

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
FROM: Philip Morley, County Administrator
DATE: January 17, 2012
SUBJECT: DISCUSSION re: Prepare for January 23, 2012 Meeting with Washington State Department of Ecology Regarding Shoreline Master Program and Finfish Aquaculture

STATEMENT:

The County Commissioners will review draft questions in preparation for meeting with the Department of Ecology on January 23, 2012, to discuss the treatment of finfish aquaculture in the County's new Shoreline Management Program.

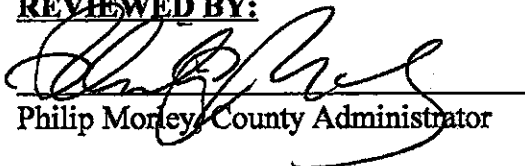
ANALYSIS:

The Department of Ecology and the County have not yet found agreement on the treatment of in-water finfish aquaculture in the new Shoreline Management Program. Attached for Commissioner review and feedback is a draft list of discussion questions, and a menu of potential Conditional Use Permit criteria and conditions that might be considered should the County opt for adopting CUP provisions for finfish aquaculture.

RECOMMENDATION:

Staff recommends the Board provide direction on final revisions to the list of questions and potential CUP criteria, and direct staff to provide the documents to Ecology.

REVIEWED BY:


Philip Morley, County Administrator

1/12/12
Date

In-water Finfish Aquaculture Questions for Ecology

Per Jefferson BoCC discussion on 12/19/2011 and 1/3/2012

Goals for the workshop:

- A. Understand each other; and
- B. If agreement can't be found, consider exploring conditions that would adequately protect the environment, would be acceptable to Ecology, and avoid duplication of existing state/federal regulations.

Questions for Ecology:

1. What are the legal and scientific justifications for considering finfish aquaculture to be a water-dependant use when there are clear examples of finfish aquaculture operations located with no connection to surface waters in non-coastal/shoreline regions?
2. Would the State consider a prohibition on in-water finfish aquaculture as acceptable and legally defensible if there were detailed analysis and rationale to show where and why it is not an appropriate use in every reach of marine shoreline?
3. What documents does Ecology rely upon for the determination that in-water finfish aquaculture can be operated with no unmitigatable impacts to surrounding resources?
 - a. How can in-water finfish aquaculture operations prevent the release of viruses?
 - b. What documents are contained in the record?
 - c. Can the record be expanded – does it require additional public review?
 - d. Does exploring existing regulations constitute expanding the record?
 - e. Are there limits to what information the County and Ecology can consider?
4. What level of review does Ecology anticipate for the finfish provisions given their request for both ecological and feasibility assessment?
5. Do State water quality regulations require all discharge be treated or is there some level that is allowed as exempt?
 - a. Does Ecology have evidence that shows fully-contained in-water tank systems adequately treat discharge?
6. WAC 173-26-201(2)(d) Preferred Uses puts ecological protection as prioritized ahead of the allowance of water-dependent uses. How does Ecology reconcile this order of priority with its decision regarding prohibition of in-water finfish aquaculture?
7. In what specific areas of Jefferson County marine shorelines does Ecology believe it is both ecologically safe and practically feasible to allow in-water finfish aquaculture?
8. In what specific ways and locations are Jefferson County marine shorelines distinctly different from Whatcom County marine shorelines?

9. Can Ecology/NOAA better explain the data regarding geographic distribution patterns of sea lice in the Salish Sea?
10. Should in-water finfish aquaculture be allowed as a conditional use in Jefferson County, what permit conditions or criteria does Ecology believe must be addressed (fish density, tracking of fish from 'farm to table', treatment of water before discharge, etc.)?
11. Does Ecology foresee any legal risks resulting from delay of final SMP adoption?
12. If Jefferson County submits a locally adopted SMP ordinance that includes a prohibition of in-water finfish aquaculture and is not willing to change, will Ecology begin rule-making?
 - a. Would Ecology consider adopting all the other SMP segments/parts as consistent and focus rule-making only on the finfish aquaculture segment/part (per RCW 90.58.090(3) and WAC 173-26-120(7))?
 - b. What other segments/parts besides finfish aquaculture might Ecology anticipate using the rule-making process to change?
 - c. What is the timeline for rule-making, and how soon would final SMP adoption be anticipated?
13. If the County took the affirmative step of informing Ecology in writing that it no longer wishes to engage in the iterative process with respect to in-water finfish aquaculture and by doing so declares that no further progress in this regard will occur would Ecology accept such a letter as proof of a "stalemate" and proceed to rulemaking with respect to in-water finfish aquaculture?

