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**COMMUNITY PLANNING &  
ECONOMIC DEVELOPMENT DEPARTMENT**

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*Creating Solutions for Our Future*

**MEMORANDUM**

**TO:** Planning Commission  
**FROM:** Andy Deffobis, Associate Planner  
**DATE:** **June 13, 2019**  
**SUBJECT:** Aquaculture – Policy Background and Inclusion in Proposed SMP

**Introduction**

As part of the overall Shoreline Master Program update, staff have been gathering and analyzing information about various issues that are of particular interest to the public and other stakeholders. This memorandum is focused on aquaculture, and serves as a primer for discussion at the upcoming June 19 Planning Commission meeting. It is not intended to be an exhaustive discussion of aquaculture.

Aquaculture is defined in the proposed SMP as “the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state and tribal co-managed wild-stock geoduck fishery.” (19.150.150). This definition is derived from the Washington Administrative Code (WAC 173-26-020(6)). SMPs must generally allow for aquaculture in appropriate areas so long as it does not result in a net loss of shoreline ecological functions or significantly conflict with navigation or other water dependent uses (WAC 173-26-241(3)(b)(i)(C)).

Aquaculture is a broad category of uses. Current aquaculture in Washington includes, but is not limited to, research on ecological impacts and new technologies; restoration and enhancement of existing native stock; cultivating shellfish for personal use; and commercial ventures growing product for human consumption and sale. Project proposals may include one or more stages of aquaculture – including raising eggs, seed, smolts or seedlings; growing these plants and animals to maturity; or processing them for sale or non-commercial use. Also, projects may be located in water or on the shore, or both (SMP Handbook Chapter 16, Page 7).

**National and State Law Overview**

*Note: Chapter 16 of Ecology’s SMP Handbook provides a more detailed discussion of the national and state laws pertaining to aquaculture.*

State policy on aquaculture is influenced by national policy, including the National Aquaculture Act of 1980 and Marine Aquaculture Policy of 2011. The latter includes a policy to encourage sustainable aquaculture development that provides jobs and products, is in harmony with healthy ecosystems, and compatible with other uses of the marine environment. Other relevant national statutes include the Coastal Zone Management Act, Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammal Protection Act, Endangered Species Act, National Marine Sanctuaries Act, and the Fish and Wildlife Coordination Act (SMP Handbook, Chapter 16, Page 4).

Aquaculture is specifically addressed in the state's SMP Guidelines. WAC 173-26 provides general provisions for aquaculture, stating that it is an activity of statewide interest that can result in long-term benefit and protection of the shoreline, if managed properly. It is water-dependent and considered a preferred use of the water when consistent with control of pollution and prevention of damage to the environment.

The Legislature has also provided policy direction on the statewide interest of aquaculture through the Aquaculture Marketing statute administered by the Department of Agriculture, and the Washington Shellfish Initiative (SMP Handbook Chapter 16, Page 5). RCW 15.85.010 states that many areas of Washington state are suitable for aquaculture development, and the Legislature encourages promotion of aquaculture with the same status provided to agricultural activities within the state.

Regarding location of aquaculture operations, the state directs local governments to "...consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions." (WAC 173-26-241(3)(b)).

## **Legal Opinions**

### 2007 Washington State Attorney General Opinion

In 2007, Washington State Attorney General Rob McKenna issued an opinion on permit requirements for geoduck aquaculture (Case No. AGO 2007 No. 1). At issue was whether the Washington Department of Fish and Wildlife (WDFW) could require hydraulic project approval permits for geoduck aquaculture, whether local governments should require substantial development permits (SDP) for geoduck aquaculture, and how local government and Ecology would address existing operations if a SDP was required.

The Attorney General's opinion is summarized as follows:

1. The Department of Fish and Wildlife may not require hydraulic project approval permits under RCW 77.55.021 to regulate planting, growing, or harvesting of farm-raised geoduck clams by private parties.
2. The planting, growing, and harvesting of farm-raised geoduck clams would require a substantial development permit under the Shoreline Management Act if a specific project or practice causes substantial interference with normal public use of the surface waters, but not otherwise.

3. Where a geoduck clam culture project would require a substantial development permit, the local government and the Department of Ecology would have a variety of enforcement options available; in some cases, conditional use permits might also be used to regulate this practice.

