regulatory/process level.

John: Need to clarify what is the management you're trying to adapt.

Blain – Adaptive management means different things to different people – DNR has many adaptive management procedures/requirements not ___ for private company. If we're going to use the term, we need to define adaptive management.

Was Tom going to follow up with a second draft to his AM document? Still an action item.

Perry: Good comment Blain – what does adaptive management mean in this context? I agree in principle – you need a good understanding of present conditions otherwise how will you know what has changed for better or worse to respond to it?

Annie: There were some comments during the meeting on Tom's adaptive management document. John will look and see if it fits into recommendations report. Catch 22 – have to talk about what aspects you're trying to manage.

Diane: We did have a good discussion that pointed to industry providing some written comment on adaptive management. We don't see adaptive management on a site-specific basis – i.e., changing an existing permit or operation, rather updating polices as you move forward.

Laura: DNR, once you write a 10-year lease, you can't adapt what they do. Is that right?

Blain: We monitor to ensure environmental protection. You could adjust after the growing cycle, like an SMP.

Laura: So it's not clear to people reading this that you can't adapt for another 10 years. And industry saying they're grandfathered and do not have to do adaptive management. Not once permit is in place. Does this mean only new farms have to adapt, or existing ones too?

Dave: I think adaptive management has to apply on a site-by-site basis. You permit something and if conditions changes, you change conditions or approval. Even between permit renewals.

Sally: If it's not already what you're considering for the next agenda, I think some focus on adaptive management is called for. Options: new operations, new growing cycle, updating with new science, SMP 7-year update cycle.

Laura: If you're going to adaptive management _____ good/bad, one-way.

Diane: We're talking about our investment of time and money into a site; so we base our practices on BAS, potentially we can't then reap from that investment if local government decides we can't _____. We have a legal right to get from the investment what we put into the farm.

Dave: Not as arbitrary as it might sound. Changes would be based on monitoring we do on site that indicate what we thought was going to work is not working, conditions for change would be built into approval.

Blain: You would need to define when you can make those changes. Seems like it should at least allow continued practices through a harvest cycle. Once we make a decision there is vested interest in that decision.

Dave: wetlands – analogy?

John: Not sure further discussion on adaptive management will bring us any closer to consensus.

Annie: But it might better articulate what the alternatives are.

Laura: The reason we're here is because we know there are issues that will need to be addressed as new info comes in – the idea that you can go forward and then not be required to change should not be used a justification for habitat destruction. It need to change, not 7 years after this destruction continues to take place.

John: The rest of these topics you can see in write-up, but I had marked them as low priority for discussion. In the “other comment” section, we got the question of how small a hobby aquaculture farm is vs. a geoduck garden – size and limits.

Agenda adjustment: will skip ahead to report outlines, then break, then come back to “low-priority issues”

Perry: November is our last official meeting for developing the recommendations report. We'll probably talk with each _____. John's goal is to get a new compilation of these comments from today's sessions back to you that will look more like a set of recommendations to Ecology. Once November meeting is over, we're compelled by HB2220 to get a report to the Legislature on what we've accomplished here. Reality is that's when our work really begins at Ecology to start SEPA and rulemaking process. You received two draft outlines – one to think about for Nov 10 (committee report to Ecology), the second is outline for committee report to Legislature. By Nov 10th we want to have a final draft document that follows this outline. By Dec 1st, we should have a final draft from this group. We have a long way to going terms of deliberation in this

process – I imagine some of you will be involved we move through the public process as well. Safe to say we're in the home stretch now.

Sally: Embedded within the outline is that the way recommendations will be reflected is to say there will be a range of opinions, with indication of center of gravity. Is there a place, maybe in introduction, some description of how our “decision-making process” has evolved, then give them back recommendations that clearly don't reflect consensus – to prevent a reader at beginning thinking they're going to get consensus from this report.

John: Agreement that those two general goals are guiding us, difference of opinions on details.

Nick: Rep. Lantz's framework she gave last time is not exactly how the Legislation was written, but if you're going to use this framework (no net loss/Land-use) are you going to define no net loss?

Perry: Yes. And comment noted. We'll get it in there –it's so much bigger than any of us here.

Cyrilla: May be appropriate under background/SMA – could talk about balancing land use, restoration, no net loss. Way to describe what you're up against trying to write these guidelines. State goal of protecting and recovering Puget Sound. There are places we all agree – protect environment and minimize land-use conflicts. Is there a way you can explain why there was disagreement on this issue e.g., industry thinking this would cause this kind of impact to industry, or a property owner might have concerns that xyz.... how do you describe these disagreements to a Legislature that hasn't been around through this process?

John: I'll do my best to reflect agreement and disagreement, you can comment on my draft.

Diane: I think it's important the Legislature hear where we started and where we ended up, and various perspectives on how it started and where we are now.

