

ADDENDUM TO ATTACHMENT A: FINDINGS AND CONCLUSIONS

Proposed Comprehensive Update of the Jefferson County Shoreline Master Program

Jefferson County Ordinance No 07-1216-13.

Jefferson County's December 16, 2013 response to Ecology's January 26, 2011 decision
Prepared by Jeffree Stewart on January 29, 2014

FINDINGS OF FACT

Amendment History

On December 7, 2009, Jefferson County locally adopted a comprehensive update to the Jefferson County Shoreline Master Program, titled Locally Approved SMP (LASMP). On January 26, 2011, the Department of Ecology (Ecology) conditionally approved the County's SMP with 24 required changes and 14 recommended changes.

On March 1, 2011, Jefferson County requested staff-to-staff consultation regarding Ecology's proposed threshold of "up to 3 cars" for garages in the appurtenant use definition, and for a common line buffer provision change from 300 feet to 100 feet. Ecology subsequently agreed to alternative language for these, based on information provided by Jefferson County. (See page 7 for additional discussion on these issues.)

Ecology's required changes 13, 14, and 15 prompted continuing requests for clarification from Jefferson County about the legal and policy basis for not allowing an outright prohibition of net pen aquaculture. Ecology sent the following excerpt in an email message to Jefferson County on March 10, 2011:

Required Change 14/Article 8.2.B.1 and 2

Ecology's required change on net-pen aquaculture reflected the water-dependent, preferred use status of all aquaculture, and the evident paucity of scientific information specific to this topic that supported the decision. In other words, we recognized that most of the focused discussion within the Advisory Groups, and the scientific information brought to those conversations, addressed geoduck and other forms of aquaculture more than net pens. Testimony was provided during the public comment periods, both in favor of banning and against banning net pen aquaculture, while our review indicates little additional technical information was amassed or considered as a basis for the prohibition.

We understand there are strongly held opinions either way. Ecology's required change would leave these activities subject to Conditional use approval, and the requirements of CUP criteria will pose significant regulatory constraints to ensure protection of the resource. We will also consider alternate methods, and whatever the Commissioners

decide will be forwarded to our Director's office for a decision, but our interpretation is the required change is an appropriate one pursuant to the RCW.

On March 15, 2011, Jefferson County Department of Community Development (DCD) conveyed some questions for Ecology, based on deliberations with the Board of County Commissioners (BOCC). Ecology's Policy Team discussed the County's questions. A summary memo, sent to Jefferson County on March 18, 2011, notes:

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.

In June, 2011, an additional required change from Ecology addressed the removal of an industrial water treatment lagoon from shoreline jurisdiction. Ecology Director Ted Sturdevant's letter of June 22, 2011 focused on a change of shoreline jurisdiction, but also spoke to the County's concerns about net pens. Director Sturdevant notes,

First of all, we appreciate the careful consideration Jefferson County is presently giving to matter of finfish net pen aquaculture. There has been relatively little activity of this sort in Washington marine waters in recent years, while the potential remains for future applications. The statutory preference for water-dependent industries needs to be factored into how the industry is regulated, as does the required protection of ecological resources.

Ecology subsequently consulted with the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) and passed along some of the County's questions and concerns of a science nature. Dr. Laura Hoberecht, Aquaculture Coordinator for the Northwest Regional Office, wrote to the BOCC on July 25, 2011, with comments about Ecology's required and recommended changes to the LASMP.

Notably, Dr. Hoberecht's letter states,

The existing commercial net pen facilities operating in waters of the State of Washington have shown no harm to federally protected marine species. NMFS also recognizes that any finfish aquaculture in marine waters is required to comply with all existing state and federal laws and regulations. We bring this to your attention, as many of the conditions of the LASMP concerning regulation of aquaculture are redundant and unnecessary from an ecological perspective.

On October 31, 2011, Jefferson County sent Ecology a "Formal Jefferson County Response to Ecology on Changes to the Locally Approved Shoreline Master Program." In the Formal Response, the County agreed to 7 of the required changes. Alternative language was proposed for the others, three of which maintained the prohibition of in-water finfish/net pen aquaculture. Of the recommended changes, 6 were agreed to, 6 were proposed with alternative language, and 2 were declined.