In-water Finfish Aquaculture: Draft CUP Criteria

This document contains:

- *Revised, reorganized and paraphrased versions of provisions D.1. – D.6. from the 10/31/11 Formal Response to Ecology matrix, plus additional criteria per BoCC concerns, presented as proposed Conditional Use Permit (CUP) criteria for in-water finfish aquaculture; and*
- *The general regulations C.1. – C.6. and application requirements E.1. – E.2. in paraphrased form from the 10/31/11 Formal Response to Ecology matrix that would apply to all aquaculture use/development.*

The latter are included to help avoid duplication in the CUP criteria.

Provisions to consider including should the County allow in-water finfish aquaculture as a conditional use, subject to the policies and regulations of the Shoreline Master Program:

Possible CUP Criteria (paraphrased)

1. Require baseline and periodic surveys, assessments, and operational monitoring by a County-approved consultant to determine the success of the project and/or the magnitude of any adverse impacts to shoreline resources, functions and processes. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.
2. Any operation that releases chemicals or harmful materials [per list of chemicals etc.] into surrounding waters shall demonstrate that all significant impacts have been addressed per the mitigation sequence. Owner/operator to provide County copies of any state or federal permits, records, or reports on the use of such chemicals/materials.
3. Owner/operator must report any significant fish kill events in a timely fashion to the County Public Health and Community Development departments stating the date and extent of the loss, cause of death, and detailed remedial action to prevent reoccurrence.
4. Adequately mitigate any environmental impacts including, but not limited to:
 - i. In- or over-water processing, sorting, culling, washing or similar activities;
 - ii. Broodstock supply is state-approved;
 - iii. Copies of state- or federal-required monitoring reports provided to County;
 - iv. Copies of required analysis of potential discharge per NPDES provided to County;
5. Adequately mitigate any facility siting issues including, but not limited to:
 - i. Site characterization and baseline survey including photo/computer simulation of visual impact for any in-water facility located within 1,500' of OHWM;
 - ii. In-water operations/facilities shall locate 2 nautical miles from Type S streams and 1 nautical mile from Type F streams unless documented conflicts with navigation prove this infeasible;
6. Adequately mitigate any use compatibility issues including, but not limited to:
 - i. Direct light, reflected glare, and security lighting;
 - ii. Odor control;
 - iii. Upland operations must be screened from view by fences, berms, and/or vegetation unless visual assessment shows unnecessary.

7. In-water fish pen structures used only for temporary holding or diversion and established and managed solely and directly for purposes of native salmon enhancement and/or restoration are not considered net pens for purposes of this Program, as defined in Article 2.
8. Applicant/operator must ensure density of fish in any enclosure, or the cumulative density for all enclosures at any location, does not exceed the limits identified by the State, per the Interim Guidelines, Siting Study, Programmatic EIS Preferred Alternative or subsequent appropriate documents.
9. Applicant/operator must provide complete food product information that tracks all stages of production and distribution including, but not limited to, broodstock/egg source, processing, transport, and wholesale/retail sales and any other related information per the academic/industry recognized standards for seafood traceability.
10. Limit experimental finfish aquaculture to two (2) acres in area and three (3) years in duration. County could issue a new permit to continue an experimental project as many times as deemed necessary and appropriate.