Annie: Is there place to have an appendix with all the comments?

Diane: So you have to report to Leg in December 1st.
Yes.

Diane: And you will need our recommended guidelines to go with that?

Your recommendations on the guidelines and an explanation of the process for all of this.

Sally: In terms of not overloading the, with paperwork, the website contains a really good record. Perhaps we can refer them there.

Cyrilla: So the introduction would be written out as more of narrative form, but the recommended elements of guidelines would be in outline form?

Perry: It will set the stage for each topic, description of the kind of discussions we had here and the range of opinions. These bullet statements you see here will be written out into real report.

John: Also possible that a couple of these may be combined because reactions are mostly the same (like noise and light).

Annie: Discussion with SEPA – one of the ways you approach alternatives is to pull out recommended alternative, impacts, _____? This would essentially be the scoping for that process.

Eric: I assume there will be some discussion of Sea Grant here yes?

John: We can indicate in recommendations report that it's the product for Task 3. All tasks will be addressed in report to legislature.

You'll have something back from us in about 2 weeks, you'll have a week to review and get comments to us so we can be working on final recommendations draft in November. We'll have three weeks after that to get this back to the Legislature. Your recommendations will be one part of a much larger report.

John: Will we be setting time in November to let committee see how updates on the other tasks are shaping up?

Sally: The Legislature set this committee up to oversee/monitor the research program - we'll need to talk about what people envision there, and check in with Sea Grant to see if they've already given it thought.

John: And Ecology will continue to use this group as an advisory group as we develop the guidelines. In the fullness of time, it's probably more important that your recommendations report reflect your thinking and not be overly rushed.

Cyrrilla – so we're expecting to get the draft by October 27th, and you want written comments by one week before the November 10 meeting (November Nov 3rd)?

John: We'll need written comments before the meeting, can provide additional comments at the meeting.

Can we give recommendations for how to handle the November meeting once we see the draft?

Send email with this schedule to committee as a reminder before meeting notes:

Progress Report to Leg (see outline document)

Task 1: Regulatory Process

Task 2: Sea Grant

Task 3: Geoduck Aquaculture Guidelines

Perry: Would expand future committee activities and also add Ecology's future actions (SEPA/ rulemaking) and how committee fits into that. Do you want to attach the compiled comments, or just our summary?

John: The compiled comments are limited, incomplete – only a record of comments on what was discussed at that meeting (not what was discussed before, or today)

Yongwen: Has Ecology received an update from Sea Grant on the status of the research program? Would like an update to committee on that.

Cyrrilla: I would challenge that we're actually overseeing the Sea Grant research program – we've had no say in decision-making process. Would like to redefine what our role is there.

Perry: Clarify: I don't believe you're charged to oversee the process. There were some guidelines set up for Sea Grant early on – the technical team was put together to review the criteria, was deliberated in front of this body, Sea Grant has updated us on a couple of times during the process.

Blain: I have concerns about being kept out of the loop on this – they are going ahead with the briefing paper and we haven't been able to submit comments.

Diane: I think what's outlined here is good. What I'd like to suggest is that in general information or task introduction, include a brief overview of how we went about our work. Heard from these experts, did a field trip, etc. deliberated. Back to guidelines recommendation draft: if we could highlight the two specific areas of operation that were specified by HB 2220 (landowner notification and debris).

Laura: On debris, we haven't resolved it, concerned when we go through that some of these things we still haven't addressed. Information was brought forward then contested. It's obvious there are some profit motivated, other habitat.... that needs to be acknowledged. People need to understand the framework – I don't understand why DFW didn't make comments. No comments except for seed. I would like that to be addressed.

Rich: We did comment on the areas where we have authority (disease and genetics) – do you really want us commenting in areas where we don't have authority?

Laura: Yes. You have expertise and should share your opinion. That's why you're on the committee.

John: It's your call how you want us to present this to legislature, what level of detail on the range of opinions.

Yongwen: My understanding is that DFW deals with wildstock management.

Dave: I can see how it would be cumbersome to include all of our comments, but should include reference to where they can find that.

Diane: I don't think anything becomes more divisive than when you put on white hats and black hats. – we all came to the table with the same goal – to find a solution to these conflicts. I would like to see a statement that “this is what the committee recommends”. If someone doesn't agree with it they can submit a minority report.

Continuation of framework discussion (low-priority items):

No need to reiterate comments unless they are confusing or clarification necessary. Are there any that jump out at people?

Laura: The bigger question: citizens brought this to Ecology over a year ago, should have been brought to committee along time ago – how many other things that are new or innovative that we don't know about – it should be industry's responsibility to come forward with info on that.

John: This was discussed around the table last meeting.

Laura: Where will it show up that industry will be regulated on innovation that may be more destructive of what is out there?