The following are excerpts from the County's Formal Response document, at pages 30- 31:

Current Science -

Arising from Ecology's response, the County conducted further investigation in greater detail of the science in support of and opposition to finfish aquaculture, with special focus on in-water operations such as net pens. The Finfish Bibliography includes some 125 documents including peer-reviewed journal articles, state and federal agency policy and technical guidance, permit samples from existing Puget Sound net pen operations, Shoreline Master Programs from other Puget Sound jurisdictions, a programmatic EIS document and other sources of pertinent information. The Bibliography includes documentation submitted during formal public comment and constitutes a representative sample of the available science. The Bibliography contains recently published "current" science such as the February 2011 report of Michael Price *et al.* on juvenile salmon runs.

Upon review of the Finfish Bibliography, the County concludes that while the evidence before it is in conflict and does not present a consensus opinion, there is considerable evidence that in-water finfish aquaculture, such as net pens, can be detrimental to shoreline functions and processes, including native salmon populations-especially migrating juveniles.

There are many risks recognized in relation to net pen operations: Biodeposits-food and feces; Chemical Use-pesticides, pharmaceuticals, etc. Disease; Parasites-sea lice; Escapement, breed/compete with natives; impacts to Puget Sound...The current science is inconsistent. Therefore, the County concludes it has no choice but to err on the side of caution and protection. The County believes the science dictates that in-water-fish aquaculture, including net pens, is not an appropriate use of shorelines of the state in Jefferson County waters.

Ecology responded with a letter on December 7, 2011, explaining the State could not legally support a county-wide prohibition on in-water finfish/net pen aquaculture, and encouraging the County to develop an approach of limited allowance for net pens with effective protections for ecological resources.

On January 23, 2012, the BOCC hosted a "Finfish Aquaculture Workshop" with technical and regulatory representatives of state and federal resource agencies. Ecology requested representatives from its Shorelands and Environmental Assistance and Water Quality Programs, Washington Department of Fish and Wildlife (WDFW), and NOAA to discuss with the Commissioners the regulation of net pens in Washington State waters. The meeting was open to the public for observation.

At the workshop, Jefferson County presented proposed criteria for evaluating in-water finfish proposals, titled "In-water Finfish Aquaculture: Draft CUP Criteria." In addition, key policy and technical questions were presented in a memo. In the memo, the County asks for Ecology's legal and scientific justifications for considering finfish aquaculture as a water-dependent use. It asks which documents led Ecology to believe net pens could be safely deployed, questions the level of review Ecology would expect on the County's finfish provisions, asks what specific areas of Jefferson County Ecology would consider appropriate for net pens and asks how Jefferson County shorelines were different from those of Whatcom County because Ecology had

previously allowed a similar prohibition there. These and other questions were addressed at the workshop.

After the workshop, Jefferson County made formal, written requests regarding the State's legal rationales in a February 21, 2012 memorandum. The Commissioners challenged Ecology's determination that in-water finfish aquaculture is a water-dependent use. The County questioned Ecology's interpretation about how WAC 173-26 applied to adoption of the SMP update. The Commissioners asked if the net pen issue could be resolved independently of the SMP adoption. Staff level conversations continued in the ensuing months, and these queries and challenges were formally addressed by Ecology Director Ted Sturdevant in a July 23, 2012 letter.

Sturdevant's letter responded formally to the County's February 21, 2012 legal queries and recognized mutual agreement on all proposed changes to the SMP except for finfish aquaculture. Sturdevant proposed three options for resolving the net pen issue and adopting the SMP: conditional use; conditional use and moratorium; and reject, deny, appeal. Sturdevant asked for a decision from the County by August 15, 2012. The deadline was later extended as negotiations and deliberation continued. Jefferson County planning staff applied siting criteria and water quality parameters to Environment Designation maps, determining which marine waters would potentially be available for siting of net pen facilities. A new set of maps was added, showing where such uses would be prohibited and where they could be allowed with conditional use approval.

On September 6, 2012, Jefferson County released a working draft outline of "Proposed Conditional Use Criteria for In Water Finfish Aquaculture." The contents replaced certain portions of the County's October 31, 2011 Formal Response.

