

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

SMP Submittal accepted May 13, 2020, Ordinance No. 2020-49
Prepared by Department of Ecology on June 17, 2020

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 Order on Compliance and 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 and the subsequent Order on Compliance.

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:

- **18S.60.030 Shoreline Permit Table:** Revised to correct a typographical error, as adopted by Ordinance 2019-59, which resulted in the inadvertent prohibition of Aquaculture in the High Intensity Shoreline Environment Designation.
- **18S.70 – Appendix C, Aquaculture Application Requirements. Section E. Monitoring Plan necessary to ensure compliance with a Shoreline Permit Application.** Revised to clarify what should be addressed in a monitoring plan, and that monitoring will occur over a time frame sufficient to demonstrate compliance with the approved shoreline permit.

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

- **18E.40.040 E. Forage Fish Spawning and Herring Holding Areas:** Revised to suspend, rather than prohibit, regulated activities waterward of the Ordinary High Water Mark, in areas of confirmed spawning habitat during spawning periods until it's demonstrated that spawning is not occurring.

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, 2018, 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. In response to the FDO, Pierce County approved Ordinance No. 2019-59 amending certain Aquaculture provisions in the SMP. Ecology approved this amendment as submitted on November 4, 2019. The GMHB held a compliance hearing on January 16, 2020 and issued a decision February 21, 2020 ordering additional changes be made.

Review Process:

The record shows the County Council Community Development Committee held a hearing on May 5, 2020 to consider the proposed amendment. Notice of the hearing was published April 22, 2020.

With passage of Ordinance No. 2020-49 on May 5, 2020, 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 May 13, 2020. Notice of the state comment period was distributed on May 21, 2020 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 May 27, 2020 and continued through June 11, 2020 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-2020-amendment> and as part of the written notice sent to all interested parties.

Ecology received two comment letters. One comment supported the amendment and the other requested a better definition of "cumulative impacts". On June 11, 2020, Ecology forwarded copies of all comments to the County. The County provided its comment response on June 16, 2020 (see Attachment B – Comment Summary and Response). No additional changes to the master program are proposed.

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

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.

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.

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. On May 5, 2020, 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:

- *SMP Submittal Checklist*

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.