JEFFERSON COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street
Port Townsend, WA 98368
Al Scalf, Director

November 22, 2010

Attn: Cedar Bouta
Washington Department of Ecology - SEA Program
PO Box 47600
Olympia, WA 98504-7600

Also Sent via Email to: ShorelineRule@ecy.wa.gov

Subject: Comments on SMA Rulemaking 2010

Dear Ms. Bouta,

We appreciate this opportunity to comment on the proposed rule change to revise Chapter 173-26 of the Washington Administrative Code (WAC 173-26), the SMP Guidelines. We recognize the effort the Department has made in meeting the requirements of HB 2220 by conducting the Shellfish Aquaculture Regulatory Committee (SARC) process, and appreciate that our staff was consulted as part of that effort. We share an interest in how to best manage and regulate geoduck aquaculture because the aquaculture industry is a highly valued and important segment of our local economy. Our county is a leader in farmed shellfish production with locally grown shellfish exported throughout the country and the world.

As you may know, we have been working on a comprehensive update to our Shoreline Master Program (SMP) for several years and our *Locally Approved SMP* (LA-SMP) is currently under review by the Department. We anticipate adoption by the Department in early 2011. Our critical areas ordinance (CAO) was updated in March of 2008 to incorporate best available science as the required by the Growth Management Act (GMA). Additionally, based upon the legislative change under EHB 1653 enacted on March 18, 2010, Jefferson County is currently applying critical area standards within the shoreline jurisdiction in conjunction with the standards of our existing SMP.

Jefferson County can support the rule making changes recommended for those areas identified in WAC 173-18 thru WAC 173-22. These amendments pertain to listing of streams and lakes, and references to wetland delineations and mapping. Jefferson County can support the recommended changes to WAC 173-26-020 thru WAC 173-26-201. These amendments pertain to non-commercial geoduck aquaculture such as definitions, SMP submittals and appeal processes, description of priority species as well as removing the term "large" from the statutory definition of large woody debris.

In regards to the proposed changes to WAC 173-26-221, Jefferson County supports the amendment which adopts the No Net Loss in place of the "at least equal to CAO" provision. Jefferson County has concerns about the amendments proposed to WAC 173-26-221 redefining "critical saltwater habitats".

First, removing the term subsistence should be carefully reviewed in view of tribal treaty rights. Second, removing the reference to commercial and recreational shellfish beds may raise a conflict with use provisions provided by the SMP and CAO regulations of local jurisdictions and the enabling statutes of the SMA and the GMA. Particularly, replacing this section with the term "naturally occurring beds of native shellfish species" needs further clarification. Over the past two years, we have seen legal standards changing. The most significant has been the "at least equal to CAO" provision of the GMA, to the no net loss standard of the SMA, and now a proposal to include a standard of "adverse impact". This may create confusion as to what is allowable and what is prohibited. The interrelationship of these standards needs further examination in terms of project permit decision making and assurances to project proponents who seek to invest in long term stewardship. Finally, within the Jefferson County comprehensive plan, aquaculture lands are designated as resource lands and should be afforded more protection and conservation for long-term commercial significance than uses in other zoning districts.

Jefferson County can support some of the changes in WAC 173-26-241 such as the conditional use permit and public notice provisions. However, permit timeline restrictions and the increase in local government oversight are problematic for operators looking for long-term assurance for their business as well as scarce staff resources. Clearly, a methodology to combine permit review requirements with local, state and federal review agencies must be found to efficiently process proposals while protecting the public interest.

Jefferson County recognizes the often controversial nature of geoduck aquaculture and supports Ecology's efforts to ensure this industry continues to thrive in local waters while adequately protecting natural habitats and ecosystem functions. In order to fully realize these intentions, we strongly encourage Ecology to foster additional dialogue with the aquaculture industry, affected Tribes and environmental interests to ensure these issues of concern are adequately considered and addressed prior to adoption of the WAC changes.

Sincerely,

Al Scalf, Director