

**City of Bainbridge Island SMP Limited Amendment – Aquaculture**

Summary of Proposed Changes

February 17, 2017

Item	SMP Citation	Proposed language	Discussion/Basis for Change
A1	5.2.1	These provisions apply to the commercial cultivation and harvesting of fish, shellfish or other aquatic animals or plants, and also to non-commercial harvesting, <del>and to the incidental preparation of fish and shellfish for human consumption, or cultivation for restoration purposes.</del>	Verbatim recitation of a general provision of SMP Guidelines is not required if it does not result in an inconsistency with the SMA or SMP Guidelines. Regulations should not apply to cooking of food.
A2	5.2.1	<del>When properly managed, aquaculture can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline.</del>	Verbatim recitation of a general provision of SMP Guidelines is not required if it does not result in an inconsistency with the SMA or SMP Guidelines. WAC language deleted because City does not agree with language for all types of aquaculture.
PA	5.2.2.1	Identify and encourage aquaculture activities which <del>may provide opportunities for creating</del> <u>create</u> ecosystem improvements and result in no net loss of ecological functions.	Language revised for clarity and improving consistency with WAC 173-26-191(2)(ii)(A), which requires that regulations “Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.”
P1	5.2.2.3	<del>Aquaculture should not be permitted</del> <u>Do not permit aquaculture</u> in areas where it would result in a net loss of ecological functions, adversely impact eelgrass or macroalgae, or significantly conflict with navigation and other water dependent uses.	Language revised for clarity and improving consistency with WAC 173-26-191(2)(ii)(A), which requires that regulations “Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.”
P2	5.2.2.3	<del>Aquaculture should not be permitted</del> <u>Do not permit aquaculture</u> in areas where it would result in a net loss of ecological functions, adversely impact eelgrass or macroalgae, or significantly conflict with navigation and other water dependent uses.	Language revised for clarity and improving consistency with WAC 173-26-191(2)(ii)(A), which requires that regulations “Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.”
P3	5.2.2.4 (new)	<u>Locate new commercial aquaculture shall be located to avoid or minimize conflicts with public use and access of the shoreline and waters of City-owned tidelands and shorelines designated for public use (e.g.; Island Conservancy shoreline designation).</u>	<p>New policy added to support regulation prohibiting aquaculture in Island Conservancy shoreline designation and City-owned tidelands. Regulations must have a policy that they are implementing. Revised for clarity to emphasize policy is not elevating public use over aquaculture use on all shorelines. Also changed to avoid should/shall debate.</p> <p>There is a balance inherent in the SMA, its associated regulations, and the City’s SMP that, while seeking to encourage aquaculture, also seeks to avoid interference with recreational use.</p> <p>SMPs generally must allow for aquaculture in appropriate areas so long as it does not result significantly conflict other water-dependent uses [WAC 173-26-241(3)(b)(i)(C)]. Public use and access of the shoreline is a water-dependent use and primary use of lands designated Island Conservancy (public parks, open spaces and road ends). While nothing in the description of geoduck aquaculture necessitates interference with the public use of surface waters, some geoduck gear (e.g. markers, floats, barges, and entanglements) may affect public use of the water. A neighboring public park may trigger an interference with public use of the surface water (see Attorney General’s Opinion AGO 2007 No. 1 and <i>Wash. Shell Fish</i>, 132 Wn. App. 239.).</p> <p>In WAC 173-26-201(2)(d), local jurisdictions are directed to first reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, <b>aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership</b>. Local governments should ensure that these areas are reserved consistent with constitutional limits (emphasis added).</p>

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P4	5.2.2.4 (current) 5.2.2.5 (new)	<del>Design and locate aquaculture facilities should be designed and located to not spread disease to native aquatic life, establish new non-native species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.</del>	Changed to avoid should/shall debate. Language revised for clarity and improving consistency with WAC 173-26-191(2)(ii)(A), which requires that regulations “Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.”
P5	5.2.2.5 (current) 5.2.2.6 (new)	<del>Impacts to ecological functions should be mitigated</del> Mitigate impacts to <u>ecological functions</u> according to WAC 173-26-201(2)(e) and Section 4.1.2, Environmental Impacts.	Changed to avoid should/shall debate. Language revised for clarity and improving consistency with WAC 173-26-191(2)(ii)(A), which requires that regulations “Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.”
P6	5.2.2.9 (new)	<u>Before permitting commercial aquaculture, the City should first reserve appropriate areas for protecting and restoring ecological functions to the greatest extent feasible while planning for and fostering reasonable and appropriate water-dependent uses (RCW 90.58.020, WAC 173-26-201(2)(d), WAC 173-26-251(2)).</u>	<p>New policy language to support limiting where commercial aquaculture can occur and documenting City’s interest in first protecting shorelines.</p> <p>This language articulates RCW 90.58.020, WAC 173-26-201(2)(d) and WAC 173-26-251(2) and supports the proposed location standards for commercial aquaculture. RCW 90.58.020 requires that the qualities of natural shorelines be preserved to the greatest extent feasibly with the requirement to plan for and foster all reasonable and appropriate uses. In WAC 173-26-201(2)(d), local jurisdictions are directed to first reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health and then reserve shoreline areas for water-dependent and associated water-related uses.</p> <p>WAC 173-26-201(2)(d) continues, in part: Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommodated <b>provided that the preferred uses are reasonably provided for in the jurisdiction</b> (emphasis added).</p> <p>The aquaculture definition in the SMP Guidelines applies to all types of aquaculture – including commercial; personal, non-commercial use; and recreational use. The SMA and SMP Guidelines are silent as to any required proportion of the different types of aquaculture that must be provided.</p> <p>The City’s proposed limited amendment reasonably provides for aquaculture based on reasonable and foreseeable use in the jurisdiction (emphasis added). There are 250 existing personal shellfish gardens, one commercial shellfish garden and 5.9 surface water acres of commercial finfish aquaculture (29 percent of all commercial Atlantic salmon net pen aquaculture within the entire state) within the jurisdiction. The proposed limited amendment allows for non-commercial aquaculture along over 75 percent of the shoreline, 5 acres of commercial shellfish aquaculture and 9 new acres of commercial net pen aquaculture within the jurisdiction. The proposed limited amendment reasonably provides for the preferred use of aquaculture in the jurisdiction.</p> <p>See additional rationale in Exhibit 5, Overview Document.</p>
P7	5.2.2.10 (new)	<u>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)).</u>	<p>New policy language to support limiting where commercial aquaculture can occur and documenting City’s interest in first protecting shorelines. Changed should to active language.</p> <p>See additional rationale in Exhibit 5, Overview Document.</p>