The County proposed prohibition of net pen aquaculture for specified geographic areas. Maps were developed, based on existing, documented water quality and environmental sensitivity as well as the Shoreline Environment designation purpose statements. Twenty one categories of criteria were articulated, by which the County would evaluate proposed in-water finfish development in the areas that were identified as possibly suitable for such facilities.

Continued concerns about possible impacts of net pen facilities were formally noted. In a letter of September 24, 2012, Commissioner John Austin stated to Ecology Director Sturdevant:

Protecting and restoring wild salmon runs is a matter of great importance to our citizens and to our environment....In particular we are concerned that requiring the County to allow in-water finfish aquaculture will jeopardize threatened and endangered native species as well as other marine resources by putting them at risk from disease.

None of the three options spelled out in Ecology's earlier letter of July 23, 2012 are desirable to us. However, in the interest of retaining local control of developing the conditional use conditions, as well as retaining local control of the balance of our work on the SMP, and avoiding further delay in completing the SMP update, the Jefferson County Board of County Commissioners has made the difficult choice to pursue the 'adopt with conditional use' approach of allowing for in-water finfish aquaculture in our SMP, that you refer to as Option 1.

Jefferson County hosted a second workshop at Port Townsend on October 8, 2012. The focus was fish disease and potential risks of pathogens and health threats to farmed and wild fish. The speakers were recognized experts involved in fish disease research and regulation. Speakers were from WDFW, Ecology, NOAA, and U.S. Geologic Survey Western Fisheries Center, and included a private sector fisheries veterinarian specializing in aquaculture fish health.

Jefferson County sent a follow-up email to interested parties on October 16, 2012. Jefferson County noted several points made during the three hour workshop, including:

ISA was reported to be detected in British Columbia last year, but repeated testing to confirm that finding has failed to produce a positive result. What was found was a scrap of DNA genetic material that had a similar sequence of nucleotides to part of the DNA chain for ISA. A general scientific principle is that results must be robust and repeatable, not a one-time fluke. Federal, State, and industry experts do not believe the ISA virus is present in the Pacific Northwest, nor is there any indication that any ISA clinical disease is present. There is a substantial surveillance (monitoring) effort now in place that has been tested to ensure the broadly approved methods being used are indeed capable of detecting ISA. The program includes US Dept. of Agriculture, US Fish & Wildlife Service, WA Dept. of Fish & Wildlife, local Tribes, industry and others sampling some 25,000 to 30,000 fish per year. The sampling will continue over the next few years and investigates Atlantic salmon as well as other species.

ISA is an orthomyxovirus; IHN is a rhabdovirus. Both are salmon viruses; ISA was thought to be found but wasn't and therefore hasn't caused any mortalities. IHN is endemic ("commonly found") in the wild salmon and HAS caused mortalities in naïve (sic) farmed salmon in both WA and BC. The reported discovery of ISA was, in fact, a false positive result of polymerase chain reaction (PCR) testing, a method referred to as "molecular photocopying" and considered a 'fast and inexpensive way to amplify segments of DNA'. Learn more [here](#). Experts repeatedly state that 'ISA has never been found in BC. The positive PCR tests [that] have been reported are false positives. False positive test results are not a threat to either wild or farmed salmon.' Net pen and hatchery operations are required by law to test for and report any detection of pathogens discovered.

While the Salmonid Disease Control Policy of the Fisheries Co-Managers of Washington State (relied upon by WDFW Policy #5104) does not specifically address ISA, the policy is considered to be flexible enough to adapt should the ISA virus or the disease be detected.

Concerns expressed in the workshops and others from public comment letters were generally opposed to and/or fearful about the possibility of new net pen facilities being sited in waters of Puget Sound and Straits of Juan de Fuca. Salmon restoration efforts were cited as a reason for supporting the outright prohibition language in the SMP, and legislation was proposed that would allow local governments to make such determinations in their SMPs.

Ecology became aware that Washington State's system of net pen regulation was commonly misunderstood. Many comments appeared to conflate the net pen siting and regulatory systems

applied in other countries as being directly analogous to those here. In fact, Washington State has a very robust and effective regulatory program to ensure protection of marine ecosystems.

Ecology posted Washington-State specific materials online and in fact sheets to help people recognize the role of Shoreline Master Programs as land use planning tools, explaining how this is distinct from the state and federal systems of permitting and monitoring by which in-water finfish net pens are regulated.