Provisions that will generally apply to all aquaculture use/development per the 10/31/2011 Formal Response to Ecology matrix (pp. 10 – 12 and 14):

General Regulations (paraphrased)

- C.1. SDP is valid for 5 years; CUP is valid for the period of time specified.
- C.2. Existing and ongoing aquaculture doesn't need a new permit, unless/until:
 - i. Physical extent or cultivation method changes more than 25% in a ten-year period;
 - ii. Cultivate species new to Washington state
- C.3. Some aquaculture is not development and needs no permit unless:
 - i. Interferes with normal public use of surface waters
 - ii. Placement of structures
 - iii. Dredging by mechanical harvest equipment
 - iv. Filling of tidelands/bedlands
- C.4. Interference with normal public use of surface waters to be assessed via JARPA and SEPA; the use/development doesn't interfere unless:
 - i. Located in or near public tidelands;
 - ii. Use of gear that blocks public access/facilities or excludes public from more than one acre of surface water.
- C.5. Unless identified as an exception, aquaculture requires an SDP or a CUP and must meet the following:
 - i. Locate, design and maintain to avoid adverse effects on ecological functions and processes
 - ii. Prevent adverse cumulative effects on ecological functions and processes and adjoining land uses. Including acceptable placement and concentration of commercial aquaculture
 - iii. Upland structures that don't need to be near the water have to be landward of the buffer.
 - iv. No overwater work shelters and sleeping quarters
 - v. Floating/hanging aquaculture no more than 6' above water surface, except by Administrator (does not apply to vessels)
 - vi. Floating/hanging aquaculture facilities need to blend into the surrounding environment and minimize visual impacts.
 - vii. Don't interfere with navigation, or access to adjacent waterfront properties, public recreation areas, or tribal harvest areas. Mitigation when needed.

- viii. Non-fish aquaculture needs to be at least 600 feet from any National Wildlife Refuge and other bird or mammal areas. Finfish aquaculture needs to be 1,500 feet away. County can allow closer with permission from USFWS and/or WDFW.
- ix. Avoid shading/adverse impacts to existing kelp and eelgrass beds.
- x. Use helical anchors to minimize substrate disturbance.
- xi. County can require applicant to reimburse for use of public facilities.
- xii. Only non-lethal, non-harmful measures to control birds and mammals that comply with existing federal and state regulations.
- xiii. Avoid use of chemicals, fertilizers and GMOs except per state and federal law.
- xiv. Use non-navigational directional lighting not area lighting as necessary to conduct safe operations but don't interfere with vessel traffic.
- xv. Waste materials and by-products shall be properly disposed of.

C.6. County may require a visual analysis to describe effects on nearby uses and shoreline aesthetics and to demonstrate that adverse impacts are mitigated.

Application Requirements (paraphrased)

E.1. County may require copies of permit applications and/or studies required by state and federal agencies to ensure provisions of this Program are met, including, but not limited to, the following information:

- i. Anticipated harvest cycles and potential plans for future expansion or change in species grown or harvest practices
- ii. Number, types and dimensions of structures, apparatus or equipment.
- iii. Predator control methods.
- iv. Anticipated levels of noise, light, and odor and plans for minimizing their impacts.
- v. Potential impacts to animals, plants, and water quality due to the discharge of waste water from any upland development.
- vi. Proof of application for an aquatic lands lease from the Washington State Department of Natural Resources (DNR) or proof of lease or ownership if bedlands are privately held.
- vii. Department of Health (DOH) Shellfish Certification Number.
- viii. Department of Fish and Wildlife (DFW) commercial aquatic farm or non-commercial, personal consumption designation.
- ix. Proof of application for any permits required by the U.S. Army Corps of Engineers, Department of Health, or other agency
- x. Proof of application for any state and federal permits/approvals including any required federal consultation under Section 7 of the Endangered Species Act (16 U.S.C. § 1531 et seq., ESA).

E.2. County may require a visual analysis prepared by the applicant/proponent describing effects on nearby uses and aesthetic qualities of the shoreline. The analysis shall demonstrate that adverse impacts on the character of those areas are effectively mitigated.