Meeting Notes

Shellfish Aquaculture Regulatory Committee

August 11, 2008
9:15 a.m. – 2:00 p.m.
Ecology Headquarters Auditorium
Lacey, Washington

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

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

Presenters: Dave Anderson (CTED)

Interested Agency Staff: Adrienne Stuart (Rep. Lantz's office), Cathy Barker & Jessie DeLoach (DOH); Hugo Flores (DNR); Jim Weber & David Fyfe (NWIFC); Cinde Donoghue & Joshua Brann (Thurston Co.);

Other Interested Parties: Paul Sparks (WA Council of Trout Unlimited), Marilyn Showalter (self), Anne Mosness (Go Wild Campaign), Kris Mansfield (Harstine Island), Bill Burrows (Citizens of Harstine and Stretch Islands), Charlene Anderson (property owner), Jerry Anderson (property owner), Melinda Gray (AMEC); Evan ___? (Northwest Farm Credit Services); Curt Garrigan (SCS)

Facilitator: Annie Szvetecz, Department of Ecology

Note taker: Candice Holcombe, Department of Ecology

Committee Business

Review agenda:

- Elizabeth Van Deren is ill and cannot present her internship summary today. Perry will give a brief summary and we will post her presentation to the website.
- No comments. Agenda Approved.

June Meeting Summary:

- No comments. Approved.

Announcements:

- Welcome new members Rich Childers and Bob Sizemore (alt.) from DFW; Trish Byers (alt.) from Pierce County; Blain Reeves from DNR.
- Introduce John Dohrmann, formerly of Puget Sound Authority/ PSAT. John will be Ecology's lead for the SEPA/rulemaking process for SARC.

Discussion of draft guidelines (John Dohrmann, Department of Ecology)

- Presentation on website.
- Three major sections: SMP "zoning" for aquaculture; requirements for siting and operations; required approval sand application process.
- Zoning: Is system laid out in current guidelines adequate? Probably not.
- Note that SARC has discussed separating large and small operations; non-commercial operations may also need to be considered.
- Current zoning guidance stipulates five environments for upland areas (above high water mark); one for below high water mark (aquatic).

- Jefferson County has proposed "aquatic" and "priority aquatic" designations to help distinguish between shellfish aquaculture and non-shellfish aquaculture areas.
- Critical Area Designations – GMA defined fish and wildlife habitat conservation areas; SMA guidance calls for designation of Critical Saltwater Habitats (kelp, eelgrass, forage fish, threatened species habitat). Also says all public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Local governments should consider both commercial and recreational shellfish areas. (occurs in both SMP Guidelines and Growth Management Act guidelines. The guidelines for designating fish and wildlife habitat conservation areas are under the Growth Management Act.)
- New zoning guideline options:
    - No change
    - Subdivide aquatic designation to identify areas where geoduck aquaculture may be allowed.
    - Subdivide critical area designation to better identify areas where geoduck aquaculture may be allowed.
    - Create special overlay (special area planning) to identify those areas where geoduck aquaculture may be allowed.
- Shoreline Inventory and Evaluation – in revising SMPs, local jurisdictions will be evaluating current data and trends regarding
    - Physical characteristics of the habitat;
    - Terrestrial and aquatic vegetation;
    - Level of human activity;
    - Restoration potential;
    - Tributaries and small streams flowing into marine waters;
    - Dock and bulkhead construction;
    - Conditions and ecological functions in the near-shore area;
    - Uses that may negatively impact saltwater habitats;
    - Analysis of data gaps.
- Geoduck aquaculture "zoning" criteria may include:
    - Slope and sediment requirements
    - Habitats to be avoided/protected.
    - Possible conflicts with surrounding areas.
    - Public access or navigation leads.
    - Consideration of ownership patterns.
- Cyrilla: On slide 9, #3 is different from 2 and 4. 2 and 4 are more tied to the ground—a place on the map; critical designation tends to be more performance based. Do 2 and 4 allow you to get to land use conflict and compatibility criteria better than critical areas? Not everyone has mapped their eelgrass, for example.
- John: Eelgrass comes and goes by itself, so some of these designations can be a moving target. It would be an unfair expectation that local jurisdictions will subdivide shoreline maps around every place there's eelgrass today as opposed to broad strokes. Other issues could be considered at a site-specific scale.
- Diane: I like having these options out there in writing so we can get our heads around it. What Cyrilla said was… a lot of saltwater habitats and critical areas,

but there are protections for those areas in SMPs if they are there. Same thing could be done potentially with aquaculture sites. Having areas where aquaculture can be helpful to all of us and reduces conflict. Lets people know that they are buying lands adjacent to approved aquaculture lands. Industry is so dependent on clean water; as new development comes in, it does not protect us from upland uses, and then we are zoned out. If we only have one spot on a map and it gets polluted, then we are done. How do you address that?

