



DEPARTMENT OF
ECOLOGY
State of Washington

Revised Small Business Economic Impact Statement

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

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Revised Small Business Economic Impact Statement

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

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for

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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 #11-06-002 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 amending 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 - Adoption of designations of shorelands and wetlands associated with shorelines of the state
- Chapter 173-26 WAC - State master program approval/amendment procedures and master program guidelines
- 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 rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the 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 the amended rules are consistent with legislative policy. The current document represents a revision of the SBEIS that was issued previously (Ecology publication 10-06-019). In response to comments received on that document, the rule language was changed from a more prescriptive approach to one that allowed more local discretion in permitting commercial geoduck aquaculture. The primary difference in this revised analysis is the amended language imposes less costs on businesses.

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

There are three groups of amendments:

1. Changes to Shoreline Master Program Guidelines to address commercial geoduck aquaculture siting and operations as instructed by Second Substitute House Bill 2220 (RCW 43.21A.681).
2. Changes to WAC 173-26-201(1) 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 to state statute.

Of these, only the first will impact small businesses. As discussed in Section 3 of the Cost – Benefit Analysis (Ecology Publication 11-06-003), changes related to limited amendments and

housekeeping do not impose costs on business. Under the existing rule, commercial geoduck aquaculture is treated as all other aquaculture. Geoducks are not specifically discussed in the existing 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.

The costs of acquiring a CUP vary across jurisdictions. Some jurisdictions require additional permitting for some projects, including, but not limited to the State Environmental Policy Act (SEPA), variances, and a shoreline substantial development permit.

Ecology estimates that costs of acquiring a CUP will average roughly \$11,000. This includes the cost of a baseline ecological survey which is required for an applicant. The ratio of cost is 13.9 times higher per employee for small businesses than large businesses and therefore Ecology concludes **the amended rules have a disproportionate impact on small businesses.**

Ecology included the following mitigation measures to reduce the burden on small businesses. The first set existed prior to this rule making and still applies. The second list is new mitigation measures specific to this rule making.

- 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.
- Allowing local government discretion in requiring a conditional use permit for conversions of non-geoduck aquaculture to geoduck.
- Ensuring local governments allow the harvest of geoduck once planted.

Section 1. Background

Ecology is amending five of the Shoreline Management Act rules, including the Shoreline Master Program Guidelines (Chapter 173-26 WAC, Part III). The Shoreline Management Act (Chapter 90.58 RCW) charges Ecology with periodically reviewing and amending guidelines for implementing the 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. Ecology's update of the SMP Guidelines (Chapter 173-26 WAC, Part III) began a new era of shoreline planning in Washington. Between now and 2014, about 260 towns, cities and counties with shorelines of the state must "comprehensively update" their local shoreline master programs. The amendments to WAC 173-26-201(1) and many of the housekeeping amendments that are part of this rule making were included based on Ecology's and local government experiences with these updates.

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 (Chapter 173-26 WAC, Part III) 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 guidelines.

Reason for the Rule Changes

There are three groups of amendments:

1. Changes to Shoreline Master Program Guidelines to address commercial geoduck aquaculture siting and operations as instructed by Second Substitute House Bill 2220 (RCW 43.21A.681).
2. Changes to WAC 173-26-201(1) as to when and why limited (non-comprehensive) amendments to local shoreline 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 (Chapter 173-26 WAC, 2004 Guidelines), commercial geoduck aquaculture is treated as all other aquaculture. Geoducks are not specifically 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.

Section 2. Analysis of Compliance Costs for Washington Businesses

Affected industries

The changes to the Shoreline Master Program Guidelines are mostly directed at local governments who must comply with them when developing, revising and administering local shoreline programs. As the term is defined by RCW 19.85.020, no “business” is required to comply with any direct requirement of the 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 contained in their individual shoreline programs 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 evaluates.

For this analysis, the industry identified as being affected by the 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 this analysis. This sample represents all of the existing commercial geoduck operations in Washington State. Each must have a federal permit administered by the Army Corps of Engineers.

Costs of compliance

Currently, the costs of acquiring a CUP for commercial geoduck aquaculture vary across jurisdictions. Some local governments require site surveys as part of local permit applications while others do not. Some require permits while others do not, and some require additional review and permitting, including, but not limited to, SEPA, variances, and a shoreline substantial development permit. The amended rules require a baseline ecological survey and CUP for all new commercial geoduck projects in all jurisdictions with SMPs.

While local governments should consider certain issues when evaluating CUP applications, specific details of permit applications and limits and conditions are not fully defined in the geoduck provisions. Because the exact content of permit applications and the exact permit limits and conditions are determined at the local level, any costs they may or may not impose are outside of this analysis.

