



JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

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Jefferson County Shoreline Master Program Comprehensive Update (MLA08-475) Staff Report on Finfish Aquaculture

Jefferson County adopted its first shoreline management master program in 1974 making some minor revisions and updates in the years 1989 to 1998. For the past several years, the County has been striving to bring its shoreline management policies, regulations, definitions, shoreline designations, and strategies for shoreline restoration into compliance with the Shoreline Management Act (RCW 90.58) and 2003 Shoreline Master Program (SMP) Guidelines (WAC 173-26). This SMP Comprehensive Update (MLA08-475) is required by law and must be completed by December 2011.

During the later project phase of final review and approval by the State Department of Ecology (Ecology), the subject of finfish aquaculture (net pens and upland facilities) gained a new level of attention. Below, the County's process for considering the issue is described:

Current SMP Provisions for Finfish Aquaculture (JCC 18.25.280)

In the current SMP, finfish aquaculture is regarded as 'intensive aquaculture development', with net pens subject to 'subtidal' and/or 'floating aquaculture' provisions and upland fish farms included as 'upland aquaculture'. Both are allowed, when consistent with the Program, in most shoreline designations as a primary or secondary use with a Type II or III Substantial Shoreline Development Permit (SDP), except upland facilities are prohibited along Natural designated shores. While all applicable provisions must be met, the performance standards specific to net pens and upland fish farms require the following (paraphrased):

- Site Characterization and Baseline Survey per Ecology's 1986 Recommended Interim Guidelines for Management of Salmon Net Pen Culture in Puget Sound (1986 Interim Guidelines), 1990 Final Programmatic Environmental Impact Statement (PEIS) Preferred Alternative, or subsequently state-approved documents.
- Detailed analysis of potential impacts to plants, animals and water quality, including conformance with Ecology's waste water discharge permit requirements.
- Visual Assessment per Ecology's 1986 Aquaculture Siting Study.
- Copies of reports from regular monitoring per Ecology's 1986 Interim Guidelines, 1990 Final PEIS Preferred Alternative, National Pollutant Discharge Elimination System (NPDES) permit, or subsequently adopted documents.
- Fish kill reports
- Locate no closer than two miles from Type 1 or one mile from Type 2 river mouths.
- Locate no closer than 300 feet from habitat of special significance per Ecology's 1986 Interim Guidelines.
- Locate no closer than 1,500 feet from seabird & mammal habitat.
- Maximum surface area not to exceed two acres.
- Only use state/federal approved brood stock.
- In Suburban and Conservancy designations, screening from view of adjacent residential or recreation.

- Locate no closer than 1,500 feet from public parks and historic districts.

As many local residents recall, there have been salmon net pen operations in Jefferson County waters in years past, but none are currently present or in operation. Similarly, many remember a moratorium prohibiting new net pen operations. Indeed, in November 1986, the County passed Resolution No. 89-86, an Emergency Moratorium on Filing and Processing Substantial Development Permits for the Growth and Culture of Fish in the Marine Waters of Jefferson County (Fish Farms). This moratorium expired as an operation of law and the aquaculture provisions of the SMP were updated to reflect state guidance on net pens.

There have been few inquiries to Jefferson County Department of Community Development regarding development of any new net pen operation in the past few decades. Commercial salmon net pen operations in Washington State are relatively limited, with some eight facilities operating in about four locations in Puget Sound. The most recent state-approved permit for a new net pen operation was issued in 1991 but the facility was never developed.

STAC & SPAC

In September 2007 the project team of staff and consultants presented a Committee Working Draft (CWD) Shoreline Master Program to the Shoreline Policy Advisory Committee (SPAC) for detailed review, with a courtesy review opportunity for the Shoreline Technical Advisory Committee (STAC). In addition to general provisions which would apply, Chapter 8 contained policies and regulations specific to finfish aquaculture and net pen facilities/operations. The farming of finfish was proposed to be allowed in the Aquatic designation only when adjacent to Conservancy, Shoreline Residential, and High Intensity designations. Most of the finfish regulations contained in the current SMP (JCC 18.25) were included along with new provisions, such as (paraphrased):