The BOCC continued deliberations in the wake of the workshop, and they directed DCD staff to refine and strengthen regulatory criteria and provisions. In January of 2013, Jefferson County sent draft maps to Ecology, showing areas that were being considered as locations where in-water finfish facilities could be proposed.

Jefferson County held a public hearing on April 15, 2013 at Port Townsend. The County invited public comment on its “Revised Response to Ecology on In-water Finfish Aquaculture Required Changes 13-15.” While a public hearing was not legally required, the Commissioners wanted to ensure the public had ample opportunity to comment. The County received 55 submittals of written and verbal testimony, which led to consideration of 60 additional changes.

Jefferson County continued to revise and refine the proposed definitions, policies, and regulatory criteria over the subsequent months. A June 24, 2013 letter provided Ecology with advance review of the draft provisions the County planned to adopt. Ecology comments led to clarifications and edits to final documents that were sent to Ecology on August 29, 2013. Ecology staff indicated support for the County’s proposed in-water finfish provisions on September 4, 2013.

On December 16, 2013, the Jefferson County BOCC voted unanimously to adopt the County’s 2013 Shoreline Master Program (Ordinance No. 07-1216-13) including alternative language for finfish aquaculture to replace Ecology’s required changes 13, 14, and 15. Jefferson County documented the rationale for its approach in Findings 257-294 of the adopting ordinance.

Jefferson County delivered the adopting ordinance and all supporting documents to Ecology on December 19, 2013. The supporting documents particularly relevant to the required and recommended changes are “Attachment 2; Formal Jefferson County Response to Ecology on Required and Recommended Changes to the Locally Approved Shoreline Master Program-FINAL” (Nov 2013) and “Summary of Final Non-substantive Edits.”

Required Changes

As provided within their “Attachment 2; Formal Jefferson County Response to Ecology on Required and Recommended Changes to the Locally Approved Shoreline Master Program-FINAL” and noted in Ecology’s Attachment B – Revised, the County accepts Required Changes 2, 5, 6, 8 - 12, 18, 20 - 24 and 26¹. These changes have been incorporated into Ordinance No. 07-1216-13.

¹ The County added the June 2011 Required Change addressing the industrial treatment pond as number 26. Number 25 was added to acknowledge a Required Change discussed in the text of Attachment A (dated January 2011) but never included in Attachment B.

As provided within their “Attachment 2; Formal Jefferson County Response to Ecology on Required and Recommended Changes to the Locally Approved Shoreline Master Program-FINAL” Response and noted in Ecology’s Attachment B – Revised, Jefferson County proposes alternative language for Required Changes 1, 3, 4, 7, 16, 17 and 19. Alternative language for Required Changes 13, 14 and 15 is discussed below.

Required Change 25: Ecology intended to require a change to the provisions allowing common line setbacks from 300 feet to 100 feet from houses on adjacent properties. The specific required language was not included in Attachment B by Ecology, but was discussed in Attachment A-Findings and Conclusions. The County demonstrated in its October 31, 2011 formal response document that this provision would only apply to approximately 1% of the County’s shoreline lands:

The County proposes to maintain a 300’ separation for this provision because it is already limited for view purposes and only allowed on non-conforming lots. Cumulative Impacts Analysis shows that some 750 of the approximately 6,200 shoreline parcels will become non-conforming to the new buffers making this provision applicable to just 12% of the parcels, or ~3% of the land area. Further, of the parcels anticipated to become non-conforming, only some 225 (30%) are vacant leaving the provision most likely used on a mere 4% of all shoreline parcels or ~1% of the land area. Given the limited applicability of this provision, the County affirms the 300’ separation is appropriate.

Ecology agreed to allow the setback to remain at 300 feet, concluding this limited possible application, along with other SMP standards, would meet the no net loss requirement.

Ecology also agreed to drop the phrase, “up to 3 cars” in Required Change #4, based on the County addressing Ecology’s concerns about impervious surfaces in J.C.C. 18.30.070.

Jefferson County’s Alternative Language for Required Changes 13, 14, and 15

Jefferson County’s proposed alternative language for required changes 13, 14 and 15 is set forth in pages 7 – 26 of the Attachment 2 document titled “Formal Jefferson County Response to Ecology on Changes to the Locally Approved Shoreline Master Program – FINAL (November 2013)”.

