



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Small Business Economic Impact Statement**

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*Chapter 173-18, 20, 22, 26 and 27 WAC  
Shoreline Management Act*

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**Chapter 173-18, 20, 22, 26 and 27 WAC  
Shoreline Management Act**

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**Note:** Due to size limitations relating to the filing of documents with the Code Reviser, the SBEIS does not contain a fully detailed explanation of Ecology’s analysis. The Cost-Benefit Analysis (Ecology publication #10-06-020 contains full details of the analysis, including additional contextual information and methodology.

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## Executive Summary

The Washington State Department of Ecology (Ecology) is proposing to amend the following Shoreline Management Act rules:

- Chapter 173-18 Washington Administrative Code (WAC) - Shoreline management act — streams and rivers constituting shorelines of the state
- Chapter 173-20 WAC - Shoreline management act — lakes constituting shorelines of the state
- Chapter 173-22 WAC - Adoptions of designations of wetlands associated with shorelines of the state
- Chapter 173-26 WAC - State master program approval – Amendment procedures
- Chapter 173-27 WAC - Shoreline management permit and enforcement procedures

The objective of this Small Business Economic Impact Statement (SBEIS) is to identify and evaluate the various requirements and costs the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. The Revised Code of Washington (RCW) 19.85.040 describes the specific purpose and required contents of an SBEIS.

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet Chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rules are consistent with legislative policy.

Ecology is proposing changes to five of the Shoreline Management Act rules, including the Shoreline Master Program Guidelines (Chapter 173-26 WAC, Parts III). The Shoreline Management Act (SMA, RCW 90.58) charges Ecology with periodically reviewing and amending guidelines for implementing SMA (RCW 90.58.060).

There are three groups of proposed changes:

1. Changes to Shoreline Master Program Guidelines to address commercial geoduck agriculture siting and operations as instructed by House Bill 2220 (RCW 43.21A.681).
2. Changes to 173-26-201 as to when and why limited (non-comprehensive) amendments to local Shoreline Master Programs will be allowed.
3. Housekeeping amendments to better align the rules with changes in statute.

Of these, only the first will impact small businesses. Under the current rule, commercial geoduck aquaculture is treated as all other aquaculture. Geoducks are not discussed in the current rule. Because of this, jurisdictions have little guidance how to reconcile conflicts among shoreline uses or mitigate environmental impacts. Accordingly, there is currently a wide range of treatment across jurisdictions. This includes requiring a conditional use permit (CUP) in some jurisdictions. The specific requirements for a CUP also differ across jurisdictions.

The costs of acquiring a conditional use permit vary across jurisdictions. Some jurisdictions require additional permitting for some projects, including, but not limited to the State Environmental Policy Act (SEPA), variances, and Shoreline Substantial Development permit.

Beyond the actual cost of the CUP, meeting the 15 minimum requirements of the permit represents additional costs for the applicant.

Ecology estimates that costs will range from \$23,512 to \$119,567, mainly for the buffer. The ratio of cost is 13.9 times higher per employee for small businesses and therefore Ecology concludes that **the proposed changes have a disproportionate impact on small businesses.**

Ecology included the following mitigation measures to reduce the burden on small businesses:

- A requirement that all SMPs comply with all constitutional and statutory limitations on the regulation of private property.
- Flexibility in SMP development and mitigation.
- Promotion of alternative approaches to shoreline development.
- Consideration of the economic impact of permit fees on small businesses.
- Reducing the paperwork burden on growers, especially small businesses.
- Requiring local governments to allow harvesting of plantings in response to market factors.
- Requiring local governments to create SMP policies and regulations that protect water quality for shellfish beds.

## Background

Ecology is proposing changes to five of the Shoreline Management Act rules, including the Shoreline Master Program Guidelines (Chapter 173-26 WAC, Parts III). The Shoreline Management Act (RCW 90.58) charges Ecology with periodically reviewing and amending guidelines for implementing SMA (RCW 90.58.060).

Washington's Shoreline Management Act (SMA) was passed by the State Legislature in 1971 and adopted by voters in 1972. The overarching goal of the Act is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The Act applies to all 39 counties and more than 200 towns and cities that have "shorelines of the state" (RCW 90.58.030(2)) within their boundaries.