- Locate no closer than 1,500 feet from National Wildlife Refuge lands
- Must meet State guidelines; if conflict arises, the more stringent requirement shall prevail;
- Use helical anchors; no chemicals and antibiotics;
- Locate no closer than one nautical mile from adjacent net pen facilities;
- Net cleaning must avoid state water quality violations; list of preferred methods;
- Upland fish farms to be governed by commercial/industrial provisions;
- All facilities/equipment marked per USCG navigation standards;
- Limit density to minimize cumulative impacts;

Numerous revisions were made during the committee review process based on input from the aquaculture industry, WA Department of Ecology, WA Department of Natural Resources, and other stakeholder interests, including the following specific to net pens and upland fish farms:

November '07 CWD revisions

- Shift classifications to 'Low – Medium – High Intensity Aquaculture' definitions per '89 SMP and P. Downey proposal (shellfish only for 'low 'or 'medium', finfish only for 'high')
- Definition of agriculture should include "upland finfish"
- Clarify what constitutes 'development' per Attorney General Opinion and requirements for shoreline substantial development permit (SDP), definition of structures, experimental aquaculture, etc.

May '08 Revised CWD

- Net Pens prohibited, except for enhancement/restoration functions
- All aquaculture prohibited in HI shoreline environment designation (SED)
- Shifted classifications to 'Bottom' or 'Hanging Aquaculture'
- Upland aquaculture structures allowed when adverse effects are avoided and meet applicable noise, air pollution, waste and water quality standards etc from Regulations 1a – m
- Water-oriented commercial/industrial prohibited in the Priority Aquatic or Natural designation, allowed as a conditional use in the Aquatic or Conservancy designation, and permitted in the Shoreline Residential and High Intensity designation.

The project team of staff and consultants used the committee input contained in the Revised CWD SMP to prepare a Preliminary Draft SMP for formal public review. As a good faith courtesy to the committees, final informal feedback on a 'sneak peek' version of the preliminary draft was requested.

August '08 Preliminary Draft SMP 'Sneak Peek' copy for final committee review:

- Prohibit net pens and finfish aquaculture that uses herbicides, pesticides, antibiotics, fertilizers, genetically modified organisms, or feed.

Planning Commission

In December 2008, a Preliminary Draft SMP (PD-SMP) was presented to the Planning Commission to begin the formal public review process. The Planning Commission considered a large volume of public input during their seven months of deliberation. There were 48 comment letters/verbal testimonies that addressed aquaculture, of which few mentioned net pens/upland fish farms. The primary focus was on shellfish aquaculture, specifically geoduck farms.

Planning Commission prepared a Revised Draft SMP that proposed many changes (including numerous revisions to the Article 8 Aquaculture provisions) and released the document for additional formal public review. While 54 comment letters/verbal testimonies on the Revised Draft SMP regarded the topic of aquaculture, and some were about net pens and upland fish farms, the majority of the interest continued to be about shellfish aquaculture, especially commercial geoduck operations. The Planning Commission considered the public input and forwarded their Final Draft SMP recommendation to the Board in July 2009.

Locally Approved SMP

After another formal public comment period in September 2009, the Board carefully reviewed the Final Draft SMP recommendation along with a considerable volume of additional public input and recommendations from staff, making numerous changes to the document. The Board's direction for finfish aquaculture was to exercise their legislative authority to prohibit all net pen aquaculture and any finfish aquaculture that uses or releases harmful substances into surrounding waters.

In December 2009, the Board of County Commissioners approved Jefferson County Resolution 77-09 to make amendments to the Jefferson County Comprehensive Plan and Jefferson County Code after final approval by the state. In March 2010, the County submitted a complete *Locally Approved Shoreline Master Program* (LA-SMP) to Ecology for final review and approval, per RCW 90.58 and WAC 173-26.

Ecology Approval with Required & Recommended Changes

In April/May 2010, the State held a formal public comment period and a local hearing to gather citizen input on the County's proposed LA-SMP. In consideration of public input and the County's Responsiveness Summary, Ecology reviewed the County's proposed SMP update for consistency with state statutory and rule requirements.

On January 26, 2011 Ecology determined that the County's LA-SMP met the procedural and policy requirements of the Shoreline Management Act and the SMP Guidelines, pending some required changes. A letter from Ecology's director with three attachments (and two supplements) outlines their conditioned approval, findings and conclusions, and total of 26 required changes and 14 recommended changes.