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P8	5.2.2.11 (new)	<p><u>Until the City's scheduled periodic review of this Program under RCW 90.58.080, limit where commercial aquaculture may occur based on local conditions and ecological considerations, estimated future demand for shoreline space, potential use conflicts, current shoreline use patterns and projected trends. During the periodic review, the City will make amendments deemed necessary to reflect changing local circumstances, new information or improved data, relevant environmental and ecological conditions and any applicable guidelines issued by the Department of Ecology.</u></p>	<p>New policy language to support limiting where commercial aquaculture can occur and documenting City's interest in first protecting shorelines. Timeline of periodic review provided to emphasize that City acknowledges changing nature of aquaculture industry and lack of information/data on impacts specific to the island. Changed should to active language.</p> <p>See additional rationale in Exhibit 5, Overview Document.</p>
R1	--	<p><u>The following is prohibited:</u></p>	<p>This language was added as a heading for clarity to the section on uses, activities and materials that are prohibited.</p>
R2	5.2.3.1	<p>Aquaculture in the Natural, <u>Island Conservancy</u>, and Priority Aquatic designations, except as provided in Section 5.2.4 (1), below.</p>	<p>Existing SMP use table (Table 4-3) shows Aquaculture as prohibited ("X") and Aquaculture, Shellfish Garden as permitted ("P") in the Island Conservancy shoreline designation. This text added to provide consistency between text and table. The Island Conservancy designation is comprised almost wholly of public properties designated as road ends, open space parcels or parks.</p> <p>Revision necessary to clarify that commercial aquaculture is prohibited in Island Conservancy designation. Existing SMP use table (Table 4-3) shows Aquaculture as prohibited ("X") and Aquaculture, Shellfish Garden as permitted ("P") in the Island Conservancy shoreline designation. This text added to provide consistency between text and table. The Island Conservancy designation is comprised almost wholly of public properties designated as road ends, open space parcels or parks.</p> <p>There is a balance inherent in the SMA, its associated regulations, and the City's SMP that, while seeking to encourage aquaculture, also seeks to avoid interference with recreational use.</p> <p>SMPs generally must allow for aquaculture in appropriate areas so long as it does not result significantly conflict other water-dependent uses [WAC 173-26-241(3)(b)(i)(C)]. Public use and access of the shoreline is a water-dependent use and primary use of lands designated Island Conservancy (public parks, open spaces and road ends). While nothing in the description of geoduck aquaculture necessitates interference with the public use of surface waters, some geoduck gear (e.g. markers, floats, barges, and entanglements) may affect public use of the water. A neighboring public park may trigger an interference with public use of the surface water (see Attorney General's Opinion AGO 2007 No. 1 and <i>Wash. Shell Fish</i>, 132 Wn. App. 239.).</p> <p>In WAC 173-26-201(2)(d), local jurisdictions are directed to first reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits (emphasis added).</p> <p>Island Conservancy shoreline designation management policies provide (SMP 3.2.4.2) that new recreational uses that preserve the natural character of the area or promote preservation of</p>