The opinion states that local government determines whether a particular project involves placing obstructions. They did not conclude that geoduck aquaculture inherently involves interference with normal public use of the surface waters in all locations. They did conclude that the use in question did not involve dredging, construction, or other types of development described by RCW 90.58.030(3)(d) and that, therefore, the SDP requirement is not necessarily required for intertidal geoduck farming.

The Attorney General’s Opinion is referenced in WAC 173-26. The SMP Handbook states:

“The AGO is referenced in the geoduck aquaculture provisions of the Guidelines to ensure local governments understand that Ecology will review and approve SMPs consistent with the AGO [WAC 173-26-241(3)(b)(iii)].”

2011 Thurston County Hearings Examiner Decision (Case Nos. 2010100540, 2010100420, and 2010100421)

In 2011, the Thurston County Resource Stewardship determined that three proposed geoduck aquaculture operations met the definition of development under the Shoreline Management Act, and would require shoreline SDPs. This was based on a determination that geoduck aquaculture involves “construction of a structure” (i.e. PVC/mesh tubes and netting installed in the substrate to contain and protect juvenile geoduck clams).

The Hearing Examiner agreed that the proposed geoduck operations involved structures, based on the definition of structure in the shoreline rules. The Hearing Examiner concluded that the proposed operations met the threshold of substantial development, and thus would require SPDs. This decision was appealed by the applicants. The Hearing Examiner’s decision was ultimately upheld by the Board of County Commissioners.

In communications with Ecology, Ecology has stated that the Attorney General’s opinion requirements are the standard that they will require in the updated SMP.

## **Aquaculture Provisions in Draft SMP**

*Note: This section is intended to provide an overview. The specific use and development standards related to aquaculture will be the topics of future Planning Commission meetings.*

Aquaculture is addressed in several sections of the proposed Thurston County SMP. Much of the WAC language governing aquaculture (WAC 173-26-241(3)(b)) is incorporated into the draft as policies in proposed Chapter 19.300, or development standards in proposed Chapter 19.600. Specifically, see sections 19.300.120(B), and 19.300.130 for Thurston County’s proposed goals related to aquaculture.

These policies direct how potential locations of new aquaculture operations should be reviewed by the County in order to shield adjacent uses and the environment from impacts of the operation, and vice

versa. This reflects guidance in the SMP handbook, which states: “When considering appropriate locations for aquaculture, local governments should analyze potential use conflicts, consistency with environment designation management policies, and ecological considerations and document these considerations in their shoreline use analysis” (SMP Handbook Chapter 16, page 10).

Proposed Table 19.600.105 requires commercial geoduck operations to obtain a conditional use permit, while other types of aquaculture require a SDP, unless the project meets exemption criteria outlined and referenced in proposed section 19.500.100(C).

Proposed section 19.600.115 includes standards for aquaculture. New aquaculture activities that meet the definition of substantial development are required to obtain a SDP. New commercial geoduck aquaculture is required to obtain a conditional use permit or administrative conditional use permit. This is a higher standard of review than a SDP. A SDP would be required if the project results in substantial interference with normal public use of surface water.

This chapter also lays out application requirements and development standards. Applicants are not required to duplicate information that was already provided in local, state, or federal permit applications. A complex framework of state and federal requirements for aquaculture is in place. These requirements may include health certifications, aquatic farm permits, NPDES permits, aquatic land leases, fish transfer permits, tribal harvest notifications, Endangered Species Act consultations and more. (SMP Handbook Chapter 16, Page 8).

Applicants must provide a site plan delineating the area of the proposed use, and describe adjacent upland uses, vegetation, structures, and other modifications. They must describe where substrate modification will occur, and make access provisions for marine and vehicle traffic. Applicants must provide a baseline description of environmental conditions, and an operational plan that describes the type and quantity of aquatic product to be raised, and the scale and logistics of the proposed operation.

Under the proposed rules, aquaculture is not permitted where it would result in a net loss of shoreline ecological functions, or where adverse effects to critical salt- and freshwater habitats cannot be mitigated. The proposed rules also include specific standards for various types of aquaculture, including commercial geoduck and net pen aquaculture. Please refer to Chapter 19.600 for all proposed aquaculture use and development standards.

During the June 19<sup>th</sup> meeting, Ecology is scheduled to present on aquaculture, including an overview, requirements of the WACs, and legal case history. Aquaculture will continue to be a topic of discussion as the Planning Commission moves into other chapters of the draft SMP, particularly 19.600.