Board Consideration of Changes

The County is considering Ecology's 40 changes and is preparing a formal response as to accept or propose alternatives to each of those changes. In addition, 23 other revisions have been proposed by the County to correct typographical errors and for document clarification. Therefore, the Board of County Commissioners is considering these 63 possible changes to the LA-SMP as part of the process for final SMP adoption by the state and by local ordinance.

To assist the Board, staff reviewed Ecology's required and recommended changes and provided guidance to the Board on whether to agree, further study, decline or propose alternative changes, including numerous revisions proposed for clarification to correct various errors in the document prior to final adoption. The Board discussed the DCD Recommendation on February 22, February 28 and March 7, 2011 providing feedback to staff on each item for the County's response to Ecology. The Board reviewed and discussed initial versions of Draft County Response on March 14 and 21. Three required changes regarding the issue of finfish aquaculture were presenting significant challenge, so additional information was gathered, the Board continued discussion on the topic on April 18, but further discussion was needed.

On April 25, the Board took action by sending a letter to alert Ecology about the status of the County's pending response and directed staff to cease further efforts to gather and catalogue more finfish aquaculture information. The Finfish Aquaculture Bibliography was temporarily capped at 84 items and staff worked with the Board to prepare a revised draft code proposal for finfish aquaculture as an alternative to Ecology's required changes. It is important to note that the collection of literature regarding finfish aquaculture is not intended as a comprehensive analysis of scientific, technical and other information on the subject. Given the available science is both voluminous and divided, staff has deferred to the most current state-adopted policy and technical guidance in consideration of the local conditions.

While the discussion focused on revised provisions for net pens and upland fish farms, some changes to non-fish provisions were required to ensure document clarity and consistency. Efforts were made to eliminate any provisions that would have unintended consequences on shellfish aquaculture. The general approach used in preparing the proposed finfish provisions was to include most of the current performance standards, along with some newer provisions proposed by the project team, provisions similar to those in the Whatcom County SMP, and some fine tuning for more detailed reference to state guidance documents.

Ecology has indicated there is a legal limitation for a complete prohibition of a water dependent, preferred shoreline use. The proposed alternate provisions allow the use only in appropriate areas to ensure adequate protection of shoreline resources and minimize use conflicts with adjacent shoreline use/development. The alternative presented in the Draft County Response is consistent with the statutory requirement to allow such shoreline activity as a water-dependent, preferred use and with Ecology's requirement for allowance as a conditional use. Ecology's three required changes regarding finfish aquaculture addressed their legal concerns but did not address our community's significant local concern about net pens and finfish aquaculture.

Rather than Ecology's allowance for finfish aquaculture use/development in all shoreline environment designations (SEDs) the Draft County Response allows the use only in appropriate areas to ensure adequate protection of sensitive shoreline features and to minimize use conflicts with adjacent use/development. The proposed revisions are intended to better tailor the allowed use to local shoreline conditions. The specific performance standards are consistent with state guidance on finfish aquaculture use/development such as siting, use conflicts, and environmental impacts. Further, the provisions clarify aquaculture as a subset of agricultural use/development. The overall intent is to ensure a balanced approach and achieve responsible shoreline use and development, environmental protection, and public access while addressing our local community's values for healthy waters and wildlife. Our local SMP must ensure 'no net loss of ecological functions' and avoid the damage from cumulative impacts while fostering a vibrant local economy.

On June 6, the Board provided additional guidance to staff for final edits to the proposed finfish aquaculture code and two mapping issues (Glen Cove, and Port Ludlow), requesting a final review of the Draft County Response prior to public release.

On June 20, the Board directed staff to make some final edits to the Draft County Response and took action to approve the document for public release scheduling a 4-week public comment period and public hearing.

The Draft County Response is a 37-page document, including:

- Matrix of 63 possible changes to the LA-SMP (28 pgs.);
- Rationale for the County response to each possible change (3 pgs.);
- Five attached maps to show two possible mapping changes (6 pgs.).

Final Adoption Process

The following steps are part of the final adoption process:

- Board will consider public input after comment period closes on 7/25/11
- Board will adopt updated SMP via local ordinance to become effective upon Ecology final adoption
- Board will send formal County Response to Ecology
- Ecology will consider County Response and either:
 - Adopt Jefferson County's updated SMP with proposed changes; or
 - Further negotiate certain changes with the County before final adoption of updated SMP.
- The new SMP will be in effect upon Ecology's final adoption.

This process must be complete before the County's legislative deadline of December 2011.