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			open space, floodplain or sensitive lands either directly or over the long-term should be the principal uses within the designation and that uses should be of a non-permanent nature unless recreational.
R3	5.2.3.2 (new)	<u>Aquaculture uses and/or operations on City-owned public tidelands.</u>	The City is in the process of acquiring 20 +/- tidelands from Kitsap County. Recent policy recommendations from the Public Water Access Committee include a prohibition of commercial aquaculture on City-owned tidelands. This is consistent with the prohibition in the Island Conservancy designation, although not all City-owned tidelands are adjacent to the Island Conservancy shoreline designation.
R4	5.2.3.3 (new)	<u>New commercial net pen aquaculture.</u>	See Exhibit 5, Overview Document.
R5	5.2.3.2 (current) 5.2.3.4 (new)	Aquaculture that uses or releases herbicides, pesticides, antibiotics, fertilizers, parasites, pharmaceuticals, genetically modified organisms, feed or other materials known to be potentially harmful into surrounding waters is prohibited, unless: <ul style="list-style-type: none"> <li>a. When conducted for native population recovery in accordance with government/Tribal approved plan and all state and federal regulations; or</li> <li>b. If approved by all appropriate state and federal agencies and proof thereof is submitted to the City and if all regulations of <u>SMP 4.16, Water Quality and Stormwater Management, are met.</u></li> </ul>	Additional language added to emphasize City's strong interest in protecting water quality.
R6	5.2.3.4 (current) 5.2.3.5 (new)	Mechanical and/or hydraulic harvesting or other activities that involve substantial substrate modification shall be prohibited in existing kelp beds, or in beds of native eel grass ( <i>Zostera marina</i> ) and mixed beds of native and non-native eelgrass.	Eelgrass beds ( <i>Zostera</i> spp.) form an ecologically important habitat type and can potentially be disturbed by shellfish aquaculture (Dumbauld et al. 2009). Information on the distribution of eelgrass in Washington State varies in quality and resolution. The SMP Handbook provides, "Given the two eelgrass species occur in close proximity or in mixed beds, protection of mixed beds will result in protection of <i>Z. japonica</i> as well" (page 27).
R7	5.2.3.6 (new)	<u>Use of non-biodegradable plastics commencing two years after the effective date of Ordinance 2016-06.</u>	The topic of prohibition of non-biodegradable materials was discussed at length during the course of public hearings on the proposed limited amendment. There is much literature that the use of plastics is harmful to the marine environment. See additional rationale in Exhibit 5, Overview Document.
R8	5.2.3.7	<u>Operating <del>Driving on the shoreline below the ordinary high water mark with motorized vehicles, such as trucks, tractors and forklifts, on the shoreline and below the ordinary high water mark.</del></u>	Language revised for clarity and consistency with WAC 173-26-191(2)(ii)(A), which requires that regulations "Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies."
R8A	5.2.3.8 (new)	<u>New commercial aquaculture in or on known forage fish spawning sites and/or essential fish habitat.</u>	See Exhibit 5, Overview Document.
R9	5.2.4.1.a	1. Aquaculture may be allowed as follows: <ul style="list-style-type: none"> <li>a. <del>Aquaculture as a conditional use in Shoreline Residential, Urban, and adjacent Aquatic designations. Commercial aquaculture, including geoduck, as a conditional use in the Shoreline Residential Conservancy, Shoreline Residential, Urban and adjacent Aquatic designations.</del></li> <li>b. <u>Commercial aquaculture, excluding geoduck, as a conditional use in the Natural, Island Conservancy and adjacent Aquatic designations if</u></li> </ul>	Language revised to provide consistency between table and text. Text was not changed to reflect Ecology's required change to allow aquaculture in Shoreline Residential Conservancy shoreline designation.  Language added to separate geoduck aquaculture from other commercial aquaculture. "Non-reproducing" added to reflect that most shellfish gardeners are using Pacific oysters, which are triploid but not native species. Result of public comment by Puget Sound Restoration Fund.

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		<p><u>using non-reproducing or native species or as part of an approved shoreline restoration project or native species recovery project.</u></p> <p>c. <del>Individual Shellfish Gardens are allowed in the Island Conservancy, Shoreline Residential Conservancy, Shoreline Residential and Urban shoreline designations and in adjacent Aquatic designation Priority B. They also are allowed in Aquatic Priority A when for the recovery of native populations, restoration, or personal use. Non-commercial aquaculture is a permitted use in the Shoreline Residential Conservancy, Shoreline Residential, Urban and adjacent Aquatic designations. It is a permitted use in the Natural, Island Conservancy, Priority Aquatic A and Priority Aquatic B designations if using non-reproducing or native species or as part of an approved shoreline restoration project or native species recovery project.</del></p> <p>d. <u>Non-commercial aquaculture is limited to a cultivation area of no greater than 200 square feet.</u></p>	<p>Language revised to reflect updated use table. See above comment re: "non-reproducing."</p> <p>d. See f., below.</p>
R10	5.2.5.9 (current) 5.2.4.2 (new)	<p><del>Shellfish Gardens for personal consumption are allowed on private lands provided the following can be met: <u>Non-commercial aquaculture is allowed without a Shoreline Conditional Use Permit pursuant to Section 5.2.4.1.c, provided it meets the substantive requirements of this Program and the SMA, and the following can be met:</u></del></p> <p>a. <del>They comply</del> <u>It complies</u> with all state and federal regulations, including transfer and harvest permits required by WDFW;</p> <p>b. The cultivation and harvesting is limited to <del>native</del> species of shellfish acquired from a licensed source consistent with state law;</p> <p>c. The operation may utilize bottom culture or off-bottom culture bags if in accordance with best management practices and it does not significantly alter the tidal bed;</p> <p>d. <u>All materials shall be marked with owners' contact information to provide identification after storm disturbance;</u></p> <p>e. <u>Any use or activity meets the no net loss standard of Section 4.1.2.4; and</u></p> <p>f. <u>The total disturbance area is limited to an area of 200 square feet.</u></p>	<p>Revised language to remove "shellfish garden," making a distinction between commercial and non-commercial only. Language revised to provide consistency with permitting requirements, add additional regulations for shoreline protection and limit the size of non-commercial aquaculture.</p> <p>a. Revised for clarity.</p> <p>b. Revised because the majority of shellfish gardeners are using Pacific oysters, which are not native.</p> <p>c. No change.</p> <p>d. Added to ensure debris collection.</p> <p>e. Added to clarify that even though a permit is not needed, the use/activity still needs to meet the no net loss standard.</p> <p>f. Staff originally proposed a 500 sf limit based on the existing community shellfish farm operation and publications available for personal shellfish growing/consumption. 500 sf allows for 6 15-foot long lines spaced 12 inches apart, each with a minimum of 5 bags. This calculates out to 30 dozen oysters which is the maximum subscription amount for the shellfish farm membership (members can sign up to get 120, 240 or 360 oysters per year). The 500 sf number was also intended to accommodate group (neighbors or multiple families) growing in one area and minimize the administration of conditional use permits for personal shellfish gardens. Public comment and City Council concluded that "a few bags" is more than ample for personal shellfish gardening and that 200 sf is sufficient to provide for such use.</p>
R11	5.2.4.3	<p>Aquaculture shall <del>avoid</del> <u>not cause</u>:</p> <p>a. A net loss of ecological functions or processes;</p> <p>b. Adverse impacts to <del>eelgrass and macro algae</del>; <u>critical saltwater habitat as defined in WAC 173-26-221(2)(c)(iii), including all kelp</u></p>	<p>Revised for clarity to include complete definition of critical saltwater habitat and improve consistency with WAC 173-26-241(3)(b)(i)(C): 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.</p>