- Annie: Couldn't you have a critical area and subdivide it too? Are they mutually exclusive? (John: Yes, that's an option.)
- Diane: Pollution sources are directly upland of aquaculture. Maybe we could set higher requirements for septic and such directly upland.
- John: The concept of critical saltwater habitat designation should receive protection by considering it when adjacent lands are approved for certain uses; so development on lands adjacent would require some additional thought.
- Perry: Reminder that we have to work on shoreline guidelines, which only relate to SMPs locals are adopting. But ultimately those will be brought into local comprehensive plans, and through that comprehensive plan you can extend your vision beyond the shoreline to what's happening upland. But for us, we have to be looking at shoreline areas. That's where the relationship between what's happening in the water and on land is critical. Dave, is Pierce still considering multiple aquatic designations? (Answer: As far as I know)
- John: I should have offered one more alternative: The idea of a general statement or assignment. Currently the Guidelines direct locals to at least have the five onshore and one in-water environment, and locals are free to add additional environments of their choosing. We could recommend that they have some aspect of their local scheme that differentiates in-water environments, and leave it to them whether it's in aquatic zones or overlays. We don't have to tell them what tool to use, just to differentiate whether they will or will not allow aquaculture, as opposed to site-specific design.
- Diane: Critical saltwater habitat – In both GMA and SMA, many locals don't realize that shellfish beds are the center of critical saltwater habitats. It's a perception problem – we still have to ask for it even though it's in the acts.
- Laura: I'm confused. I've spoken to people at Jefferson County – they're telling me in their SMP update, they're putting off aquaculture designation. They've been told by Ecology they need to wait for SARC recommendations. Pierce County told me that we need to wait for SARC recommendations too, and that would take care of aquaculture. So they're giving it to you, you're giving back to them – they're going to do nothing. I see there being no regulations, and we'll be worse off than when we started.
- John: HB 2220 says Ecology should develop and adopt by rule Guidelines for locals in developing SMPs. Ecology will not directly regulate this – each local jurisdiction will follow the Guidelines when they write their new local programs; it will only kick in when they adopt their new local program consistent with the Guidelines, then Ecology will review and approve the local program, and then it will be in force.

- Laura: Jefferson County is waiting for Ecology – they don't know what the criteria are going to be.
- Perry: To clarify, the discontinuity of timing has been recognized from beginning. Second, we're not writing regulations; we're giving recommendations, Ecology is amending its Guidelines. Ecology is not telling anyone they must wait for the process to finish.
- Laura: But you're suggesting it. I heard your rep say that.
- Perry: We just accepted Pierce County interim draft guidelines as a submittal.
- Laura: She told them that the interim guidelines would be sunset, will be nonexistent when new guidelines come out
- Perry: That's one of the problems we have with accepting interim updates to SMPs before they move into the comprehensive update. Yes, the interim guidelines will go away, although they could be incorporated into the new SMP verbatim, or not.
- Jeffree Stewart (Ecology planner, SWRO): On Jefferson County, the way Laura speaks of it is not exactly right; the counsel I've given to them they should proceed as they see fit. Down the road, Ecology may or may not accept what they're presently proposing. But I'm not telling them to wait for us, jut saying we're going through the state process at the same time as their local process;
- Cyrilla: My understanding is that Jefferson has preliminarily decided to put aside whether they need to require a substantial development permit; they're deferring to this process and the attorney general opinion. They were going to keep standards; the question of how to implement standards remains to be seen. If we could go back to the X side (#8). There's value here, but if we do this path, we need to have a separate standard or design for aquatic, but it must be tied to upland natural/conservancy, will likely have the best forage fish, salmon habitat, etc., and also the best environment for shellfish aquaculture. That's where the conflict lies. We're trying to protect natural critical areas and the water quality. If I can speak for you (industry) you want to go where there aren't currently people upland, because you know there will be conflict.
- Diane: Yes, that's exactly true, if we get relegated to specific shoreline area out of natural or conservancy, it gives us few places to go. As we get through the science and Sea Grant process, the research will help inform locals on that issue – what are the impacts, how are they mitigated, etc. We do need to be cognizant of where you're going to put aquaculture within that matrix so we're not zoned out of business.
- John: There are developing methods for subtidal geoduck aquaculture. We need to keep that in mind. The bill doesn't limit us to intertidal geoduck aquaculture. We need to consider guidance for both intertidal and subtidal.
- Annie: Is there anyone who thinks that thinks it would be better left as is with regard to zoning? (no response.)
- Perry: The key is on page 10 and 11 – that's where we'll get the info we need. We will use this information to determine appropriate uses of the shoreline. How we do that is they key, or just he fact that we do it. Whether it's with environment designations or whether we tie uses to standards in the SMP back to the inventory,

there are other ways to accomplish it. It depends on where we want the SMP to start getting complicated.

- Laura: Are you talking about new zoning low intensity…?
- John: Right, the new guidelines Ecology will develop for geoduck aquaculture wouldn't suggest that local governments should do anything different to zone; we simply don't address the zoning aspect in guidelines.
- Laura: Changing residential to low-intensity has added a lot more in that category that hasn't been there before. How do you put rural residential into low intensity zone? Used to be large, they shrank so that there's not much natural left. A lot of that land is conservancy, so people have been thinking about these county issues; now the zones they were in are totally changed. You have to figure out what you intended to do and fit it into new zones and make it right. Other counties have talked about the same issue, it just doesn't fit.
- Annie: You're saying there's confusion about how upland designations are being implemented at local level? Maybe that's a parking lot issue to be addressed another time. That may be a bigger issue than this group's assignment.
- Laura: If you were going to use zoning as a tool to manage aquaculture, it's going to be more difficult with the way you have these zones set up.
- Perry: Ecology is not doing the mapping. Change in designations should be the result of local research and work, reflecting the information they have gathered in their inventory and characterization. That is a local process. Regardless of who is collecting it, it should be reflective of current conditions.
- John: Here are three suggestions: 1) when a new SMP is developed under the new guidelines for geoduck aquaculture, there ought to be a discussion of where aquaculture will and will not be allowed at the mapping and zoning phase of process; 2) I think that the five upland classifications and one in-water aren't sufficient to differentiate between where you would and would not want geoduck aquaculture; you need some other way of subdividing aquatic (or overlay). I'm not sure how that would make the most sense. We have the option to tell locals to do it, and offer several methods of how to do it, and they could choose (or we could require one); 3) In the 2003 Guidelines those environments don't line up with the shoreline zones old jurisdictions had in their SMPs – that's a problem everyone is facing.
- Dave: I don't see 2, 3, and 4 as discrete and separate – it always comes back to critical areas designation anyway. If there are areas where geoduck aquaculture is outright prohibited, it would be on the basis of feeder bluffs, etc. It all revolves around Critical Area designations.
- Diane: Regarding Pierce County, I appreciate that Ecology provides the Guidelines but locals have a lot of latitude in how to interpret and implement them. Also, regarding these kinds of proposals, there is a lot of information and good ideas on the table, but I would like the opportunity to caucus with industry folks and then provide comments later on.
- Perry: To David's line of thinking: using the Pierce County model for aquatic and deepwater marine, for an overlay, for example, you would expect some kind of decision-making criteria in those zones as to whether and if and how aquaculture would be regulated in certain areas. Besides 10 and 1 that show physical