The County proposes to allow in-water finfish activities only in the Aquatic designation adjacent to High Intensity shoreline designation and a small section of the Natural designation, with a conditional use permit required. Eligible areas are shown on the maps on pages 13-17 of Attachment 2. Specific prohibitions are shown in Priority Aquatic and the Aquatic designation adjacent to Conservancy, Shoreline Residential and most of the Natural Environment Designations. Rationales for these determinations are documented by the County on pages 40-48 of Attachment 2.

The County proposes to revise the use table in Article 4.3 to require a conditional use permit for upland and in-water finfish uses in the Shoreline Environment Designations where it will be

allowed. A revised “Allowed Use Table” removes the “X” that indicate prohibitions in all Shoreline Environment Designations. The table also clarifies which kinds of permits apply where.

Locations where in-water finfish activities are allowed are also described in text, notably in Shoreline Environment Regulations. The research, negotiations, and mapping exercises by which Jefferson County determined areas appropriate for net pen proposals are mentioned in the Amendment History section of this document.

Jefferson County documents a thorough review of existing science on the topic of in-water finfish/net pen aquaculture (see Exhibit B, “Bibliography of Scientific and Technical Information Considered” submitted with the County’s Attachment 2 formal response to Ecology’s conditional approval).

At a policy level, the County has expressed preference for those proposals which “operate within fully contained systems that treat effluent directly before discharge to local waters....” Water quality concerns are also noted in policies that allow in-water finfish aquaculture in limited areas.

There are several pages of detailed regulatory criteria for the evaluation of new proposals for in-water finfish aquaculture facilities. The parameters therein appear consistent with and based upon existing criteria from other state and federal agencies addressing these kinds of operations. Ecology’s 1986 Siting Guidelines, among others, were a primary source.

The County added definitions for “Habitat of Special Significance” and “In Water Finfish Aquaculture.” These are partly to explain distinctions between agriculture and aquaculture. The new definitions synchronize with definitions used in the 1986 Siting Guidelines. The definitions also explain relationships between the SMP and related provisions of the Comprehensive Plan. Regulations addressing upland and in-water finfish aquaculture have been added to the SMP through revisions to Article 8.1 Agriculture and Article 8.2 Aquaculture.

Regional implications of net pen aquaculture considered

Ecology recognizes that Jefferson County had serious concerns about the future of this activity regarding potential impact on native salmon populations and other ecological resources. Correspondence documents the mutual recognition of the need for protection of ecological resources and also addressing statewide policy per RCW 90.58.020 for allowance of water dependent uses.

During 2011, 2012, and 2013, Ecology engaged with other state and federal agencies, as outlined by key points in the Amendment History of this Findings and Conclusions. Ecology and Jefferson County partnered to conduct a thorough review of the current status of regulatory controls in Washington State. Jefferson County made extensive, deliberate and carefully considered efforts to ensure the County would be able to actively protect the marine resources in its jurisdiction.

On May 1, 2012, Ecology and Jefferson County representatives made a site visit to NOAA research facilities and Icicle Seafood commercial net pen facilities in Kitsap County. They learned about scientific and technical advances which had occurred over the last 15-20 years in the commercial fish growing industry in Puget Sound.

Ecology plays an active regulatory role in both water quality and waterfront land use regulation. Other state and federal agencies have overlapping and interactive roles to protect water quality and fish health.

Marine salmon net pens have existed in Washington waters for over 30 years. The first National Pollution Discharge Elimination Permits (NPDES permits) were issued in 1996 to 12 net pens operated by private companies and WDFW. Ecology is responsible for issuing and regulating the NPDES Waster Discharge Permit under the authority of the federal Clean Water Act. The NPDES Permit sets limits on the allowable discharges from net pen aquaculture operation in State waters, and prohibits discharge of unauthorized chemicals.

Ecology's Water Quality Program now manages 8 NPDES permits for private net pen operations owned by one company. The permit requires a sampling plan with specific permit requirements, including a sediment monitoring cycle to be carried out by a third party consultant, reporting to Ecology and the Department of Natural Resources. Sediment monitoring of benthic impacts are carried out around a 100-foot perimeter from the farm sites. Impact limits are set for the organic enrichment of sediments to three distinct threshold values. Mandatory mitigation and monitoring is required if sediment standards are exceeded.