There are three basic policy areas to the SMA:

- Shoreline use
- Environmental protection
- Public access

Under the SMA, each city and county with shorelines of the state must prepare and adopt a Shoreline Master Program (SMP) that is based on state laws and rules but is tailored to the specific geographic, economic and environmental needs of the community. The local SMP is essentially a shoreline-specific combined comprehensive plan, zoning ordinance and development permit system. Most shoreline programs were originally written between 1974 and 1978.

The SMA establishes a balance of authority and partnership between local and state government. Towns, cities, and counties are the primary regulators. Ecology acts primarily in a support and review capacity. Ecology provides technical assistance to local governments and funding in the form of grants. Ecology is also required to review certain kinds of permits for compliance with the law, and must review local shoreline master programs to ensure they also comply.

The most recent version of the SMP Guidelines rule was the result of a negotiated settlement agreement between Ecology and interested parties such as cities and counties, business associations, environmental organizations, and individuals. The outcome was the 2004 version of the rule.

## **Reason for this Rule Proposal**

There are three groups of proposed changes:

1. Changes to Shoreline Master Program Guidelines to address commercial geoduck agriculture siting and operations as instructed by House Bill 2220 (RCW 43.21A.681).
2. Changes to 173-26-201 as to when and why limited (non-comprehensive) amendments to local Shoreline Master Programs will be allowed.
3. Housekeeping amendments to better align the rules with changes in statute.

Of these, only the first will impact small businesses. Under the current rule, commercial geoduck aquaculture is treated as all other aquaculture. Geoducks are not discussed in the current rule. Because of this, jurisdictions have little guidance on how to reconcile conflicts among shoreline uses or mitigate environmental impacts. Accordingly, there is currently a wide range of treatment across jurisdictions. This includes requiring a conditional use permit (CUP) in some jurisdictions. The specific requirements for a CUP also differ across jurisdictions.

## **Analysis of Compliance Costs for Washington Businesses**

### **Affected Industries**

The proposed changes to the Shoreline Master Program Guidelines are , mostly directed at rules local governments must follow when developing and revising local shoreline programs. As the term is defined by RCW 19.85.020, no “business” is required to comply with any direct requirement of these Guidelines. The Guidelines are directed at local governments who are reviewing the condition of their shorelines and who adopt SMPs to be consistent with state law. Accordingly, the Guidelines do not directly regulate development and use of the shorelines; the policies and regulations of the local governments are what directly regulate development and use of the shorelines. The Guidelines provide minimum standards for the local shoreline master programs and therefore have an indirect regulatory effect, which this SBEIS will evaluate.

For the current analysis, the industry identified as being affected by the proposed rule changes is the commercial geoduck industry. Unfortunately, this industry is highly regional and falls under the umbrella of generic shellfish farming (NAICS code 112512). For this reason, the small sample of current Washington State geoduck growers is used for the current analysis. This

sample represents all of the existing commercial geoduck operations in Washington State. Each must have a Nationwide 48 permit administered by the Army Corps of Engineers.

## Costs of Compliance

The costs of acquiring a conditional use permit vary across jurisdictions. Some jurisdictions require additional permitting for some projects, including, but not limited to, SEPA, variances, and Shoreline Substantial Development permit.

Beyond the actual cost of the CUP, meeting the minimum requirements of the permit represents additional costs for the applicant<sup>1</sup>. These requirements include:

1. Prohibiting or limiting the practice of placing tanks or pools or other impervious materials directly on the intertidal sediments.
2. Prohibiting or limiting the use of trucks, tractors, forklifts, and other motorized equipment below the ordinary high water mark and requiring that such equipment, when authorized, use a single identified lane to cross the upper intertidal to minimize impacts.
3. Limiting on-site activities during specific periods to minimize impacts on fish and wildlife.
4. Limiting alterations to the natural condition of the site, including removal of vegetation or rocks, regrading of the natural slope and sediments or redirecting freshwater flows.
5. Limiting the area of the site that can be planted or harvested at one time, to limit the areal extent of impacts.
6. Limiting the portion of a site that can be covered by predator exclusion devices at any one time.
7. Requiring compliance with the Washington department of fish and wildlife shellfish transfer permitting system to minimize the risk of transferring or introducing parasites and disease into areas where they currently do not exist.
8. Requiring installation of property corner markers that are visible at low tide.
9. Requiring buffers between geoduck operations and sensitive habitat features like critical saltwater habitats.
10. Requiring measures to minimize impacts to fish and wildlife.
11. Requiring the use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion.
12. Requiring the use of the best available methods to minimize turbid runoff from the water jets used to harvest geoducks.
13. Establishing limits on the number of barges or vessels that can be moored or beached at the site as well as duration limits.
14. Requiring measures to minimize impacts to navigation, including recreational uses of the water over the site at high tide.
15. Requiring good housekeeping practices at geoduck aquaculture sites, including removing equipment, tools, extra materials and all wastes at the end of each working day.<sup>2</sup>