- Dave: No matter how one identifies what may be allowed – it only says it can be proposed, it may not be approved. Even in those areas where it may be allowed, the site proposal still has to be reviewed against certain criteria. There would be no section of shoreline where aquaculture would be allowed outright without review – there will always be reviews. Implicit in the idea of areas where it may be allowed is the presence of certain areas where it is outright disallowed, under any circumstance. I think that would be at the local level through designations and inventory – there would have to be something pretty important going on there naturally to prohibit it outright.
- Krystal: I need to digest these options. I would be helpful if we had some professional planners who could lay out the pros and cons and benefits of each option. Maybe they're all good options and it should be up to the counties to decide.
- Laura: What is the purpose of an Aquatic designation? What is it for? Only aquaculture or anything out in that depth?
- John: The Guidelines say that new SMPs should classify everything from high-water mark out as Aquatic, and provides a list of uses allowed in Aquatic environments: navigation, boating, aquaculture, water-dependent uses that would get permission to build over water…
- Laura: So basic marine development? Marine uses? Upland and aquatic may overlap, is that what you're saying?
- John: At a minimum, any new SMP would say any place you go on intertidal, upland would have one of those five upland designations. The intertidal is automatically in the aquatic zone and you would look to see what uses would be allowed there.
- Laura: Florida has preapproved zones; if anyone wants to go into other areas, they can apply, but chances are slim they'll be approved.
- Annie: The work Rick Mraz did with local planners overlaps here.
- Diane: Reminder that we think about what geoduck aquaculture is. It may be different tomorrow than it is today – we continue to innovate and develop new techniques. Tubes and nets may not always be involved.
- Nick: I'm in an area of state that hasn't seen lot of development yet. It seems like in the Sound, given the areas compatible with water quality, sediment and such; we're narrowing this thing down to tiny spots. Does this critical area designation give us some protection from upland development? We're losing these little areas one after another; this discussion sounds like it's moving toward narrowing the areas of farming activity more and more, so now we have this little piece. Is there something in the Guidelines that could suggest once an area is designated for aquaculture, it will get protection from upland development?

- Perry: Good question, and I think the answer is yes. You can look at our current Guidelines to find how aquatic area is defined and what uses are allowed.
- Cyrilla: Residential is a preferred use, so long as it is done in a way to not damage the environment. Priority aquatics designation may be a way to allow single-family residential development while avoiding bulkheads, septic tanks, etc. (page 28 of Guidelines).
- Perry: Is the language for aquaculture the same?
- Tom: I'm reading the section of the Guidelines about preferred uses. I will put it on the screen after break. WAC 173.26.201.2d
- Laura: I've heard several times that we have less and less areas for shellfish aquaculture. And I've heard there are more acres available for commercial harvest due to water quality than ever before. Is that right?
- Cathy Barker: You may have heard that, I'm unsure if that's the case. I will verify.
- Diane: Comment about context of that statement.
- Perry: Dept of Health doesn't certify land for aquaculture until they're asked. Industry is asking for more.
- Descriptions of environment designations: 173.26.211.
- **John's Presentation, Section Two:** Requirements for geoduck aquaculture: siting, design & operation
- **Siting:** Recurring Alternatives
  - Leave it out.
  - Direct local jurisdictions to address it but provide no specifics (general statement).
  - Provide specific requirements (can also be a range or can be a performance measure).
- See presentation for more details.
- Paul Sparks on Slide 14: are those two options offered as examples, or are they the two preferred at that this time?
- John: These are suggestions from previous discussions.
- Cyrilla: We've talked about 10 feet from eelgrass or kelp beds, but we haven't discussed whether 10 feet is the right number or not.
- Blain: When I read these options, they seem very specific, but Ecology keeps saying they are going to be providing general guidance. Could a local jurisdiction decide that a certain standard is not applicable in their area and disregard it?
- John: If we just want to make a general statement, we still have a choice as to how specific and prescriptive the language should be.
- Blain: Assuming you got consensus on a specific standard, how important it is to Ecology that a local jurisdiction adheres to that standard?
- Perry: That would probably depend on which standard you're talking about. The overriding standard is no net loss. If a local jurisdiction offers a reasonable alternative, we may consider it.
- Dave: If we just went for general guidance, I am a big fan of specific standards or at least references to sources of those standards. For example, send us to Fish &

Wildlife to read their priority habitat standards. Even a reference is preferable to just a standard.