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		<p><u>beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association;</u></p> <p>c. Significant conflicts with navigation, <u>public access</u>, and <u>other water-dependent uses</u>;</p> <p>d. The spread of disease to native aquatic life;</p> <p>e. Establishing new non-native species that cause significant ecological impacts;</p> <p>f. Significant impacts to shoreline aesthetic qualities; and/or</p> <p>g. Significant modifications of the substrate.</p>	<p>a. Added full definition of critical saltwater habitat to emphasize what requires protection from impacts.</p> <p>c. Added language to limit impacts on Island Conservancy and City-owned tideland parcels.</p>
R12	5.2.4.2 (current) 5.2.4.4 (new)	<p>When a shoreline conditional use permit is issued for a new aquaculture use or development, that permit shall apply to the initial siting, construction, and/or planting or stocking of the facility or farm, and shall be valid for the period specified in the permit.</p>	
R13	5.2.4.5 (new)	<p><u>Permit revisions shall proceed in accordance with WAC 173-27-100. A new permit is required when any of the following occurs:</u></p> <p><u>i. The physical extent of the use or development or associated overwater coverage is expanded by more than ten percent compared to the permitted use or development. If the amount of expansion or change in overwater coverage exceeds ten percent, the revision or sum of the revision and any previously approved revisions shall require the applicant apply for a new permit;</u></p> <p><u>ii. The applicant proposes to cultivate a species included in the original permit; or</u></p> <p><u>iii. New chemicals not previously approved as part of the existing permit are proposed for use.</u></p>	<p>Added language from the WAC to clarify permit revision process and include triggers for new permit applications.</p>
R14	5.2.4.6 (new)	<p><u>When determined necessary for compliance with this Program and the SMA, the Administrator may apply conditions of approval to any shoreline permit. The following is a non-inclusive list of potential conditions that may apply to certain aquaculture uses or facilities:</u></p> <p>a. <u>All permitted aquaculture operations shall be reviewed by the City after the first 12-month period of operation, and no less than biennially thereafter, to confirm compliance with the terms and conditions of the permit. The City may rescind the permit pursuant to RCW 90.58.140(8) if it is determined by the Administrator that aquaculture operations are not consistent with the terms and conditions of the permit and/or the aquaculture operations are not within the original scope and intent of the original permit.</u></p> <p>b. <u>Beaches in the vicinity of permitted shellfish operations shall be patrolled monthly by crews who will retrieve aquaculture debris (e.g.: predator nets, tubes, tube caps, stakes) that escape from the project area. Crews are not</u></p>	<p>List of potential permit conditions added to provide rationale for including such conditions at time of permit approval and provide examples to potential applicants.</p>

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		<p><u>required to patrol privately owned tidelands where it can be demonstrated that a request to patrol has been made by the operator and owners have refused to authorize such activity. Within the project vicinity, locations shall be identified where debris tends to accumulate due to wave, current, or wind action, and after weather events these locations shall be patrolled by crews who will remove and dispose appropriately of aquaculture debris. Operators shall maintain a record with the following information and the record shall be made available upon request: date of patrol, location of areas patrolled, description of the type and amount of retrieved debris, and other pertinent information.</u></p> <p>c. <u>Where any proposed structure has the potential to constitute a hazard to the public, the City may require the posting of a bond commensurate with the cost of removal or repair. Following notice to the owner, the City may abate an existing abandoned or unsafe aquaculture structure if the owner fails to respond within 30 days. The City may also impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies. The owner of the structure shall post a single bond with the government agency of the owner's choosing.</u></p> <p>d. <u>Materials that are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the ordinary high water mark.</u></p> <p>e. <u>All tubes, mesh bags, and area nets used in shellfish operations on the tidelands below the ordinary high water mark shall be clearly, indelibly and permanently marked to identify the permittee name and contact information. On the nets, identification markers will be placed with a minimum of one identification marker for each 50 feet of net.</u></p> <p>f. <u>All floating and submerged aquaculture structures and facilities in navigable waters shall comply with all applicable state and federal requirements.</u></p> <p>g. <u>The operators of aquaculture developments shall control odor.</u></p> <p>h. <u>Aquaculture operations must comply with noise regulations in BIMC 16.16 and avoid or minimize noise impacts to the extent possible.</u></p> <p>i. <u>Overhead wiring or plumbing is not permitted on overwater structures.</u></p> <p>j. <u>Bulk storage for gasoline, oil and other petroleum products for any use or purpose on piers and docks is prohibited. Bulk storage means non-portable storage in fixed tanks.</u></p>	
R15	5.2.4.7 (new)	<u>In addition to the minimum application requirements in BIMC 2.16.165, applications for commercial aquaculture operations shall include the submittal requirements provided in the City's Administrative Manual. Some of these submittal requirements may be waived by the Administrator based on site-specific environmental and ecological conditions.</u>	The City provides submittal requirements for land use applications in the Administrative Manual rather than municipal code. Submittal requirements for commercial aquaculture were never added to the City's Administrative Manual as part of the 2014 update.
R15A	5.2.4.8 (new)	<u>The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant/proponent and the affected tribe(s). The City will notify affected tribes of new shoreline permit applications utilizing the applicable notification process in BIMC 2.16.165.</u>	Added based on public comment received from Suquamish Tribe. See Exhibit 12.
R16	5.2.5	Regulations –Location and Design Standards	Title revised for clarity.

