

From: [John McCabe](#)
To: [Lubliner, Nathan \(ECY\)](#)
Subject: Imazamox Comments
Date: Saturday, February 15, 2014 12:22:40 PM
Attachments: [eis_imazamox_comment.doc](#)

Dear Mr. Lubliner,

Attached please find my comments.

Best regards,

John McCabe

02.15.2014

Dear Mr. Lubliner,

The review of WA DOE's "Draft Imazamox Environmental Impact Statement (EIS)" has led me to the conclusion that the issuance of a permit for imazamox application to kill eelgrass meadows of *Zostera japonica* on Willapa Bay's commercially used tideland would be capricious.

Biased EIS

NEPA requires the preparation of an EIS that diligently analyses combined environmental impacts. Its purpose is to objectively describe in a reasonably understandable manner the positive and negative environmental effects of a proposed action and thus serve as a tool for decision making. Its preparation should not be deficient of the systematical review and classification of received agency and stakeholder comments. Presumably, an EIS by WA DOE would be of same or similar nature. It certainly is not.

The EIS consists of 142 pages. Its size suggests that WA DOE invested considerable effort in its production. However, closer inspection reveals that this EIS is very biased in favor of the Willapa-Grays Harbor Oyster Growers Association and its desire to kill eelgrass meadows of *Z. japonica* on present and prospective commercial clam beds with the pesticide imazamox. It is difficult for this writer to imagine that the Willapa-Grays Harbor Oyster Growers Association itself could have produced an EIS that is more favorable to their desire of pesticide usage than the WA DOE EIS. Moreover, this EIS can leave little doubt that WA DOE greatly favors the chemical eradication of these eelgrass meadows with imazamox. In fact, WA DOE notes that "Washington State has made a tentative decision to allow the use of imazamox in Willapa Bay for the purpose of controlling *Z. japonica* on commercial clam beds for a period of 5 years."

Reckless Endangerment

The Endangered Species Act (ESA) contains a variety of protections designed to save from extinction certain forms of life deemed endangered or threatened. It is unlawful for any person subject to the jurisdiction of the United States to 'take' any endangered or threatened species within the United States or the territorial sea of the United States.

Section 3(19) defines the term 'take' as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct."

NMFS interprets the term 'harm' "as an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering (Compare 50 CFR 17.3)."

<http://www.fws.gov/endangered/esa-library/pdf/f991108.pdf> (see also in *Babbitt vs. Sweet Home*, U.S. Supreme Court, 1995)

In this writer's opinion, WA DOE's intended permit to destroy eelgrass meadows can reasonably be qualified as an attempt to engage in just such conduct (i.e. harass, harm). The subtle manner in which this EIS admits, yet downplays, the potential risks is rather

remarkable. Also, it seems obvious who paid for the Environ Corp. study. For decades, the extreme ecological importance of eelgrass meadows, including those created by *Z. japonica*, has been confirmed in expert reviews. WA DOE is fully aware of the fact that the recent classification of *Z. japonica* as a noxious weed has been, and still is, heavily contested in Washington State. In view of its many scientifically documented environmental benefits and the recent discovery of additional benefits, the possibility certainly exists that this classification could soon change. Nonetheless, WA DOE appears in a hurry to kill eelgrass meadows and stresses legitimacy of such action in considerable part on the basis of a clearly fragile classification as a noxious weed.

WA DOE a Conundrum?

Repeated mention of this eelgrass species as some “conundrum” has no place in this EIS, particularly since the EIS notes:

“A Meeting for State Agencies (Ecology 2013) a summary of the panel’s assessment of ecosystem services provided by *Z. japonica* was developed. The panel’s summary of available scientific information identified 12 ecosystem services provided by *Z. japonica* that support natural resources and function, two that had negative impacts and three with no impacts.”

WA DOE is fully aware that, from an environmental perspective, there is certainly no ‘conundrum’ whatsoever. Instead, the conundrum is WA DOE’s administrative treatment of tidelands. If WA DOE’s mission statement is to be believed, then its primary responsibility is to “protect, preserve and enhance Washington’s environment, and promote the wise management of our air, land and water for the benefit of current and future generations.”