- Sally: Could you run us quickly through all the siting requirements that are summarized, then we can come back through and talk about specific ones.
- Perry: Under the options we're considering are more general rules, and more specific guidance (more specific requirements, supporting material). The advantage of that is it's easily updated to stay current with science. (It's easier to update guidance than a rule.)
- John: These are all the different issues that could be included in SMPs
- Diane: So currently the guidelines require no net loss, protection of salmon habitat, so I could see a technical document that gives counties information and could be updated over time. When we're talking about geoduck aquaculture, we need to be clear on exactly what aspect we're talking about: Tubes? Nets? Harvest? These techniques may change, so we need to know. What science has shown that we should not have geoduck aquaculture in pocket estuaries? What are we protecting them from?
- Bryan: In talking about siting, if you don't tie it back to the core of what we're trying to achieve (and in shoreline rules it's No Net Loss), you can stray into the difficulties that Diane is pointing out. Are we trying to say don't allow a geoduck operation for which you cannot mitigate for impacts to ecological functions, or which can't be shown to result in no net loss? Or before we get to that, are you going to talk about areas where it's okay vs. not okay. If so, by what standard? I hope that everything can be tied back to a key set of principles we're trying to protect.
- Annie: John is presenting and organizing suggestions that have come up. These aren't thrown up as new suggestions. These have come out of the group already.
- John: Another alternative is to say habitat ecological impacts should be addressed for each site. Instead of having specifics, could have locals look at potential environmental impacts for a proposed site and determine whether they're able to mitigate.
- Laura: Salmon restoration is all over the news, much science is on the record. It's clear there are reasons why we're doing this.
- Perry: We've been operating under the presumption that someone found the no net loss standard to be insufficient. We need to identify the habitat features we need to preserve ecological functions, and provide supporting documentation.
- Diane: And integrate new science as it comes in. It's important for industry to be able to adapt, innovate, expand and grow in response to new information. We need a mechanism to allow us to innovate, so it doesn't come down to very prescriptive requirements. In this context, general statements from Ecology, specific regulations from locals--but not so prescriptive that we can't be innovative and responsive to changes in science.
- Nick: if I were going to come in to apply for a permit, I'd find it helpful to have a list of things to consider when siting. If I check "yes" to pocket estuaries, can I mitigate? If no, I can't use site. I suggest a flowchart/checklist for permit applicants. You almost have to have the local person who's on site and viewing it.

- John: The siting question we're trying to get at is does the site have reasonable access, either from the land or the water?
- Dave: By the time someone submits an application, they have already determined that to their mind, there are no access issues or conflicts with navigation, for example. The debate with the local jurisdiction being adequacy. We need standards, criteria. We (locals) need something we can refer to.
- Perry: Bryan and Dave, do you have analogous situations, for example, with land access? Do you have specific requirements for those about blocking driveways, parking, etc.?
- Bryan: We do have standards, for example for hours of use, but we've taken a mixed-use zoning approach in those areas. If you're a single-family residence adjacent to a home that also has a shop used to support shellfish operations, there are protections for that use that say you must be prepared for noise and such from the operation. I wouldn't want that freedom to disappear.
- Dave: I don't know what the language in our regulations is on that right now.
- Perry: Are there other uses we might be able to draw on that are analogous?
- Dave: I'm not sure.
- Perry: On land access issues (trucks, cars, etc. vehicle traffic on residential street) what's reasonable for the neighborhood to expect, or reasonable limits? Or do we want to leave that up to local governments because you know better? Or we could issue a more general statement that you should take access issues into account.
- Cyrilla: Ecology is the expert on shorelines, and your staff has experience interpreting the SMA. Especially with no net loss, to the extent that you can put your expertise into statements to local governments that help them make those decisions, you should. There are other parts of the SMP Guidelines that address parking, for example, so we need to make sure we're being consistent with that.
- Diane: For the most part, we access by water unless we have upland owner permission. If we use public roads and adhere to public requirements, those aren't specific to aquaculture. I can't imagine someone would not have access to a site and want to farm it.
- Laura: A the Pierce County hearing, there was a lot of discussion of parking, a lot of opposition to industry using roads for parking on private roads. What I'm hearing here is not consistent with what I'm seeing in Pierce County
- John: The use of private roads to support geoduck aquaculture is not all that different from using private roads to support other kinds of business. We could say that locals should treat geoduck aquaculture the same way they treat other industries.
- Diane: I think a general statement, so guidance is appropriate. But I'd say the difference between a beauty shop and geoduck aquaculture and its associated use is that it is a preferred use as opposed to a beauty shop. Aquaculture is preferred use in shoreline jurisdiction; a beauty shop is not.
- Slide 16.
- Laura: Where is your restriction based on moving into neighborhoods? This slide?
- John: Yes.

