

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENT TO THE PIERCE COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted September 24, 2019, Ordinance No. 2019-59
Prepared by Department of Ecology on October 30, 2019

[Brief Description](#)

Pierce County (County) submitted an amendment of their Shoreline Master Program (SMP) to Ecology for approval. The amendment, addressing aquaculture provisions in the County’s SMP, is in response to the Final Decision and Order (FDO) issued by the Growth Management Hearings Board (GMHB) on appeals filed by Taylor Shellfish Company, Inc., Seattle Shellfish, LLC, and North Bay Partners, LLC (GMHB Case No. 18-3-0013c).

FINDINGS OF FACT

[Need for amendment](#)

The GMHB found certain policies and regulations related to aquaculture were not consistent with the Shoreline Management Act and Shoreline Guidelines. The County has proposed revisions to bring the SMP and relevant elements of the County’s Critical Area regulations into compliance, as required by the FDO.

[SMP provisions to be changed by the amendment as proposed](#)

The following sections of the Pierce County SMP, codified in Title 18S of the Pierce County Code (PCC) are proposed for change:

- **18E.40:** Revised to insert “native” before “eelgrass” to clarify the species of eelgrass protected by the ordinance.
- **18S.10.055 Recognition of Legally Established Development:** Revised to acknowledge that dormant or fallow aquaculture operations are not considered abandoned or discontinued.
- **18S.20.030 Natural Shoreline Environment Designation (SED):** Revised to allow for low intensity aquaculture when limited to ensure no net loss of ecological functions.
- **18S.40.040 Aquaculture.**
 - **B. Policies:** Revised to remove a preference for aquaculture projects that don’t involve tubes, structures or shoreline alterations and a statement encouraging aquaculture activities solely for restoration and enhancement; and to remove a policy adopting a prohibition on commercial aquaculture in the Aquatic SED abutting the Natural SED in marine waters. An additional revision removes a mandate and clarifies that separation (from submerged aquatic vegetation or adjoining parcels) should occur when project review demonstrates it is necessary.
 - **C. Regulations – General:** Revised to delete the requirement for a minimum 10 foot setback and the prohibition of new aquaculture in the Aquatic SED abutting the natural SED in marine waters. Additional revisions clarify that the limitations on use of

supplemental feed, pesticides, etc. applies waterward of the OHWM; clarify that predator control restrictions do not extend to control of invasive species; require notification to the county and review to assess whether the permit revision criteria is met when there is a proposed new species, change in species, or expansion or relocation of the cultivation area or shellfish operation; and clarify that activities inconsistent with the issued permit are subject to enforcement action.

- **F. Regulations – Structures:** Revised to delete a requirement that structures and equipment are the minimum necessary for feasible operations.
- **G. Regulations – Species:** Revised to delete the prohibition of aquaculture activities in the tidal channel portions of streams and rivers.
- **18S.60.030 Shoreline Permit Table:** Revised to delete footnote 2 prohibiting aquaculture in the Aquatic SED abutting the Natural SED in marine waters.
- **18S.70 – Appendix C, Aquaculture Application Requirements. Section E. Performance Standards and Monitoring:** Revised to improve internal consistency; remove the requirement to demonstrate no statistically significant changes to baseline conditions due to harvest activities; and remove potential limits on the scale or frequency of future harvest activities.

The following changes are proposed to the County’s Critical Area regulations which are adopted into the SMP by reference:

- **18E.40.020 Fish and Wildlife Species and Habitat Conservation Areas, Table 18E.40.040-1 Submerged Aquatic Vegetation:** Revised to clarify the regulated activity is Shellfish Aquaculture and the required buffer is 16 feet.
- **18E.40.040 E. Forage Fish Spawning and Herring Holding Areas:** Revised to remove the requirement that the required spawning survey be performed by a qualified professional.

