# Shoreline Management Act
# Rulemaking 2010

## Chapter 173-26 WAC
## Commercial Geoduck Aquaculture

# Meeting purpose

- Ecology - Early input on path forward → both large picture and details
- SARC – Open dialogue vs. committee position
- SARC members – Ask questions prior to providing individual comments

# Rule task - RCW 43.21A.681

- Ecology shall develop, by rule, guidelines for the appropriate siting and operation of geoduck aquaculture operations
- Guidelines must be prepared with the advice of the SARC

# Rule scope

1) Siting and operation of geoduck aquaculture language added to Shoreline Master Program Guidelines
2) Non-geoduck Guideline changes
   - Limited amendments in relationship to comprehensive updates (section 401)
3) “Housekeeping amendments” to ensure rules are consistent with state statutes
   - Update water body lists to reference local SMPs

# Rule proposed milestones

- **Jan.14 – June 5:** Stakeholder review of early drafts
- **Aug. 18 – Oct. 18:** Public comment period
  - Draft Rule
  - Small Business Economic Impacts Statement (SBEIS)
  - Preliminary Cost/Benefit Analysis
  - Draft SEPA Addendum to Guidelines FEIS 2003
  - *Hearings: Moses Lake, Olympia, Aberdeen, Mt. Vernon*
- **Dec. 7:** Final SEPA published
- **Dec.14:** Adoption (Ecology director signs)
- **Jan. 8:** Effective date

# SEPA

- Addendum to Guidelines FEIS 2003
- Two subsections?

Non-guideline chapters (173-18, 20, 22, 27)

- Add chapters to FEIS
- “Housekeeping” amendments usually considered exempt

Guidelines chapter (173-26)

- Add to existing analysis of geoduck, and other topics as needed

# SMP Guidelines

**Shoreline Management Act**
RCW 90.58

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**Shoreline Master Program Guidelines**
WAC 173-26 Part III

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**Local Shoreline Master Program**
Local Ordinance

↓

**Local permit**
WAC 173-26-241(2)(b)

# SMP Guidelines

- Layered local planning structure → changes must be integrated throughout Guidelines rather than stand-alone section
- Other elements of Guidelines and laws remain in place
- Effectiveness date at local level under discussion (AG input needed)
  - 30 SMPs already adopted by state will incorporate next local update cycle (e.g. Whatcom 2018)

# SMP guidance

- Geoduck aquaculture best management practices
  - Delivery Methods
    - Regional planners
    - SMP Handbook
    - Web-based Shoreline Planners Toolbox
    - Manual
  - Goal - provide by January effective date

# Proposed changes: Sources

- SARC Legislative Report, January 2009
- Activities since January 2009
  - Comments on June 2009 (January 2010) draft
  - SMPs adopted and under way
  - Public and private scientific research
  - Permitting experience
  - Legal opinions and case law, AG's review of proposed language

- **Be responsive to ever-changing regulatory, scientific and cultural landscape**

# Objectives: Siting

- Clarify that geoduck aquaculture is a water-dependent use "*by reason of the intrinsic nature of its operations.*" *WAC 173-26-020(36)*

- Clarify that as a use, shall be considered in use element that considers "*general distribution…location…extent of use on the shorelines.*" *WAC 173-26-176*

# Objectives: Siting

- Clarify that local governments should include geoduck aquaculture in inventory and characterization work as foundation for use element. *WAC 173-26-201(3)*

- Add language that acknowledges geoduck aquaculture not considered development in all cases. *Attorney General Opinion 2007 No. 1*

# Proposed changes: Siting

- WAC 173-26-201(2)(d)(i) and (ii)
  Preferred uses-reserve appropriate areas for water dependent uses
  - Local governments should consider creating reserve areas that are ecologically intact – upland to aquatic
  - Local governments should consider commercial aquaculture when reserving areas for water-dependent uses

- WAC 173-26-201(3)(d)(iii)
  Addressing cumulative impacts
  - Local governments must consider “uses” such as geoduck aquaculture along with development