- Laura: Aquaculture moving into residential areas with noise and lights… "not allowed if site needs major physical alterations to substrate or slope". What geoduck operation would not?
- John: That's a different question, addressed later.
- Laura: Residential is not supposed to move into agricultural, residential feels the same way about aquaculture moving into areas that were not previously industrial.
- Dave: This is helpful information to have in permit applications. Needs to ask the question of what is the impact on a beach/boat launch, etc.
- Cyrilla: In Jefferson County, people who live in residential embrace the resource-based industry because it is the base of their economy. That is an example of how it needs to play out at the local level. Locals need to be able to ask "Is that part of our vision for our shorelines or not?" We need a technical reference to let people know the current state of geoduck aquaculture. If you aree trying to decide if there are compatibility issues, your community should have that reference.
- Bryan: I am still struggling with idea that there are certain areas it should be prohibited. Seems you would want to consider impacts to substrate soil, for example, and if you cannot adequately mitigate for impacts, then it wouldn't be allowed--as opposed to a complete prohibition in certain areas. My idea of guidance would be to evaluate impacts to adjacent uses. The Sound itself is not residential. Residential is an upland, adjacent use.
- Ward: People in the ara of Thurston County near my home (low-density, 5-10 acre lots) are generally supportive of geoduck aquaculture. I believe people in higher-density areas would be more likely to object to it.
- Laura: These guidelines must be able to give an adjacent owner the ability to protect themselves from silt, the biggest problem.
- Slide 17: The second bullet is placeholder. Different areas vary on whether upland property owner also controls what happens in intertidal areas. Means that in some areas we'll have more conflict than in others. We can address, or ignore, because we know it will play out locally.
- Cyrilla: State-managed vs. privately-managed tidelands. State-managed ones are under DNR's BMPs. Private tidelands won't be regulated by the DNR BMPs. Some counties have more state-owned, others have more private tidelands. Potential for conflict between adjacent property owners cultivating geoduck, one on private lands, one on public lands. Different standards could cause conflict.
- John: DNR BMPs are a landlord-tenant relationship, which allows DNR to have lots of control over the operation that may go beyond the authority a local jurisdiction has under its police powers to regulate what happens on private property.
- Diane: It may be more appropriate within SMPs to get at why the owners object. Is it noise and lights? Can it be mitigated? Scope/scale? Needs to be taken into account. If you just outright prohibit an owner from using his tidelands because of adjacent owners, that's not right.
- Sally: I've been looking at the Guidelines section on aquaculture, to compare the level of detail in sections on mining, aquaculture, etc. Not sure how much more we'll get out of this "chewing" discussion. Do others feel ready to get to the general statements and go in from there?

- Diane: I absolutely agree. If you look at the other sections in Guidelines, there are a couple of paragraphs or pages that give guidance to local governments. We'll have to extend ours a bit, but need to guide local governments generally, and have technical documents that get to details of how they do that.
- John: Some of these siting issues also occur at the operations level. Maybe we don't need to include them under siting if they also are covered in operations.
- Cyrilla: The length of the guidelines should be whatever we need to make it good. Bulkhead section is 5-8 pages. I agree with Sally that we should move forward on siting requirements – after months of discussion, we all agree there are siting guidelines needs, we just need to decide how specific we want to be.
- Krystal: From the letter I submitted to SARC in February from Save Our Shorelines, one of their recommendations was either updating or creating a new aquaculture siting study, like the one Ecology did in 1986 (which applied to floating aquaculture. Apply new study to intertidal aquaculture.
- Diane: It's a visual impact study.
- Laura: Industry is heavily represented on most of these planning commissions. I'm concerned about this idea of technical advice that's not binding. What will ensure that counties follow the guidance when there's money to made?
- Note: Please submit comments and suggestions on this framework to John Dohrmann (jdoh461@ecy.wa.gov) and copy Candice Holcombe (chol461@ecy.wa.gov)

Update on UW Intern's Work (Perry Lund, Ecology)

- Elizabeth has done good work this summer. We assigned her three tasks for her internship:
    - Review Sea Grant research program against the list of identified knowledge gaps from shellfish research symposium.
    - Compile SARC public comments and catalogue by general themes
    - Observe aquaculture field work.
- If Elizabeth cannot come back for the September meeting, we'll provide a written summary of her work.

Discussion of GMA's Designation of Aquaculture as Agriculture (Dave Andersen, CTED)

- Tom: The legislature integrated GMA and SMA in 2003, and did this by making the SMP part of the local comprehensive plan. They said each component stands equally, and all parts have to have internal consistency. And they must be consistent with the land-use map. Dave Anderson is involved with an update of CTED's GMA guidance. One of those features is the designation of agriculture lands.
- Dave: Back when the GMA was passed, one of things the legislature asked local governments to do was to designate agricultural resource lands of long-term commercial significance. They asked CTED to develop a set of criteria for locals to use when doing their designations. We know that what constitutes the agricultural resource lands is three pronged test: 1) not already

characterized by urban development; 2) are used or are capable of being used for farming; 3) must be of long-term commercial significance.

- Once designated, 1) must conserve (not build houses or shopping malls); 2) must protect from operational incompatibility with adjacent uses. They are not subject to nuisance laws, have to be violating a permit condition.
- When CTED passed minimum guidelines, they didn't consider shellfish aquaculture. We're now in the process of looking at these guidelines and what we tell local governments to do with their comprehensive plans. A lot of people are saying that shellfish aquaculture lands are agriculture lands. This needs to be addressed.
- I'm here today to ask the Committee what you think we ought to do about this.
- We cannot modify statute – our rules must be consistent with existing statute.
- We must be able to justify change in rules. We have to make a judgment call about whether this is something we are going to be able to address.
- We have to be careful not to create conflict with shoreline rules, or a situation in which locals have to have conflicting regulation, need to avoid putting little innocent phrases in rules that create obligations we didn't mean to create.
- Given the way this framework is set up (3-prongs, operational compatibility) if we are going to designate shellfish beds as agricultural lands, how should we do that?
- Bryan: If you go to the Pacific County website, we have designated all of our aquaculture lands as agricultural lands (we did cranberries and all aquaculture). We require landowner notification upon purchase of property. 75% of our county was designated as forest land. The portion of forest lands around the bay is transitional (of long-term significance) allowing both forestry and very low density residential development. We should look at that and make sure whatever changes you make don't conflict with that.
- Cyrilla: My biggest concern is that someone might think that falls under the moratorium the legislature issued on agricultural lands, and that shellfish beds would no longer be subject to CAOs and the issue would go to the Ruckelshaus center, where we wouldn't have input. Let's keep hashing this issue out here.
- Blain: I read a Supreme Court decision recently that in counties planning under SMA, the SMP prevails over CAO.
- Tom: They did uphold the Anacortes decision of the Growth Management Hearings Board. That's the heart of the issue – they upheld a process where Ecology gets involved at the end of a Critical Area update, and the part of the update in the shoreline areas becomes part of the SMP. They weren't trying to change the timing of updating new protection. After a Critical Area update, the final step is that it is adopted by Ecology as an addition to the SMP.
- Dave: These things occur in shoreline environments – any solution or guidance has to be done understanding there is a connection between these rules and what happens on the shoreline.
- Diane: There is statute saying legislature shall consider aquaculture as agriculture. Also, I know there's been long-term conflict between the