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R17	5.2.5.1	<del>Floating and submerged aquaculture structures shall be located to avoid or minimize interference with navigation and the normal public use of the surface waters. Floating structures shall remain shoreward of principal navigation channels. Other restrictions on the scale of aquaculture activities to protect navigational access may be necessary based on the size and shape of the affected water body.</del>	Revised and moved to 5.2.5.1.e
R18	5.2.5.2	<del>Aquacultural structures and activities that are not water dependent (e.g., warehouses for storage of products, parking lots) shall be located landward of the OHWM, upland of water dependent portions of the project, and shall avoid or minimize detrimental impacts to the shoreline.</del>	Revised and moved to 5.2.7 to consolidate regulations for upland structures.
R19	5.2.5.3	<del>Hatchery and other aquaculture operations shall be required to maintain a vegetated buffer zone along the affected stream as prescribed in Appendix B, provided that clearing of vegetation shall be permitted for essential water access points.</del>	Revised and moved to 5.2.7 to consolidate regulations for upland structures.
R20	5.2.5.4	<del>Onshore support structures shall meet the height and setback standards established in Table 4.2, Site Development Dimensional Standards Table, except that reduced setbacks may be permitted through a shoreline variance where necessary for the operation of hatcheries and rearing ponds.</del>	Revised and moved to 5.2.7 to consolidate regulations for upland structures.
R21	5.2.5.5 (current) 5.2.5.2 (new)	The following shall be limited to the minimum size or number necessary for approved aquaculture development, uses, and activities:  a. Submerged or intertidal structures.  b. Land-based facilities.  c. Structures which modify substrate.	Renumbering only.
R22	5.2.5.6 and 7 (current) 5.2.5.3 (new)	<del>Floating/hanging aquaculture facilities and associated equipment, except navigation aids, shall use colors and materials that blend into the surrounding environment in order to minimize visual impacts. Floating/hanging aquaculture facilities and associated equipment, except navigation aids, shall be located at least 1,500 feet off shore outside major navigation channels and use colors and materials that blend into the surrounding environment in order to minimize visual impacts. All materials, including those used for incidental aquaculture for personal consumption, shall be marked with owners' contact information to provide identification after storm disturbance. All floating and submerged aquaculture facilities in navigable waters shall comply with all applicable state and federal requirements. Floating/hanging aquaculture facilities require a visual impact analysis consisting of information comparable to that found in the Department of Ecology's Aquaculture Siting Study (1986), as updated. Such analysis may be prepared by the applicant without professional assistance, provided that it includes an adequate assessment of impacts, as determined by the Administrator.</del>	Consolidated language for clarity.
R23	5.2.5.8 (current) 5.2.5.4 (new)	<del>For aquacultural projects using over-water structures, storage of necessary tools and apparatus waterward of the OHWM shall be limited to containers of not more than three (3) feet in height, as measured from the surface of the raft or R24 deck, provided that, in locations where the visual impact of the proposed aquaculture structures will be minimal, the City, based upon written findings and without requiring a variance, may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the ordinary high</del>	Revised language for improved clarity and restrictions.