# Proposed changes: Siting

- WAC 173-26-201(3)(c)(xi)

  Inventory shoreline conditions
  - Local governments should compile information relevant to siting commercial geoduck aquaculture

- WAC 173-26-201(3)(d)(vii)

  Water quality and quantity
  - Local governments should review data relevant to shellfish for human consumption when identifying water quality and quantity issues

# Proposed changes: Siting

- WAC 173-26-211(5)(c)(ii)(E)

  Aquatic environment designation
  - Local governments should classify areas for commercial geoduck aquaculture where conditions are suitable

- WAC 173-26-241(3)(b)(i)(B)

  New siting section
  - Local governments should direct commercial geoduck aquaculture to appropriate sites (water quality, sediments and topography, land and water access) that won’t require significant clearing or grading.

# Proposed changes: Siting

- WAC 173-26-241(3)(b)(i)(A)

  New general provisions section
  - Clarifies aquaculture is a water-dependent use
  - Local governments should consider how to minimize conflicting upland uses that affect water quality, etc.
  - Local governments should assure no net loss of ecological functions
  - Local governments should classify appropriate areas
  - Local governments should specify how public access will provided or maintained to publically-owned lands

# Objectives: Operations

- Regulatory consistency – HB 2220, Section 4
  - Respect local authority
  - Adequate public notice and opportunity
  - Minimize costs and paperwork for local governments and operators
  - Predictability for all interested parties

- Be responsive to new information
  - Periodic review and oversight →
    - Learn from experience
    - Change limits and conditions over time

# Proposed changes: Operations

- WAC 173-26-241(2)(b)(ii)(D)
  Conditional uses
  - Local governments must issue a conditional use permit for commercial geoduck aquaculture in critical saltwater habitats

- WAC 173-26-241(3)(b)(i)(C)(I),(II),(III) and (IV)
  New conditional use permit section
  - Local governments must require a permit for new and expanded operations

# Proposed changes: Operations

- New conditional use permit section (con't.)
  - Local governments should require an operations plan that contains:
    - Description of anticipated activities
    - Any monitoring or reporting requirements
    - Copy of federal or state permit application
    - OR - proof of landowner permission, map, list of adjacent property owners, measures to achieve no net loss, and management practices for mooring, parking, noise, lights, litter and other impacts

# Proposed changes: Operations

- New conditional use permit section (con't.)
  - Local governments must recognize that operators have a right to harvest once planted
  - Local governments should establish monitoring and reporting requirements
  - Local governments are provided a list of limits and conditions permits to consider, with more detail provided through handbook etc.
  - Local governments should provide public notice within 300 feet of proposed project boundary

# Proposed changes: Operations

- New conditional use permit section (con't.)
  - Permits are subject to a five year review cycle by local governments and Ecology
    - Supplemental operations plan required
    - Copy of production data submitted to WDFW and sitemap of planting and harvesting required
    - Allows for review of activities, change in limits and conditions

| Year | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Permit actions** | First site plan submitted and conditions for approval reviewed in context of existing BMP guidance; CUP required for commercial operations | | | | | Site plan updated and conditions for approval reviewed in context of updated BMP guidance | | | | | Site plan updated and conditions for approval reviewed in context of updated BMP guidance |
| **Planting and harvesting actions** | Planting and subsequent harvesting that follows BMPs → | | | | | | | | | | |
| | | | | | | Planting and subsequent harvesting that follows updated BMPs → | | | | | |
| | | | | | | | | | | | Planting and subsequent harvesting that follows updated BMPs → |
| **State actions** | Ecology publishes and other guidance based on current science and results | Sea Grant research available | Sea Grant research completed (if funded) | Ecology updates BMP and other guidance based on current science and results | | | | | Ecology updates BMP and other guidance based on current science and results | | |

# Questions, comments?

**Website: Google Ecology shoreline rule 2010**
**http://ecy.wa.gov/programs/sea/shorelines/smp/rulemaking_new.html**

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