agricultural community and proponents of CAOs. It's difficult for us in the shellfish industry -- we are a critical area, but we're also agriculture. This needs to be ironed out very clearly where it all falls out, how it all fits together. Finally, this is a step forward in our management of shellfish lands. It's different in the shoreline because upland with long-term significant land, you have control of its boundaries. We don't have the same control with the water – it's a dynamic environment instead of specific piece of ground.

- Laura: Is industry requesting this be looked at? Is that where this is coming from?
- Dave: Yes, I have heard from the industry in our process. I don't know if that's where all the comments have come from. We set our website up so we don't know who the comments came from. I do know that Taylor has come to one of our workshops.
- Laura: How do you define shellfish beds that would fit this criteria? Already designated? Is all shoreline characterized as shellfish beds? Is that where we're heading?
- Dave: I don't know that they've said that, and the GMA doesn't necessarily require a county to do that. A County would have to determine how it would apply to their particular geography.
- Laura: There's no law that the county has to designate them? Some counties have (like Pacific – historically shellfish). Pierce has not. Is that public or privately held tidelands? Is this just another way of going around that (what?) and getting it designated? What is the end result going to be, and how many acres are you talking about?
- Dave: I'm not sure if anything would really change. Could give an overlay – they'll still go through reviews, could still be conditioned the same. It seems benign to me. It would be helpful if you could find one that benefits property owners (notification when they buy).
- Laura: My understanding is that you wouldn't have the same environmental restrictions or conditions on nuisance (light, sound, etc.)
- Dave: Would these lands still be subject to CAOs?
- Tom: All CAOs being passed right are precluded from dealing with agriculture activities. Until the Ruckelshaus Center and legislature acts here in the next couple of years, then you'll have to integrate agriculture into those CAOs at that time.
- Dave: You can't change the way agricultural lands and CAOs interface before then. If you have an exemption and you update your CAO_____?
- Laura: So if certain beds got designated under this, would they still be subject to environmental review?
- Dave: With upland farming, CAO still applies (not to pre-existing uses, though). The main implication is that Ag designation means you can't allow it to be converted to uses other than farming. Second, it protects the resource activity from operational incompatibility with adjacent uses.
- Laura: So they can do whatever they want, lights, noise, etc. and we can't sue them, right? That's what the industry wants.

- Cyrilla: What could hurt the resource? A marina or a sewage treatment plant could interfere with the use. You have to think about the big picture, future development. Are we making a long-term commitment to shellfish and saying no to new marinas, sewer outfalls, etc?
- Diane: I don't believe there's anything in RCW or CAOs that would preclude a local government from setting standards for development in Agricultural lands of long-term significance. Nothing is wrong with a state saying we want to keep our farmland and resource industries intact, protected, and undeveloped. It should be a priority and value for all citizens, not just industry.
- Eric: This wouldn't apply to going into new areas. Right? Only existing agricultural lands.
- Dave: Asks Bryan to elaborate on how Pacific County works it.
- Bryan: Say someone wants to subdivide land on Willapa Bay – there is a standard for increased septic, stormwater treatment, but there's a notice on all parcels that you understand you're in this area and upland support services are allowed for aquaculture, but you might also see or smell operations. It creates an additional standard to protect industry from nuisance laws.
- Dave: That doesn't mean they're immune from other regulations and permitting requirements.
- Bryan: No, that's exactly right.
- Laura: Do you have a map of all existing shellfish beds that would be eligible for this? What I hear is that it's only what is there now, not new.
- Dave: If you were to apply the GMA framework, I can't guarantee there wouldn't be any new lands. Take out this urban ….??? You'd start with what is capable of being used for shellfish aquaculture, and then criteria to evaluate to what degree those have long-term commercial significance and which don't. Might be based on projected water quality in a given area. That would narrow it down to those lands eligible.
- Laura: So basically, it means that all the work this committee has done would be for naught because they couldn't bring a nuisance suit against a shellfish company.
- Dave: We don't want to upset existing apple carts or create something that makes a confusing enforcement mechanism. We want to create more clarity, not less.
- Laura: Forage fish area, Thurston County designated. Would there be environmental controls or not really?
- You're still obligated to protect critical areas. If it's forage fish, you have to provide for no net loss of ecological function.
- Perry: Tom, do you want to play this out and say if these were designated under GMA as Ag lands, and a community comes along and updates their SMP, those elements of the CAO are incorporated into the SMP along with our standard of equivalent protection and so on? I was suggesting it may be a kind of overlay where one use doesn't preclude another, but we must have an integration of these standards, and the portion of the Critical Area in shoreline become part of the SMP and not GMA.

- Tom: keep in mind the land use map for the community is the umbrella for all of this. Most attention has been on the zoning of these Ag lands.
- Dave: The only map absolutely required in a comprehensive plan is a future land-use map, which includes resource lands designation.
- Tom: It would be an overarching plan for the entire county (economic development, land use, shoreline program). All elements are supposed to be internally consistent. County would be the ones making these designations, not CTED.
- Eric: Keep in mind: not all Ag lands are **designated** Ag lands. Have to be of Long Term significance. Designated area tend to be larger tracts of land.