The current permits now include salmon escapement plans, sea lice monitoring plans, and reporting of fish feed, biomass and chemical usage on a monthly basis. Each facility is required to use site-specific pollution prevention plans, accidental fish escape prevention plans, fish escape reporting procedures, and accidental fish escape recovery plans in coordination with the WDFW.

The legal, operational, scientific, and regulatory underpinnings of the Washington State in-water finfish industry were given renewed attention during the Jefferson County SMP update. Strongly held public concerns about net pens were aired by citizens in public workshops and hearings. Recent studies about fish diseases from all over the planet were circulated along with older information on the same subject. Related concerns about various impacts on migrating salmonids were broadcast from neighboring British Columbia, Canada. Ecology considered these and how they differed from net pens operated and regulated in Puget Sound.

A better understanding of the overlapping responsibilities and activities of NOAA, NMFS, USGS, WDFW, WDNR and Ecology was established, and summary materials were posted on Ecology's website. These are intended to be helpful in similar debates with other jurisdictions conducting SMP updates.

An updated overview was developed on how the State's coordination and current industry practices have evolved since the 1986 era. Scientists consulted by Ecology affirmed that if such facilities are properly located and operated, they can co-exist in marine environments with

reasonable assurance of not causing adverse impacts. The results of the review confirm that decisions about the siting of in-water finfish net pen facilities are best conducted based on particular proposals at specified locations.

The 1986 Siting Guidelines for net pen facilities, published by Ecology, was reconsidered in light of the renewed attention. A newer, similar resource that would supersede the 1986 Siting Guidelines has yet to be developed. Even though the Siting Guidelines and the associated environmental impact statement (*Final Programmatic Environmental Impact Statement Fish Culture in Floating Net Pens*, Parametrix, Inc., January 1990) were completed more than two decades ago, the documents are based on robust and appropriate scientific methods. The document remains a relevant and useful resource for evaluation of appropriate siting for net pen facilities, according to the resource managers and technical experts Ecology consulted. These remain important resources used by Ecology for water quality permitting for net pens.

Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity.

During the past 20 years, the commercial net pen industry in Washington has become more regulated and significantly changed its practices. Commercial net pens are currently permitted by Ecology and other state and federal agencies, and are required to mitigate environmental impacts. Many historic concerns regarding escapement, disease, sea lice and water quality are now addressed through state permits and updated operations.

The possibility for upland production of salmon or other species for commercial purposes was acknowledged. Ecology was advised by NOAA that commercial feasibility of such upland facilities is presently precluded for economic reasons.

Recommended Changes

As provided within their response to Ecology and noted in Attachment C – Revised, the County accepted Recommended Changes 1, 3, 7, 8, 11, and 13. These changes have been incorporated into the SMP by Ordinance No. 07-1216-13. The County has proposed alternative language for Recommended Changes 5, 6, 9, 10, 12 and 14. Ecology’s original recommended language and the County’s proposed alternative language is set forth in Ecology’s Revised Attachment C.

The County declined to adopt Recommended Changes 2 and 4.

Additional Changes

Jefferson County identified 23 additional changes (“Additional Jefferson County Revisions Proposed for Clarification”) that correct typographical errors or otherwise provide clarification to the SMP. These are set forth on pages 36 – 39 of the document titled “Formal Jefferson County Response to Ecology on Changes to the Locally Approved Shoreline Master Program – FINAL (November 2013) (Attachment 2).”

CONCLUSIONS OF LAW

The Shoreline Management Act gives preference to shoreline uses that are “consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline” (RCW90.58.020). Aquaculture is a water-dependent use and therefore a preferred use of the shoreline. Pursuant to RCW 90.58.020, a local government generally must allow for water-dependent uses that will not result in net loss to the ecological functions of the shoreline.

The Shoreline Master Program Guidelines address preferred, water dependent uses and aquaculture. Relevant sections of the Guidelines are included below.

WAC 173-26-211(5)(c)(ii)(G) states, “Local governments should reserve shoreline space for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.”

WAC 173-26-241(3)(b)(i)(A) states, “This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.”