Section 3. Quantification of Costs and Ratios

Costs

Currently, requirements relating to commercial geoduck aquaculture differ significantly across jurisdictions. Many jurisdictions already require CUPs and may or may not require a baseline survey. Therefore, the true impact of the amended rules 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 this analysis, full impact was assumed. It should be noted this represents the most conservative possibility.

As stated above, CUP fees vary across jurisdictions. These costs can range up to \$10,000¹, but average roughly \$3,500.

Additionally, the new CUP application requires a baseline ecological survey of the proposed site. Survey costs vary significantly based on several factors related to:

- Level of agency involvement.
- Site differences (presence of critical saltwater habitats, intertidal versus subtidal, slope and substrate).
- Site access that may make logistics more or less challenging.²

Costs were determined by using actual survey costs of recently completed surveys as reported by the Pacific Coast Shellfish Growers Association. These costs averaged roughly \$5,000 - \$7,500. For the current analysis, the conservative estimate (\$7,500) was used.

The estimated total cost of acquiring a CUP is therefore the \$11,000 (\$3,500 + \$7,500).

Because geoduck growing falls under Shellfish Farming, state-wide totals for the industry are unavailable. Therefore, for this analysis, data for current growing permits was used to determine the size of businesses³. As geoduck growing is done in short bursts of activity followed by significant periods of downtime while the geoduck grow, part-time employment was assumed to represent 0.1 FTE each. In the geoduck growing industry in Washington State, there are two large businesses and 20 small businesses. Table 1 illustrates the demographics of the industry in Washington.

¹ 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.

² Barrette, 2011.

³ 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.

Table 1: Firm Size in Washington’s Geoduck Growing Industry

Size of Business	Number of Businesses	Average Employment per Business
Large	2	139
Small	20	10

Ratios of impacts

Using the cost and firm size information detailed above, it is possible to estimate the cost per employee for large and small business. Once these costs are estimated, it is possible to find the ratio of compliance costs for small and large business. Table 2 shows the results of this analysis.

Table 2: Compliance Costs per Employee by Business Type

(1) Small Business Compliance Cost (\$ per employee)	(2) Large Business Compliance Cost (\$ per Employee)	Ratio (1)/(2)
\$1,100	\$79.14	13.9

Table 2 shows that impacts, as measured by dollar amount per employee, tend to be disproportionately borne by small business. The figure 13.9 represents the ratio of the average number of employees for small and large business. This result is expected because the costs of a baseline ecological surveys and permit are assumed in this analysis to not differ by business size.

However, this is not necessarily the case. Local governments have substantial authority and latitude in creating geoduck policies and regulations and fee structures that reduce the costs to small businesses. Some local governments already have policies and fee structures that take into consideration project size and value thresholds which reduce the economic impacts to small businesses. Ecology expects to see such community-based consideration of small businesses continue.

Section 4. Actions Taken to Reduce the Impact of the Rule Amendments on Small Business

Ecology took a number of actions in this rule making 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 amended rules 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 requires local governments to minimize redundancy between federal state and local permit application materials.
- Requiring local governments to allow harvesting of plantings in response to market factors. 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.
- Allowing local government discretion in requiring a conditional use permit for conversions of non-geoduck aquaculture to geoduck.
- Ensuring local governments allow the harvest of geoduck once planted.

Section 5. The Involvement of Small Business in the Development of the Rule Amendments

The 2007 legislature passed Second Substitute House Bill (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 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 and local governments

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 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 organizations
- 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 also held four public open houses/hearings and provided public notice consistent with the SMA (RCW 90.58.060). Ecology strongly considered the convenience to shellfish growers in selecting hearing locations. The overwhelming majority of comments received were from the shellfish industry.

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

Ecology also provided specific notice to Washington's treaty tribes by sending two letters to tribal natural resources directors and the Northwest Indian Fisheries Commission. The Squaxin Island Tribe also had a formal consultation with Ecology's director.

Section 6: Impact on Jobs

Under RCW 19.85.040, Ecology is required to determine the number of jobs that will be created or lost as a result of compliance with a rule. This includes the impact on all sectors of the economy, not just those sectors or small businesses that are the focus of this SBEIS. Ecology used the Washington State Office of Financial Management's 2002 Washington Input-Output Model (OFM-IO) to estimate the rule amendments' first-round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry, or industries, are entered in the OFM-IO model as decreases in spending and investment.

The Cost-Benefit Analysis (Ecology publication #11-06-002, Section 3) determined that there is a \$1.5 million estimated aggregate cost of implementing the rule amendments over a 15-year period. Ecology calculated that about 32 jobs are likely to be permanently lost under the rule amendments over the 15-year period of this analysis. This results in an estimated loss of roughly 2 jobs per year. It should be noted that the commercial geoduck aquaculture sector is assumed to be adding roughly 100 jobs per year in this analysis.

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Appendices

Appendix 1 - SARC Roster

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

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