Amendment History, Review Process

Background:

The Pierce County SMP Comprehensive Update was approved by Ecology on October 12, 2018 and became effective on October 26, 2018. On December 19, 2019, two separate appeals of the SMP approval were filed with the GMHB.¹ These appeals were consolidated and a Hearing on the Merits took place May 7, 2019.² The GMHB issued the FDO on June 17, 2019 requiring certain sections of the Pierce County SMP be revised.

Review Process:

The record shows the County Council Community Development Committee held a hearing on August 19, 2019 and the full Pierce County Council held a hearing on September 10, 2019 to consider the proposed amendment. Notice of the hearing was published August 21, 2019 in The News Tribune.

¹ Appeals were filed jointly by Taylor Shellfish Company, Inc. and Seattle Shellfish, LLC, and separately by North Bay Partners, LLC.

² Taylor Shellfish Company, Inc., et. al v. Pierce County and Ecology, GMHB Case No. 18-3-0013c.

With passage of Ordinance No. 2019-59 on September 10, 2019, the Pierce County Council authorized county staff to forward the proposed amendment to Ecology for approval.

The proposed SMP amendment was received by Ecology for state review and verified as complete on September 24, 2019. Notice of the state comment period was distributed on September 27, 2019 to state, and local interested parties identified by the County, in compliance with the requirements of WAC 173-26-120. The Muckleshoot, Nisqually, Puyallup, Steilacoom, and Squaxin tribes were individually notified and invited to comment. The state comment period began on September 30, 2019 and continued through October 15, 2019 for a total of 15 days.³

Notice of the comment period, including a description of the proposed amendments and the authority under which the action is proposed, along with the manner in which interested persons may obtain copies and present their views, was provided on Ecology's website: <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Pierce-County-2019-amendment> and as part of the written notice sent to all interested parties.

Ecology received three comment letters. On October 17, 2019, Ecology forwarded a comment summary and copies of all comments to the County. The County provided its comment response on October 30, 2019 (see Attachment B – Comment Response).

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The county has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of the SMP Submittal Checklist, which was completed by the County and submitted to Ecology for review along with other amendment materials.

Consistency with SMP Amendment Criteria

The proposed amendment has been reviewed for compliance with WAC 173-26-201(1)(c) of the SMP Guidelines to ensure the analytical requirements and substantive standards of the Guidelines have been satisfied, where they reasonably apply and the proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines nor result in a net loss of shoreline ecological functions.

Consistency with SEPA requirements

The record shows the County determined the amendments within the scope of the SEPA analysis and range of alternatives considered in adoption of Ordinance No. 2013-45s4 and Ordinance No. 2018-57s.

³ Per RCW 90.58.090 (2)(a), the comment period shall be at least 30 days unless the department determines the level of complexity or controversy involved supports a shorter period.

On September 19, 2019, the County Environmental Official issued a letter to County Council indicating review of the additional amendments to the proposed SMP would not result in ‘actions that would cause “probable significant adverse environmental impacts”’ and the original determination remained valid.

Other studies or analyses supporting the master program amendment

Ecology also reviewed the following additional documents prepared by the County in support of the SMP amendment:

- *Summary of Amendments and Comments (undated)*
- *SMP Submittal Checklist*

Summary of issues identified by Ecology as relevant to its decision

The county adopted changes directly in response to the Board order. Ecology has assessed the County’s amendments in relation to the FDO to reach its conclusions set out below, but the decision on final compliance with the FDO is the GMHB’s determination.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the County’s proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendments are consistent with the criteria for approving master program amendments in WAC 173-26-201(1)(c). This includes the conclusions that approval of the SMP amendments will not foster uncoordinated and piecemeal development of the state’s shorelines (WAC 173-26-201(1)(c)(i)) and will not result in a net loss of shoreline ecological functions from implementation of the amended master program (WAC 173-26-201(1)(c)(iv)).

Ecology concludes that the County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County's SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090 and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-110, and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendment will be effective 14 days from the date of Ecology's final action approving the amendment.