In reserving shoreline areas for uses, local governments must give preference to reserving appropriate areas for protecting and restoring ecological functions over reserving areas for water-dependent and associated water-related uses; and give preference to water-dependent uses over other types of shorelines uses. [See RCW 90.58.020, WAC 173-26-201(2)(d), and WAC 173-26-251(2).]

WAC 173-26-241(3)(b) (C) states, “Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-201 (2)(e).”

Ecology has reviewed the complete record submitted by Jefferson County.

Based on the best scientific knowledge and advice from NOAA, USGS and WDFW, Ecology has concluded that commercial finfish net pens that are properly sited and operated in marine waters are compatible with a healthy marine environment. Ecology’s required changes for the net pen aquaculture provisions for Jefferson County’s Shoreline Master Program are based on RCW 90.58.020 and related WAC provisions, and they are consistent with the guidance Ecology provides to local governments statewide.

Jefferson County conducted a review of the science for in-water finfish/net pen aquaculture that included workshops with technical experts and analysis of the scientific literature, and submitted a comprehensive list of science on this topic, as documented in the record. Jefferson County has documented its response to Ecology's Conditional Approval and Required Changes 13, 14 and 15 in Ordinance #07-1216-13 and Attachment 2. Ecology concludes that the record supports the County's alternative language for Required Changes 13, 14 and 15 regarding in-water finfish/net pen aquaculture.

Ecology concludes that Jefferson County's alternative language for Required Changes 13, 14 and 15 is consistent with the purpose and intent of Ecology's original proposed required changes and is consistent with the policy of RCW 90.58.020 and the applicable guidelines.

Jefferson County has documented its response to Ecology's 2011 Conditional Approval and Required Changes 1, 3, 4, 7, 16, 17 and 19, as described in Ordinance# 07-1216-13 and Attachment 2. Ecology concludes Jefferson County's Ordinance #07-1216-13 and Attachment 2 provide a complete discussion of the relevant concerns and rationales for Jefferson County's alternative language for these required changes.

Ecology concludes that Jefferson County has accurately and completely documented alternative language responses to Required Changes 1, 3, 4, 7, 16, 17 and 19 and provided appropriate rationale. Ecology concludes that Jefferson County's proposed alternative language for these required changes is consistent with the purpose and intent of Ecology's required changes and is consistent with the policy of RCW 90.58.020 and the applicable guidelines.

Ecology concludes that Jefferson County accepted Required Changes 2, 5, 6, 8 - 12, 18, 20 - 24 and 26.

Ecology concludes that Jefferson County has accurately and completely documented alternative language responses to Recommended Changes 5, 6, 9, 10, 12 and 14. Ecology finds that Jefferson County's proposed alternative language for these required changes is consistent with the purpose and intent of Ecology's required changes and is consistent with the policy of RCW 90.58.020 and the applicable guidelines.

Ecology concludes that Jefferson County accepted Recommended Changes 1, 3, 7, 8, 11, and 13, but declined to adopt Recommended Changes 2 and 4.

Ecology has reviewed the "Additional Jefferson County Revisions Proposed for Clarification" on pages 36-39 of Attachment 2, and concludes the revisions are appropriate and consistent with SMP Guidelines.

Ecology concludes that Shorelines of Statewide Significance are defined in RCW 90.58.030 (2)(f) and include the Pacific Ocean, Hood Canal and the Strait of Juan de Fuca and their shorelands, and Puget Sound waters lying seaward from the line of extreme low tide. Jefferson County has jurisdiction over portions of these waters.

Ecology recognizes that in-water finfish/net pen aquaculture activities occur within Shorelines of Statewide Significance. Ecology finds the provisions of Jefferson County's alternative language for in-water finfish aquaculture allows for net pen proposals in specified areas while appropriately protecting ecological resources of more sensitive areas, and avoiding use conflicts in accord with the purposes of Shoreline Environment Designations. Ecology concludes the Jefferson County approach to aquaculture supports the optimal implementation of 90.58.020 policies, including those for Shorelines of Statewide Significance.

Ecology concludes that the proposed SMP, including the changes provided in Ecology's Attachment B-(Revised) and Attachment C-(Revised), contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules. This comprehensive update of the Jefferson County SMP shall become effective 14 days from date of the Ecology Director's letter notifying the County of final action approving the SMP.