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<sup>1</sup> This list represents the minimum requirements that each local jurisdiction must include in a CUP. Jurisdictions have a great deal of latitude and flexibility in any additional requirements they may choose to impose. Overall, jurisdictions must meet the requirement of no net loss to ecological functions.

<sup>2</sup> Numbering included for ease of the current analysis only.

# Quantification of Costs and Ratios

## Costs

Currently, requirements relating to commercial geoduck aquaculture differ significantly across jurisdictions. Many jurisdictions already require CUPs and some subset of the 15 proposed permit requirements discussed above. Therefore, the true impact of the proposed changes could range from no impact (the requirements are already in place) to full impact (currently there is no requirement for a CUP). For the sake of the current analysis, full impact was assumed<sup>3</sup>.

As stated above, the costs of acquiring a conditional use permit vary across jurisdictions. These costs can range up to \$10,000<sup>4</sup>, but average roughly \$3,500.

Beyond the actual cost of the CUP, meeting the 15 minimum requirements listed above represent additional potential costs for the applicant. Non-quantifiable costs include requirements 1, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, and 15. While requirement 2 would appear to represent a potential cost savings to the applicant by minimizing its construction costs, current practice often shows use of multiple lanes and accesses to a site. This indicates that the growers yield a net benefit from the additional access. Therefore, requirement 2 would yield the potential for net costs for the grower, though it is also non-quantifiable. Though requirement 8 would represent a cost for the grower, this cost is negligible.

The proposed rule changes require that buffers come out of the commercial geoduck aquaculture as opposed to critical saltwater habitats. This effectively decreases the amount of land available for planting of stock, resulting in decreased harvest and revenue generated. The extent of buffers in requirement 9 is left to the discretion of the individual jurisdictions and will be based on site-specific conditions. Not all sites will be adjacent to critical saltwater habitat and will require buffers. Therefore, a conservative estimate is done using a range of 5 to 10 feet, and buffers on 2 or 4 sides of the commercial geoduck aquaculture.

Using the assumptions of growers planting an annual block of tubes comprised of 100 rows of 200 tubes yields the following costs for meeting the requirement for buffers<sup>5</sup>:

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<sup>3</sup> It should be noted that this analysis utilizes an average sized parcel to determine the costs to firms. One way that Ecology attempts to mitigate the costs to firms of attaining a CUP is to allow multiple parcels to be brought together under the same CUP. This will decrease the cost per parcel with respect to the initial application fee. Also, for parcels that are smaller than average, the impact of buffers on costs may be relatively more significant. There is no correlation shown between firm size and average parcel size. Additionally, using current permits as a proxy for future permits is valid for overall analysis, but not for predicting specific future permits. Small firms in the current context does not equate to small parcel size, it equates to fewer employees. Combining parcels will save on the cost of the CUP, but could potentially increase the cost of buffers, as they would be applied to more parcels

<sup>4</sup> In Pierce County, \$3,510 is charged for a shoreline conditional use permit with an additional \$3,750 if a variance is associated and an additional \$3,380 (for project costs up to \$10,000) to \$4,710 (for project costs up to \$1 million) if a Shoreline Substantial Development application is also involved.

<sup>5</sup> The total area without buffers is assumed to be a plot 200' by 400' corresponding to 80,000 sq ft or roughly 1.6 acres, which is currently the average parcel size of existing operations. This will support 8 plantings of the scale discussed above, yielding a planted area of 10,000 sq ft without buffers.

Table 1: Costs of Buffers per Block Planting by Buffer Size

Buffer	Cost of Buffer	Planted Area (Sq Ft)
2-sided 5'	\$ 20,012	9,750
2-sided 10'	\$ 40,023	9,500
4-sided 5'	\$ 59,034	9,263
4-sided 10'	\$ 116,067	8,550

Because the harvest takes place in the future<sup>6</sup> these impacts have been discounted<sup>7</sup>.