John: If there is a verbose approval (SDP or exemption letter) and operational plan from grower to local jurisdiction, that's the context to say if you're going to change the nature of the operation, you have to come to us – could trigger a consultation. We learned that kiddie pools are not a feature of every site, they are associated with a limited number of sites.

Cyrilla: Dave was talking about Whatcom County having language in their SMP for experimental technologies. If you notice a change during permitting, but locals could have something called experimental designation for industry to apply for review/permission---?

John: I should have captured this in approval section.

Annie: We can think about that as we review the next draft.

“Other Guidelines Issues”, what does that mean?

John: I went back and read SMA in its totality and then read Guidelines completely, went through all headings and thought about where in current Guidelines you might capture all of these aquaculture issues. The Existing Uses section is where current aquaculture language is – automatically thinking would be that be the section where new geoduck aquaculture Guidelines would appear, but may be other places too where some of this could/should be worked in (definitions, etc.) Slide 38 - #3 predator exclusion and holding pools might be included under Shoreline Modifications. Doesn't really change content of recommendations, just a question of where in the Guidelines they're mentioned.

Eric: If you put out the swimming pools on the beach and it wasn't for aquaculture, how would it be regulated?

Dave: Was it was critical area? It's non-permanent.

Laura: What if I planned to keep it there permanently?

Blain: It's analogous to summer interim boat docks on intertidal.

Laura: The scale is different.

Cyrilla: Will guidance be referenced somewhere else (BAS, BMPs, etc) in the Guidelines?

Bryan: Concerns about something experimental or temporary in category of shoreline modifications alongside bulkheads, docks, etc., permanent, habitat-altering structures. Need some way of evaluating emerging technology, but does it equate to this large habitat-shattering activity – I'm nervous about that.

Diane: I don't think it does. I have concerns as well. Also separating out ...what are the criteria? If we have it all in one section and we can address it all in paragraphs that talk about what geoduck aquaculture is and aquaculture in a general sense, what it means in shoreline environment, keep it all together, would be more instructive and helpful to growers at least.

John: There is a strong argument for making the geoduck piece a continuous ____ in one place so all changes are in one spot and easy to find.

Laura: If you start putting it in different places, you'd have more regulatory confusion about what supersedes or conflicts with both. When you're putting that many hundreds of pools on substrate – if it changes food sources for a day, week, month, or year, at what point does it change the habitat in that area?

Eric: I want to keep basic operational portion for geoduck aquaculture in the Uses section, but there are other aspects that are already regulated in other areas. If you built a fixed hatchery over intertidal, that would trigger other actions. Don't need to create geoduck-specific rule for things that are already covered.

Diane: On kiddie pools, were covered under NWP 48, have been going thru environmental review since then, just like with floating, we've never suggested that floating shouldn't get permits – we've always gotten permits for these, and are doing the same for kiddie pools. Laura contests. Diane says go to Mason County and see.

Summary of today's issues:

We got a lot done, thank you very much for your work. Please give thought prior to the next meeting on your final thoughts, summaries. A general reminder we won't really be done,

although we'll stop having monthly committee meetings, but there will opportunities for involvement along the way.

Action Items:

- Tom Clingman: Follow up with second draft of adaptive management outline.
- Ecology will send committee the draft in about 2 weeks, committee will have a week to review and get comments to Ecology so we can be working on final recommendations draft in November.
- Update from Sea Grant?
- Candice will incorporate any changes to September meeting notes that members submit.

ADJOURNED

Public Comments:

Paul Sparks (Washington Council of Trout Unlimited): Looking at the 123 on draft outline, I would hope that Ecology does not try to minimize the amount of difference of opinion that has occurred in this process. What you've done on the Guidelines so far tends to agree where the details are insignificant, disagreement – because the committee is an unbalanced representation of interests. Would hope you could clearly define for the legislature the nature of that basic disagreement. It comes from the extraordinary innovation of the shellfish industry – innovation can bite you in the leg. My retirement income is one third less today than it was last year - innovation runs ahead of ability to ____ . What kind of tradeoff can we make on risks to the nearshore vs. industry getting a return on their investments? Don't think the shellfish industry is any more secure as a result of the work that's been done, nor is the environment better protected. Dave: why don't you pick out places where you cannot have geoduck aquaculture. Second – under Task 1 progress: research programs – I stood at a meeting at the Theodor Roosevelt Club---- said research here was not going to be useful, committee has no ability to regulate research and doesn't have _____ to solve the basic environmental conundrum that's here. Consequences _____ unless you can get yourselves around that piece we're headed for bad outcomes. Finally, I'm up to my ears in mining issues and small-scale prospecting – by the way you can do gold-sifting in nearshore – the scale of one guy with a floating hydraulic ___ with geoduck aquaculture is a scale of consequence – how can you protect the shellfish industry but be more focused on environmental issues?

DRAFT