Status of Old Action Items:

- Tom was going to continue to work on Adaptive Management and what other programs have done. In progress.
- Laura was going to continue to look into other state's adaptive management plans (or BMPs). In progress.
- Krystal: I will have my comments on John's presentation by next time.
- Ken Chew

New Action items:

- Committee staff invites written feedback on discussion draft from John.
- Suggestion of subgroup working on pros and cons of different options – thoughts?
    - Sally: Seems like there's an overlap with Rick Mraz's work here – could Rick be the convener and work with Cyrilla on this?
- Blain Reeves: Request from WA Sea Grant to review a geoduck briefing book. Sea Grant through David Gordon (geoduck scientist) has a draft briefing book – they are touting it as a briefing book for legislators, media, etc. They've given until Aug 19th to provide comments. That's a short amount of time for comment. I ask Ecology to please intervene.
    - Perry will talk to Raechel and Penny at Sea Grant to find out exactly what's going on.
    - Sally: If Perry's making the contact, he could comment on behalf of the committee and say that there should be some discussion of the rest of the work, even if it delays publication a few weeks.
    - Eric: There should be a message that SARC needs to review this before it goes out.
    - Jeanne: I think they're try to make the PCGA (?) conference in September.
- Sally: What's the status of the integrated permitting subgroup? Answer: They gave an update at the last meeting. It should be in meeting notes and on website. And they were going to have follow-up meeting, so we should try to get another update.
- Laura: I am still on record as requesting a map of all geoduck farms. I still haven't received it. I want a copy of whatever they do have, even if it's not complete.

Adjourn: 1:55

Public Comments

William Burrows: I would urge SARC members consider the work of Professor Roger Newell from the University of Maryland's Horn Point Laboratory regarding shellfish biodeposits and their impacts on the benthic environment. Professor Newell's studies clearly show both the positive and negative impacts of shellfish aquaculture and makes a very strong case for regulating planting densities of the culture. I have prepared a 20-minute presentation that summarizes Professor Newell's work on biodeposition, current speeds and ecological impacts. You can find the "launch" page at: http://www.myvbprof.com/2007_Version/SARC_Geoduck.aspx.
Thank you for taking time to learn more about this important aspect of shellfish aquaculture.

Paul Sparks (Washington Chapter of Trout Unlimited): For some time, one of the agendas for the shellfish industry has been to obtain protections for their industry similar to those enjoyed by upland farming under the provisions of the GMA. However, a close examination of geoduck aquaculture, which is the mandate of this committee, shows enough distinctive differences to make the comparison with upland agriculture an apples and oranges proposition. Some of those are listed below. However, the big issue here is one that revolves around the precedent such an action would establish. Extending special protection to shellfish aquaculture would open the door for similar protection for all forms of finfish and shellfish aquaculture, a proposition that at the very least needs to be aired in a larger and more public forum than this one. Bringing a question with those kinds of important implications through the back door, we think would be a bad idea and most certainly would oppose. Beyond this fundamental concern, the following points are worthy of consideration:

1. Farm protection began as a consequence of the explosive growth of urban and suburban growth. When the GMA was drafted, it was based on a compromise that recognized the dangers to established agricultural interests and the need to protect them from the pressure of growth. This in turn, from the perspective of cities and municipalities, seemed like a win/win situation because it preserved open space. This would seem to be a fair comparison for shell fish operations based on long term holdings. However, most geoduck aquaculture takes place on tracts in the nearshore that were never previously exploited for aquaculture. This is a new use and, as such, at variance with the intent of the legislation that created the special case protections for existing agriculture. The move for GMA was strongly environmentally oriented and preservationist. In western Washington, it was thought that the most desirable parcels of land that would need to be preserved would be engaged in forestry, although the political compromise covered all agriculture. Once again, the intention was preservation and to inhibit development. The distinctive difference presented by the expansion of geoduck aquaculture is that it converts a natural

ecosystem to commercial production of a monocrop. It represents a form of development, not preservation.

2. Existing legislation privileges shellfish growing in the nearshore, however it also mandates that new development should result in no loss of habitat. This would seem to protect pre-existing shellfish farms and to render further protections such as those for upland agriculture as redundant. On the other hand, the injunction against uses that impair or substantially change existing unimpaired ecosystems would seem to militate against an industry expansion in previously undeveloped areas of the near shore.
3. Two of the most widely heard arguments for special protection of shellfish agriculture turn on a nostalgic depiction of geoduck growers as small farmers and on the shellfish industry's claim that geoducks are a powerful tool in cleaning up the waters of Puget sound. Protection of family farms and small farms has had a special power in growth issues debates, and especially so with the rise of hobby farms. While many small shellfish operations are the equivalent of family farms, the bulk of all geoduck production comes from a handful of large shellfish firms. The largest of these, Taylor Shellfish, with holdings in Mexico, British Columbia, Fiji, and Asia, had sales of thirty five million dollars in 2005. The argument for commercial shellfish as a tool in cleaning up the sound has some basis in fact but also may profit from exaggeration. The shellfish industry has been a powerful advocate for clean water. However, there is no scientific support for the idea that domesticated shellfish are better for the environment than the wild variety or that the environmental costs of shellfish aquaculture should not be carefully weighed against any potential good that it might produce. Significantly, in the Chesapeake Bay, there has been a movement encouraging the revival of native shellfish as an alternative to shellfish aquaculture. We are spending literally billions in the NW on Salmon recovery. Shellfish farming is now recognized as a limiting factor for salmon. Given that and potential impacts on forage fish, is it appropriate to offer special protections to an industry, however well intended, that may be an obstacle to a multibillion dollar recovery effort?
4. Shellfish farmers enjoy large direct and indirect subsidies not available to upland farmers. The DNR's system for leasing tidelands keeps the costs of shellfish production artificially low on state lands as well as leased private tidelands since the owners of the latter have to compete with the low DNR rates. These subsidies probably amounted to as much as twenty million dollars a year from the pockets of Washington taxpayers in the late 90's. On upland farms, the tenant returns to the land owner 40 to 60 percent of the gross return on the crop. The tenant subtracts his production costs from this total but the costs for the use of good land are still substantial. Protection for upland