<http://www.ecy.wa.gov/quality/eco-mission.pdf>

In view of the serious impact on biota on Willapa Bay, especially the likely impact on threatened or endangered species, aspirations of an already very successful group of shellfish producers to expeditiously kill eelgrass meadows to cost-effectively expand their clam production can, at best, only be a secondary consideration. Unfortunately, it appears that WA DOE has made the later its primary consideration. I find it disturbing that WA DOE appears to be dabbling as some economic development authority in an industry it does not begin to understand. This EIS seems to indicate that WA DOE has but little historical or practical understanding of the shellfish industry, let alone clam cultivation. For example, if WA DOE did have any such understanding:

1. it would not, as WA DOE has in the past, continue to repeat the obvious misinformation of “Shellfish aquaculture in Willapa Bay began in approximately 1849”. In recent years, WA DOE has repeatedly been corrected in this regard. Anything remotely resembling aquaculture on Willapa Bay did not occur before the end of the 19th century with the importation for grow-out of Eastern oysters (*Crassostrea virginica*) from the U.S. East Coast. Before this time, only rampant exploitation of the native Olympia oyster (*Ostrea lurida*, aka *O. conchaphila*) existed that culminated in the near extinction of this species in Willapa Bay.

(see also Ruesink: <http://depts.washington.edu/jlrlab/historical.php>; incidentally the same Ruesink that WA DOE quoted ten times in this EIS)

2. it would know that the claim, “Natural recruitment is sometimes supplemented with hatchery seed” is certainly backwards. Commercial clam growers in Washington State

today usually rely on hatchery seed and welcome natural recruitment as an ancillary bonus. The principal hatchery clam seed producers on the entire West Coast, Taylor Shellfish and Coast Seafoods Co., are leading members of the Willapa-Grays Harbor Oyster Growers Association. In Fact, WA DOFW has historically been a big clam seed customer of Coast for the restocking of public tideland.

3. it would stress that clam and oyster cultivation plots can exist side-by-side at the same elevation on Willapa Bay, that some oyster beds can readily be converted to clam beds, that the elevation of clam beds is not necessarily higher than that of oyster beds.

4. it would be in a position to exercise warranted skepticism and rigorously verify claims by a few Willapa shellfish moguls. This writer recommends that WA DOE personnel entrusted with tideland decisions should not hesitate to additionally interview a few of the many hard-working, low-wage clam harvesters in Washington State. Some speak English. I have met many and never met one I did not like. Although eelgrass is rather common on clam beds in Washington State, never once have I heard a worker complain about it. Eelgrass is part of an honest day's (and sometimes night's) work that helps puts food on the table.

5. it would consider that wind speeds on Willapa Bay, adjacent and connected to the Pacific Ocean, are notoriously variable. I find it absurd to expect a pesticide applicator working a large area to immediately stop spraying when gusts occur or the wind speed happens to increase above 10 mph in the course of his work. Moreover, a pesticide applicator is bound to inadvertently spray countless organisms that frequent these meadows at low tide, quite possibly even birds. He or she is bound by a tight schedule dictated by the tides that changes daily. It is the same schedule that countless organisms must obey daily to survive. Death and the onset of necrolysis during and after spraying will predictably draw additional forms of life, especially insects. Many pesticide-soaked organisms will predictably fall prey to a variety of organisms, including birds.

Collective Environmental Impact of Pesticides Rodeo, Carbaryl/Sevin and Prospective Pesticides Imazamox and Imidacloprid?

This writer is unaware of any tideland in the United States other than Willapa Bay where the combination of past and considered usage of the pesticides commonly known as Rodeo, Carbaryl/Sevin, imazamox and imidacloprid has ever been seriously considered, let alone implemented. At this point, Willapa Bay could be nicknamed "The Chemical Coast". I find it reasonable to suspect that some producers of pesticides would hardly have overlooked what appears to be budding acceptance in Washington State of pesticides on tideland. Conceivably, our very own Willapa Bay could be viewed as the beginning of an extraordinarily profitable tideland pesticide market nationally. There is a new book titled *Nature's Trust* (2014) by Mary Wood, a distinguished Professor of Law. Fittingly, in the chapter titled *Death by Discretion*, she notes, "The rates of permit issuance show that many agency officials feel bound to approve applications for pollution or resource damage."

Kind regards,

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