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		<p><del>water-mark. A temporary sanitation station may be allowed on fixed overwater pier structures when utilities are not available within a reasonable distance. Any items stored upon overwater aquaculture facilities such as materials, garbage, tools, or apparatus, shall be sited and maintained to minimize visual impacts. Storage of necessary tools and apparatus waterward of the OHWM shall be limited to containers of not more than three (3) feet in height, as measured from the surface of the raft or dock unless shoreline conditions serve to minimize visual impacts as demonstrated through a visual impacts study. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM. Impacts of overwater structures (e.g.; shading) shall be evaluated based on the maximum surface coverage including any items stored upon such structures.</del></p>	
R24	5.2.5.9 (current)	<p><del>Shellfish Gardens for personal consumption are allowed on private lands provided the following can be met:</del></p> <ul style="list-style-type: none"> <li><del>a. They comply with all state and federal regulations, including transfer and harvest permits required by WDFW.</del></li> <li><del>b. The cultivation and harvesting is limited to native species of shellfish acquired from a licensed source consistent with state law; and</del></li> <li><del>c. The operation may utilize bottom culture or off-bottom culture bags if in accordance with best management practices and it does not significantly alter the tidal bed.</del></li> </ul>	Revised and moved to 5.2.4.2.
R25	S.2.5.1 (new)	<p>1. <u>Location standards for commercial aquaculture operations include:</u></p> <ul style="list-style-type: none"> <li>a. <u>The total area of all newly permitted commercial aquaculture operations other than net pen aquaculture operations on Bainbridge Island shall not exceed 5 acres. Acreage shall include the area of cultivation and harvest on the tidelands</u></li> <li>b. <u>Aquaculture use and development located on parcels abutting or nearby City-owned tidelands shall be located so as to not restrict pedestrian access or circulation along public beaches.</u></li> <li>c. <u>Shellfish aquaculture use and development shall not significantly interfere with navigation, or access to adjacent waterfront properties, or public recreation areas. Mitigation shall be provided to offset such impacts where there is a high probability that adverse impact would occur. This provision shall not be interpreted to mean that an operator is required to provide access across owned or leased tidelands at low tide for adjacent upland property owners.</u></li> <li>d. <u>Aquaculture use and development shall be located in areas where biophysical conditions, such as tidal currents, water temperature and depth are suitable for the form of aquaculture proposed. Individual aquaculture uses and developments shall be separated by sufficient distance to ensure that significant adverse cumulative effects do not occur.</u></li> <li>e. <u>Floating and submerged aquaculture structures shall be located to avoid or minimize interference with navigation and the normal public use of the surface waters. Floating structures shall remain</u></li> </ul>	<ul style="list-style-type: none"> <li>a. See Exhibit 5 for rationale for 5-acre limit.</li> <li>b. See discussion for 5.2.2.4 (new).</li> <li>c. See SMP Handbook, When considering appropriate locations for aquaculture, local governments should analyze potential use conflicts (page 10); language added to improve consistency with WAC 173-26-241(3)(B), (C) and (D) regarding siting considerations.</li> <li>d. Language added to improve consistency with WAC 173-26-241(3)(b)(i)(B),(C) and (D) regarding siting considerations.</li> <li>e. Existing language; renumbered.</li> <li>f. Added language to provide internal consistency with property line setbacks for other shoreline overwater structures (See SMP 6.3.7.6.3, side yard setbacks).</li> <li>g. and h. The aquaculture provisions in the SMP Guidelines state that aquaculture “should not be permitted where it would adversely impact eelgrass.” The City’s existing critical saltwater habitat regulations already apply to all require a 25 foot buffer from new or expanded overwater structures. The current buffer width range used in state 401 Water Quality Certifications for new intertidal geoduck aquaculture is 10-25 feet. The City proposes a 25-foot buffer for aquaculture structures and activities to provide internal consistency and acknowledge that the definition of “eelgrass bed” is evolving along with seagrass science and not provided in the SMP Guidelines.</li> <li>i. Eelgrass beds (<i>Zostera</i> spp.) form an ecologically important habitat type and can potentially be disturbed by shellfish aquaculture (Dumbauld et al. 2009). Information on the distribution of</li> </ul>

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		<p><u>shoreward of principal navigation channels. Other restrictions on the scale of aquaculture activities to protect navigational access may be necessary based on the size and shape of the affected water body.</u></p> <p>f. <u>Property Line Setbacks. The perimeter of an aquaculture operation shall be set back a minimum of ten feet (10') from side property lines. Aquaculture operations that include multiple parcels require property line setbacks only at the outer edge of the operation and not from internal property lines.</u></p> <p>g. <u>Native aquatic vegetation attached to or rooted in substrate, including native and mixed beds of eelgrass, require a minimum buffer of 25 feet. This buffer must be maintained between the aquatic vegetation and outside edge of an aquaculture activity or structure.</u></p> <p>h. <u>The City may require a larger buffer based on consultation during permit review with Ecology, Department of Natural Resources and the U.S. Army Corps of Engineers to determine appropriate buffers based on the most current and applicable science and proximity of bed to the project, current and tidal flow direction, anticipated turbidity and anticipated frequency and intensity of operation. The City may require a larger buffer in and areas adjacent to existing eelgrass beds that are suitable for reintroduction or natural colonization of native eelgrass beds as identified in the City's SMP Restoration Plan. These restoration areas include: Milwaukee Dock Eelgrass Project, Port Madison Shoreline Restoration Project, Rolling Bay Walk Acquisition and Demolition and West Bainbridge Shoreline Protection Project. Buffers will be determined based on site-specific conditions and survey data submitted with the permit application.</u></p> <p>i. <u>Mixed beds of native and non-native eelgrass shall be protected as critical saltwater habitat in order to protect native eelgrass and the species that depend upon both types of eelgrass. This regulation does not preclude hand removal of non-native eelgrass pursuant to WAC 16-750-015.</u></p>	<p>eelgrass in Washington State varies in quality and resolution. The SMP Handbook provides, "Given the two eelgrass species occur in close proximity or in mixed beds, protection of mixed beds will result in protection of <i>Z. japonica</i> as well" (page 27).</p>
R26	5.2.5.5	<u>Netting and fencing shall be the minimum necessary to deter targeted predators and shall not exceed six (6) feet in height, as measured from water surface.</u>	Renumbering only; moved from 5.2.5.1.
R27	5.2.6	<u>All commercial aquaculture operations shall comply with the following standards:</u>	Added to clarify that these apply only to commercial aquaculture.
R28	5.2.6.1	<u>Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner. Aquaculture operations that do not conform with this master program are considered discontinued if the use has ceased for a period of more than five (5) years.</u>	Language separated and moved below.
R30	5.2.6.3 (new)	<u>Aquaculture operations that do not conform with this master program are considered discontinued if the use has ceased for a period of more than five (5) years twelve (12) consecutive months.</u>	Changed to be consistent with non-conforming use language in SMP Section 4.2.1.5.
R31	5.2.6.3 (current) 5.2.6.4 (new)	<u>No processing of any aquaculture product, except for the sorting and culling of the cultured organism and the washing or removal of surface materials or organisms after</u>	Renumbering only.