Therefore, the total costs for meeting the proposed changes depend on the buffer used by the local jurisdiction and are summarized in Table 2.

Table 2: Aggregate Costs for Compliance by Buffer Size

Buffer	Total Cost
2-sided 5'	\$ 23,512
2-sided 10'	\$ 43,523
4-sided 5'	\$ 62,534
4-sided 10'	\$ 119,567

Because geoduck growing falls under Shellfish Farming, state-wide totals for the industry are unavailable. Therefore, for the current analysis, data for current growing permits was used to determine the size of businesses<sup>8</sup>. As geoduck growing is done in short bursts of activity followed by significant periods of downtime while they grow, part-time employment was assumed to represent 0.1 FTE each. In the geoduck growing industry, there are two large businesses and 20 small businesses. Table 3 illustrates the demographics of the industry in Washington.

Table 3: Size in Washington's Geoduck Growing Industry

Size of Business	Number of Businesses	Average Employment per Business
Large	2	139
Small	22	10

<sup>6</sup> It is assumed that a geoduck will reach its 1.5 lb harvest size six years after planting.

<sup>7</sup> For a full discussion, please see Preliminary Cost-Benefit and Least Burdensome Alternative Analysis. Chapter 173-18, 20, 22, 26 and 27 WAC.

<sup>8</sup> There are 30 Federal permit holders in Washington State. Of these, Ecology gained information from 24 and used the information from 22. Six firms failed to respond to Ecology's request for information. Two responses were not included in the current analysis: one indicated that they were not in production; and one identified itself as a lumber company and did not have information on employment in geoduck growing specifically.

## Ratios of Impacts

Using the information detailed above, it is possible to determine the cost per employee for large and small business. This result will depend on the type of buffer employed in the jurisdictional requirements. Once these costs are determined, it is possible to find the ratio of compliance costs for small and large business. Table 4 shows the results of this analysis.

Table 4: Compliance Costs per Employee by Business Type and Buffer Type

Buffer	(1) Small Business Compliance Cost (\$ per employee)	(2) Large Business Compliance Cost (\$ per Employee)	Ratio (1)/(2)
2-sided 5'	\$ 2,351	\$ 169.15	13.9
2-sided 10'	\$ 4,352	\$ 313.12	13.9
4-sided 5'	\$ 6,253	\$ 449.89	13.9
4-sided 10'	\$ 11,957	\$ 860.20	13.9

As can be noted in the table, impacts, as measured by \$/employee tend to be disproportionately borne by small business. The ratios are consistent across buffer type, and represent the ratio of the average number of employees for small and large business, as should be expected because the costs for compliance do not differ by business size.

## Actions Taken to Reduce the Impact of the Rule on Small Business

Ecology took a number of actions in the proposed rule to reduce the disproportionate impacts on small businesses. Some actions benefit both small and large businesses. The following measures have been retained from the existing rule:

- A requirement that all SMPs comply with all constitutional and statutory limitations on the regulation of private property.
- Guideline language that allows for flexibility in SMP development and mitigation that allows for taking site specific conditions into consideration and for a wide variety of options to meet requirements.
- Promotion of alternative approaches to shoreline development that will mitigate the impacts of SMP Guideline requirements on some firms.

Ecology has also included new mitigation actions which include the following:

- Consideration of the economic impact of permit fees on small businesses, especially those that have several small, non-contiguous parcels (less than 1 acre) that makes up their business. The proposed rule changes provide local governments a way to permit non-contiguous parcels under one permit, as long as those parcels are reasonably close geographically. Requiring such proximity allows for a reasonable review of the environmental impacts, including cumulative impacts on embayments, coves, etc.
- Reducing the paperwork burden on growers, especially small businesses. Ecology added language that encourages local governments to allow submittal of federal or state permit applications in partial fulfillment of local permit application requirements.

- Requiring local governments to allow harvesting of plantings in response to market factors rather than a set permit expiration date. Businesses will be able to harvest when they can receive the best return on their investment.
- Requiring local governments to create SMP policies and regulations that protect water quality for shellfish beds, thus ensuring the commercial viability of existing beds.

