

## Michelle McConnell

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**From:** Stewart, Jeff R. (ECY) [jste461@ECY.WA.GOV]  
**Sent:** Friday, March 18, 2011 5:00 PM  
**To:** Michelle McConnell  
**Cc:** Skowlund, Peter (ECY); Ehlers, Paula (ECY)  
**Subject:** Net Pen Aquaculture

### Hi Michelle

This follows up on our conversations and correspondence about various ways Jefferson County could provide alternative language for net pen aquaculture that will be consistent with RCW 90.58 and the Guidelines at WAC 173-26. Sending now so you have it for your meeting-will follow up with a letter next week, and send the documents you requested.

Jefferson County's Locally Adopted SMP (2010) included an outright ban (prohibition) of net pen aquaculture throughout the jurisdiction. Ecology review determined there was insufficient science basis presented for an outright prohibition of a water-dependent use. Our required changes struck the prohibition language and replaced it with across the board requirements for Conditional Use review and approval. Jefferson County Commissioners wanted instead to include more particular guidelines or constraints. Ecology was asked if we would approve the same language that was adopted in Whatcom County's (2008) update.

Ecology convened a policy discussion on 15 March 2011 about when it may be appropriate to use prohibition language in reference to water dependent uses such as net pen aquaculture. We talked about the Whatcom SMP, where Barry Wenger explained how local conditions and science were applied to specified prohibition language being adopted. The broad context of aquaculture and food production was reviewed, with NOAA and Ecology Water Quality and other agencies roles being noted.

The appropriateness of regulating through the permit process versus banning a water-dependent use outright was talked about. The difficulty of legally defending an outright prohibition was discussed. With the information we have seen, an outright ban in Jefferson County would be hard to defend. Peter Skowlund noted the Whatcom approach is not an outright ban. The outright prohibition is limited only to commercial salmon net pens, and, it does allow temporary net pens for certain not for profit/restoration type operations.

The following conclusions from our discussion today may be useful to Jefferson County as it considers alternative language:

The criteria are application of stricter standards to specified geographic areas, and consistency with Guidelines provisions.

There needs to be some evaluation of the sites proposed for prohibition that demonstrates a need for protection.

Local governments can apply stricter standards than those outlined in the Guidelines, including limited prohibitions of water dependent uses, but only where such a prohibition can be shown necessary. This is more likely appropriate in smaller jurisdictions or those with relatively few shoreline areas.

Jurisdictions like King or Jefferson County, which have diverse and large water bodies and a wide range of conditions, would require a high showing of evidence to support an outright ban throughout the jurisdiction.

It is appropriate to identify areas where conditions warrant prohibiting an activity, showing the science basis for doing so.

It is not appropriate to use the Environment Designation system as a "back door" or de facto means of prohibition (e.g. allowing net pens only in areas where existing shoreline conditions are not appropriate for such uses or only in upland ED's where in-water net pens aren't practical anyway).

It is appropriate to apply the purpose statements for different Environment Designations as a rationale for limiting, and for specifying restrictions or conditions that are consistent with those purpose statements.

Ecology and Jefferson County's SMP provisions relating to AQ must be supported by and aligned with the policies of RCW 90.58.020, effectively apply the "preferred use" priorities of WAC 173-26-201(2)(d) in the order listed, first reserving appropriate areas for protecting ecological processes and functions, then reserving shoreline areas for water-dependent AQ..., and provide rationale accordingly based on analysis and SMP provisions should recognize shoreline conditions and technologies will evolve.

I hope some of this may help in your continuing discussions.

Look forward to talking with you soon-

Jeffree Stewart

Shoreline Specialist

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