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		harvest, shall occur in or over the water unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be governed by these provisions and the policies and regulations of other applicable sections of the Master Program, in particular, provisions addressing commercial and industrial uses.	
R32	5.2.6.4 (current) 5.2.6.5 (new)	Aquaculture wastes shall be disposed of in a manner that will ensure compliance with all applicable governmental waste disposal standards. No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation, <u>except for in approved receptacles [BIMC Chapter 8.16].</u>	The Shorelines Hearings Board has found that SMPs may require equipment marking and litter patrols and aligned with local litter ordinances (see SMP Handbook, page 21).  <u>Aquaculture is a preferred use only when consistent with control of pollution and prevention of damage to the environment per WAC 173-26-241(3)(b)(i)(A).</u>  Added to provide flexibility in operations. Changed to provide clarity – receptacles would be approved at permit review as part of review of operations plan.
R33	5.2.6.5 (current) 5.2.6.6 (new)	Predator control shall not involve the killing or abusive harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, fencing or netting for otters. The use of other nonlethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required. <u>Aquaculture use and development shall employ non-lethal, non-harmful measures to control birds and mammals.</u>	Added to emphasize protection of birds and mammals.
R34	5.2.6.6 (current) 5.2.6.7 (new)	All nets shall be maintained in accordance with all applicable state and federal requirements. If a state or federal permit is not required, cleaning of nets and other apparatus shall be accomplished by air drying, spray washing or hand washing, rather than chemical treatment and applications.	Renumbering only.
R35	5.2.6.8	<u>Predator exclusion devices shall:</u>  a. <u>Be firmly attached or secured so as to not become dislodged or trap animals underneath.</u> b. <u>Blend with the natural environment.</u> c. <u>Be routinely inspected and maintained.</u> d. <u>Be removed as soon as they are no longer needed to perform protective functions.</u>	Language added to improve consistency with WAC 173-26-241(3)(b)(i)(B).
R36	5.2.6.9	<u>Aquaculture operations shall avoid adverse proximity impacts from light and glare and satisfy the applicable provisions of BIMC 18.15.040. Pursuant to BIMC 18.15.040.C, lighting shall be shielded to the maximum extent possible, and lumens shall be minimized to the maximum extent possible.</u>	Ecology recommends that local governments determine if and how their existing nuisance ordinances are applicable to aquaculture before writing additional nuisance policies and regulations. Recent Shorelines Hearings Board’s decisions have required shielded lighting and other mitigation to address such impacts (see <i>Marnin v. Mason County</i> SHB No. 07-021; <i>Taylor Shellfish Farms v. Pierce County</i> , SHB No. 06-039).  “Aquaculture facilities should be designed and located so as not to... significantly impact the aesthetic qualities of the shoreline” [WAC 173-26-241(3)(b)(i)(C)].
R37	5.2.6.10	<u>For shellfish aquaculture, property corner markers that are visible at low tide during planting and harvesting must be installed. Property corner markers shall not interfere with navigation at low tides.</u>	Added to ensure operations are not sited on wrong property and or larger than permitted.
R38	5.2.6.11	<u>The City shall determine appropriate identification/markings of floating and submerged aquaculture structures and facilities in navigable waters to provide identification after storm disturbance.</u>	Added to provide better shoreline protection.

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R39	5.2.6.12	<u>On-site work is allowed during low tides, which may occur at night or on weekends. Measures to reduce impacts to adjacent existing uses, from such sources as noise from equipment and glare from lighting, shall be identified in an operational plan submitted with the permit application.</u>	Shellfish harvesting typically occurs at low tides which occur periodically at night and on weekends. Recent Shorelines Hearings Board's decisions support the right to work during low tides, recognizing that limits and conditions to reduce impacts by be needed (see <i>Marnin v. Mason County</i> SHB No. 07-021; <i>Taylor Shellfish Farms v. Pierce County</i> , SHB No. 06-039).
R40	5.2.7	<u>Regulations – Upland Structures</u>	New section added for upland structures only for clarity.
R41	5.2.7.1	<u>When upland structures are allowed they must be the minimum necessary to meet the needs of the water-dependent use.</u>	Original language related to upland structures (shown below) consolidated and revised for clarity and to improve internal consistency:  Aquacultural structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall be located landward of the OHWM, upland of water-dependent portions of the project, and shall avoid or minimize detrimental impacts to the shoreline.  Hatchery and other aquaculture operations shall be required to maintain a vegetated buffer zone along the affected stream as prescribed in Appendix B, provided that clearing of vegetation shall be permitted for essential water access points.  Onshore support structures shall meet the height and setback standards established in Table 4-2, Site Development Dimensional Standards Table, except that reduced setbacks may be permitted through a shoreline variance where necessary for the operation of hatcheries and rearing ponds.
R42	5.2.7.2	<u>Upland nonwater-oriented aquaculture development, uses and activities shall be located upland of the water-dependent portions of the operation and set back from the OHWM a sufficient distance to avoid disturbance of the Shoreline Buffer or Shoreline Vegetation Management Area. (See and Section 4.0, General (Island-wide) Policies and Regulations; Section 4.1.3 Vegetation Management; and Tables 4-2 and 4-3, for dimensional standards.)</u>	See above.
R43	5.2.7.3	<u>Upland structures shall be designed, constructed and maintained to include vegetative screening for parking, and upland storage areas and facilities consistent with landscaping standards for parking lots as prescribed in BIMC Section 18.15.010, Development Standards and Guidelines; Landscaping, Screening, and Tree Retention, Protection, and Replacement.</u>	See above.
R44	5.2.7.4	<u>A temporary sanitation station may be allowed on fixed overwater pier structures when utilities are not available on the same parcel(s) as the aquaculture operation.</u>	See above.
R45	5.2.7 (current) 5.2.8 (new)	<u>Regulations – Specific – Commercial Geoduck Requirements Aquaculture</u>	Revised for clarity.
D1	--	<u>Aquaculture – 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-managed wildstock geoduck fishery. Upland finfish rearing facilities are included in the definition of agriculture and are not considered aquaculture for the purpose of this SMP. Aquaculture activities include, but are not limited to, the hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals, and the maintenance and construction of necessary equipment and buildings. Cultivation methods include, but are not limited to, fish pens, shellfish rafts, racks and long lines, seaweed floats and nets, and the planting and harvesting of clams and oysters.</u>  <u>Aquaculture, Commercial: Commercial Aquaculture is the cultivation of fish, shellfish or other aquatic plants and animals for sale.</u>	Revised for clarity.