## **The Involvement of Small Business in the Development of the Proposed Rule Amendments**

The 2007 legislature passed SSHB 2220 relating to shellfish aquaculture. The bill directed Ecology to integrate geoduck aquaculture siting and operations guidance into Shoreline Master Program Guidelines (Chapter 173-26 WAC, Parts III and IV), and convene a Shellfish Regulatory Advisory Committee (SARC) to advise Ecology on rule language. The 14 committee members represent the:

- Shellfish industry
- Environmental community
- Shoreline property owners
- Four state agencies (Ecology, Fish and Wildlife, Agriculture, and Natural Resources)
- Tribal governments

The Members of the Pacific Coast Shellfish Growers Association participated on the committee, and represented both large and small business interests. (Appendix 1: SARC Roster).

The SARC first met in July 2007 and submitted a recommendations report to the legislature in January 2009. Ecology developed two discussion drafts of the proposed rule changes based on the report and current knowledge related to geoduck permitting and research. Ecology solicited input from:

- SARC
- Affected local governments
- Signatories to the 2002 negotiated settlement agreement including various business
- Environmental, shoreline property, and local government interests
- Northwest Indian Fisheries Commission and individual tribes
- Shellfish industries not represented on the SARC
- Members of the SARC listserv representing both large and small business interests.

Ecology provided a website and notices with background information on the rule update and preliminary rule text, and requested comments and concerns. These distributions occurred in January and May 2010. The SARC met in June 2010 to discuss the draft rule language in detail.

Ecology's Shorelands and Environmental Assistance (SEA) Program Senior Policy and Legislative lead, and project staff also discussed the proposed rule changes with individual members of the SARC via email, phone, and in-person meetings, and gave two presentations to local government planners updating shoreline policies and regulations.

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# Appendices

## Appendix 1 - SARC Roster

<b>Shellfish Aquaculture Regulatory Committee</b>		
<i>Updated May 31, 2010</i>		
<b>Member represents:</b>	<b>Committee Members</b>	<b>Alternate/Staff Contact</b>
County located on the Puget Sound	<b>Dave Risvold</b> Pierce County	<b>Mike Erkkinen</b> Pierce County
County located on the Pacific Ocean	<b>Bryan Harrison</b> Pacific County	<b>None</b>
Owner or operator of an aquatic farm in Puget Sound	<b>Diane Cooper</b> Taylor Shellfish Farms	<b>Peter Downey</b> Discovery Bay Shellfish
Owner or operator of an aquatic farm in state waters other than the Puget Sound	<b>Nick Jambor</b> Ekone Oyster Co.	<b>David Hollingsworth</b> Markham Oyster Inc.
Organization representing the environmental community	<b>Krystal Kyer</b> Tahoma Audubon	<b>Miranda Wecker</b> Willapa Hills Audubon
Organization representing the environmental community	<b>Bruce Wishart</b> People for Puget Sound	<b>Dave Peeler</b> People for Puget Sound
Shoreline property owner who does not have a commercial geoduck operation on his or her property	<b>Patrick Townsend</b> Olympia	<b>Laura Hendricks</b> Gig Harbor
Shoreline property owner with a commercial geoduck operation on his or her property	<b>Ward Willits</b> Olympia	<b>None</b>
Department of Ecology	<b>Sally Toteff</b> SWRO	<b>Jeannie Summerhays</b> NWRO
Department of Fish and Wildlife	<b>Rich Childers</b>	<b>Bob Sizemore</b>
Department of Agriculture	<b>Eric Hurlburt</b>	<b>Lee Faulconer</b>
Department of Natural Resources	<b>Blain Reeves</b>	<b>Brad Pruitt</b>
Tribal government within the Puget Sound drainage	<b>Andy Whitener</b> Squaxin Island Tribe	<b>Jeff Dickison</b> Squaxin Island Tribe
Tribal government	<b>Russ Svec</b> Makah Tribe	<b>Yongwen Gao</b> Makah Tribe

<b>Other Interested Agencies</b>	<b>Representative</b>	<b>Alternate(s)</b>
Department of Health	<b>Rick Porso</b>	<b>Cathy Barker and Maryanne Guichard</b>
Puget Sound Partnership	<b>Duane Fagergren</b>	<b>None</b>
Corps of Engineers	<b>Pamela Sanguinetti</b>	<b>Michael Lamprecht</b>
Washington Conservation Commission	<b>Ron Schultz</b>	<b>None</b>
Northwest Indian Fisheries Commission	<b>Fran Wilshusen</b>	<b>David Fyfe and Tony Forsman</b>