Marilyn Showalter (Jefferson County property owner): Mr. Dohrmann, your getting out these points on paper was very helpful and made the conversation productive. It's understandable that people aren't ready to choose from the alternatives you present, because we haven't had the time to consider the options. The heart of the matter is: What is geoduck farming and its effect on the environment and other uses? Six things distinguish it, and they were not really addressed in today's discussion: 1) the density of geoduck plantings and related waste. 2) the plastic tubes inserted into the beach ; 3) the use of netting over the tubes; 4) liquefaction of the sand at harvest 5) noise and lights at harvest; and 6) the prevalence or penetration of farms over the whole region. Analogy: a 10-acre farm with 10 cows on it is very different from a feedlot. If regulations don't distinguish between casual farming and a feedlot, they haven't protected very much. Salmon are great, but pen-raised salmon are not so great. Puppies are cute, but puppy mills are not. We need to address the issue of 40,000 tubes filled with geoduck in one acre. Since you can't say there's no net loss, since there are no scientific studies on the question, you should prohibit it. The burden of proof has to be on the artificial activity. Do the studies first, and only then, if they show no harm, consider the matter futher. What you need to avoid is the assumption that maybe some beach is "suitable" for geoduck farming because it has one geoduck per 3 square yards, and therefore is the same as 40,000 in an acre. This is the issue that's before this group, and the options on the board today danced all around that basic issue: Is this kind of commercial industrial activity harmful to the environment or not? No net loss and threats to eagles and wildlife are issues this group must consider. Some issues, such as nuisance issues (lights and noise during harvesting) may be more of a local issue than an Ecology issue, but liquefaction of sand is not just a local issue. I'm encouraged by the structure of today's discussion, but I'm discouraged that we've gotten farther away from the real issue instead of closer to it.

Anne Mosness (Go Wild Campaign): Presented a July 2008 prepublication copy of NOAA's manual "Offshore Aquaculture in the United States: Economic Considerations, Implications and Opportunities". This promotional manual, along with the Sept. 2007 handout on "Washington Aquaculture Opportunities for Growth" should make us aware that while we are focused on our work here, what we do in Washington is very important to the nation as whole . As one of the two states in the nation that has allowed private industry to rear salmon in open cages, we have experience with pollution, diseases and other risks from allowing marine feedlots in our marine environment, and the decisions we make in Washington State may influence how other states handle aquaculture.

The references in this NOAA manual on offshore aquaculture are very scant. Many of the contract scientists used by NOAA are paid to promote aquaculture, and their studies are not peer-reviewed. As the NOAA's one page piece from a year ago clearly shows, the agency is promoting expanded * Shellfish production, including oysters, mussels, Manila clams, and geoduck clams * New finfish species such as black cod * Culture of salmon and steelhead * Open ocean aquaculture in the Strait of Juan de Fuca ... *Production of submersible offshore fish cages...."

We haven't agreed to this in either state or federal waters and we're talking about the same push from other agencies that should be protecting our marine environment, wild salmon and other threatened and endangered species. There's very little discussion of risks in NOAA and Sea Grant's material on industrial aquaculture, only promotion. That's what worries me with this process and the information that you are provided to consider.

My family were fishers, and unlike the shellfish industry, we don't think this state owes us the natural resources of the state or that our business goals are this committee's concern. Yet if you make policies that further harm wild salmon and other native species in our region, additional tribal and recreational fisheries will be lost along with continued decline of commercial fisheries.

When any activity occurs that strips marine vegetation from tidelands through bulldozing, liquefying with high pressure hoses, dredging and stomping in tens of thousands of pvc tubes, there are impacts that affect natural resources, livelihoods and recreational enjoyment of our regions by other citizens. This issue is about the perceived entitlement of one industry to take precedence over everything else. This is also about using commercial activities as an indicator of recovery or health of the marine environment. It would be like me saying that the most indicator of Puget Sound restoration is that commercial fishing would greatly expand and while we may think I am referring to small scale, well regulated businesses, I might really be referring to bottom dragging in our estuaries and state tidelands.

The benchmarks we need for restoration of Puget Sound are clean water, undisturbed tidelands, and abundant marine vegetation that support forage fish spawning habitat and healthy functioning ecosystems so our salmon, Orcas and other marine life flourish. We cannot look at increasing private, commercial activities as measures of Puget Sound recovery, particularly since independent science describes many of these activities as actually causing our aquatic resources and waters to deteriorate.

David Fyfe (Northwest Indian Fisheries Commission): I missed the last meeting to attend NOAA's 2008 National Symposium on Shellfish and the Environment in Rhode Island. The results of this two-day symposium in Rhode Island are on their website. It offered perspectives from around the world. Should have lots of good information. (Link: http://aquaculture.noaa.gov/news/shellfishsymposium.html)