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		<u>Aquaculture, Non-commercial: The cultivation of fish, shellfish or other aquatic plants and animals for personal consumption, research, or restoration or enhancement of native species.</u>	
D2	--	<u>Aquaculture, Shellfish Garden – The cultivation, harvesting, and incidental preparation of shellfish for personal human use and consumption on public and private tidelands</u>	
R1	1.3.4.7 (new)	<u>This SMP will be applied consistent with all applicable federal, state and local laws including, without limitation, those affecting tribal treaty rights.</u>	During the public process for the limited amendment, the City received comment from the Suquamish Tribe that tribal treaty rights were not address. The City is proposing to add this provision to its SMP to address this omission.

Table 16.12.030-1 Shoreline Use and Modification Table

"P" = Permitted Use

"X" = Prohibited Use

"A" = Accessory Use

"C" = Conditional Use

"#" = Same as Upland Property

"CA" = Conditional Accessory Use

SHORELINE USE	UPLAND DESIGNATION					AQUATIC DESIGNATION			Use Specific Standards
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban	Aquatic	Priority Aquatic		
							A	B	
<b>Natural Resource Management</b>									
<u>Aquaculture, Commercial</u>	C[1]	C[1]	C	C	C	#	X	X	
<u>Aquaculture, Commercial Geoduck</u>	X	X	C	C	C	#	X	X	
<u>Aquaculture, Non-Commercial</u>	P[1,2]	P[1,2]	P[1,2]	P[1,2]	P[1,2]	#	P[1]	P[1]	
<u>Aquaculture</u>	C[1]	X	C	C	C	C	C[1]	C[1]	
<u>Aquaculture, Shellfish Garden</u>	X	P	P	P	P	P	P[1]	P[1]	

[1] Allowed if using non-reproducing or native species or part of an approved shoreline restoration or native species recovery project.

[2] A conditional use permit is required for non-commercial aquaculture with a cultivation area over 200 square feet.

[1] Allowed if using native species and part of an approved shoreline restoration project.

Table 16.12.030-2 Dimensional Standards Table

Greyed out setback boxes or letter X indicate prohibited uses

SHORELINE USE	UPLAND DESIGNATION					AQUATIC DESIGNATION			Use Specific Standards
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban	Aquatic	Priority Aquatic		
							A	B	
<b>Natural Resource Management</b>									
<b>Aquaculture</b>									
<b>Setbacks</b>									
Water-dependent	X	0'	0'	0'	0'	DOES NOT APPLY TO DEVELOPMENT BELOW OHWM			
Water-related	X	25' <u>30'</u>	25' <u>30'</u>	25' <u>30'</u>	25' <u>30'</u>				
Nonwater-oriented	X	150'	115'	100'	100'				
<b>Height Limit</b>									
Overwater Structures	DOES NOT APPLY TO DEVELOPMENT ABOVE THE OHWM					3'	<del>X</del> 3'	3'	
Accessory use on overwater structures						3'	<del>X</del> 3'	3'	
Overwater Structure Predator Control <u>and Safety Features or Other Apparatus Required by Regulation</u>						6'	<del>X</del> 6'	6'	
Upland	X	30'	30'	30'	30'	DOES NOT APPLY TO DEVELOPMENT BELOW OHWM			

Table 16.12.030-2 Dimensional Standards Table

Greyed out setback boxes or letter X indicate prohibited uses

SHORELINE USE	UPLAND DESIGNATION					AQUATIC DESIGNATION		Use Specific Standards	
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban	Aquatic	Priority Aquatic		
							A		B
<b>Aquaculture, Non-commercial for Recovery of Native Population</b>									
<b>Setbacks</b>									
Water-dependent	X	0'	0'	0'	0'	DOES NOT APPLY TO DEVELOPMENT BELOW OHWM			
Water-related	X	25'	25'	25'	25'				
Nonwater-oriented	X	150'	115'	100'	100'				
<b>Height Limit</b>									
Overwater	DOES NOT APPLY TO DEVELOPMENT ABOVE THE OHWM					3'	X	3'	
Upland	X	30'	30'	30'	30'	DOES NOT APPLY TO DEVELOPMENT BELOW OHWM			