



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Rule Implementation Plan**

**Chapter 173-18 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**

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# Publication and Contact Information

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For more information contact:

Publications Coordinator  
Shorelands and Environmental Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

E-mail: [shellyne.grisham@ecy.wa.gov](mailto:shellyne.grisham@ecy.wa.gov)  
Phone: (360) 407-6927

Washington State Department of Ecology - [www.ecy.wa.gov](http://www.ecy.wa.gov)

Headquarters, Olympia	360-407-6000
Northwest Regional Office, Bellevue	425-649-7000
Southwest Regional Office, Olympia	360-407-6300
Central Regional Office, Yakima	509-575-2490
Eastern Regional Office, Spokane	509-329-3400

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## Purpose

Ecology provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

## Introduction

The purpose of this rule implementation plan is to inform those who must comply with the Shoreline Management Act rules (Chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC) about how the Department of Ecology (Ecology) intends to:

- Implement and enforce the rule amendments.
- Inform and educate persons affected by the rule amendments.
- Promote and assist voluntary compliance with the rule amendments.
- Evaluate the rule amendments.
- Train and inform Ecology staff about the amended rules.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the amended rules.
- Where more information about the rules is available.
- Contact information for Ecology employees who can answer questions about implementation of the rule amendments.

## Implementation and Enforcement

The purpose of the adopted rule amendments is to:

- Respond to a legislative directive (RCW 43.21A.681) to “adopt, by rule” guidelines that address the potential use conflicts resulting from commercial geoduck aquaculture in shoreline areas.
- Clarify WAC 173-26-201(1) regarding limited (non-comprehensive) amendments of local shoreline master programs.
- Complete some housekeeping changes – updating the rules to make them more consistent with recent changes to state statutes.

The effective date of the rule amendments is March 14, 2011. However, it’s important for the public and local governments to know that the geoduck provisions and certain housekeeping rule amendments apply to private entities only after a shoreline master program is locally updated and adopted after the effective date. Thus, there are 36 recently updated local shoreline master programs that do not have to respond to the geoduck aquaculture and other rule amendments until their next shoreline program update – seven years after their last update. For example, Whatcom County won’t have to respond to key rule amendments until 2018 – the date their next program update is due.

Local governments will need to respond to rule amendments that don’t require updating their shoreline master program. For example, the revised criteria for limited amendments to local

shoreline programs (WAC 173-26-201(1)), and many of the housekeeping amendments, immediately apply to local governments upon the March 14, 2011 effective date.

## Ongoing Planning, Permitting, and Enforcement

Ecology's Shorelands and Environmental Assistance (SEA) program has the primary responsibility for implementing and enforcing the Shoreline Management Act and related rules (RCW 90.58.120). The SEA's Coastal/Shorelands Section conducts the core work of overseeing local government writing, adoption and implementation of local shoreline master programs required by the Act. The SEA program's budget for Shoreline Management Act implementation and enforcement during the July 2009-June 2011 biennium is approximately \$7.5 million. This includes salaries for the 35 full time employees that support the 260 local governments updating and implementing their shoreline master programs. These are the total resources dedicated to all shoreline master program activities including technical expertise, management involvement, support staff, and the wide array of activities associated with implementation and enforcement of the whole Shoreline Management Act and its associated rules. The small portion that will be used in implementing and enforcing these specific rule amendments is difficult to quantify, given the integrated approach and structure of existing services.

Existing service options for implementing and enforcing Shoreline Management Act rules:

### Regional planners

- Ecology has a regional planner assigned to each local town, city or county required to have a shoreline master program. The planners provide direct technical advice to these local governments. They are responsible for ensuring local shoreline programs, program amendments, and local permits are consistent with the Act and the rules. They also are directly responsible for conducting any public review or hearing associated with Ecology review and approval of local programs. Headquarters staff and management, and the Attorney General's office support the regional planners in their work. Find Ecology contacts here: [www.ecy.wa.gov/programs/sea/sma/contacts/index.html](http://www.ecy.wa.gov/programs/sea/sma/contacts/index.html)

### Online written guidance

- The online guidance is provided in a phased format that parallels current grant contracts for comprehensively updating local programs. The online toolbox also includes information and links to laws, rules and cases pertinent to shoreline programs, training and assistance materials, and specific guidance on permitting and enforcement and data and information. This online guidance is updated regularly. For more information go online to Ecology's Shoreline Planners Toolbox at [www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox.html](http://www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox.html).

### Shoreline Master Program Handbook

- This handbook is part of the online guidance and includes chapters and sections on topics of special interest to local governments or that present a particular interpretive challenge.

For more information, see the SMP Handbook at [www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/index.html](http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/index.html).

#### Quarterly networking meetings for shoreline planners

- These meetings are an opportunity for Ecology to disseminate time-sensitive information and provide training. They also are an opportunity for local government and Ecology staff to learn from one another and improve working relationships. See Training, Assistance & Outreach Materials at [www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox/training.html](http://www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox/training.html).

#### Grants for comprehensively updating shoreline programs

- Biennial grant funding is subject to legislative approval. In the 2009-2011 biennium, the state is providing \$7.5 million in grant funding to local governments required by RCW 90.58.080 to comprehensively update their shoreline programs by 2014. For more information, to [www.ecy.wa.gov/programs/sea/grants/smp/index.html](http://www.ecy.wa.gov/programs/sea/grants/smp/index.html) for details.)

### **Ecology Implementation Actions**

The Shoreline Management Act rules are existing rules. The rule amendments as adopted do not require new significant implementation and enforcement services beyond those already ongoing for Shoreline Master Programs (see above). Ecology will ensure implementation and enforcement of the rule amendments by these additional actions:

- Training regional planners.
  - Ecology holds monthly shoreline staff meetings. These meetings will be used for sharing rule-specific information and staff training. Rules staff also will meet individually with planners who have a particular responsibility for geoduck aquaculture areas.
- Briefing local governments on commercial geoduck aquaculture amendments.
  - Ecology's regional planners will offer briefings to local governments regarding the geoduck provisions. In particular, Ecology will focus on Pierce and Thurston counties who expect to submit their updated shoreline master programs to Ecology for approval in 2011, and have substantial intertidal lands suitable for geoduck aquaculture.
- Adding a geoduck aquaculture web page to the online Shoreline Planners Toolbox.
- Updating the shoreline program handbook to reflect the adopted rules, particularly any guidance related to geoduck aquaculture. Geoduck aquaculture handbook guidance will specifically address conditional use permits and best management practices.
- Providing briefings at future Ecology planner meetings.

- Continuing to enhance internal communications and cross-review of materials to enhance consistency between the geoduck aquaculture 401 Water Quality Certification permit limits and conditions and those in conditional use permits required by local governments, when and where appropriate.

## **Informing and Educating Persons Affected by the Rule**

### **Local Governments and Ecology**

Two directly affected audiences for the Shoreline Management Act rules are the over 260 towns, cities and counties required by the Act to have a shoreline master program, and Ecology Coastal/Shorelands Section staff. The rules define what land use policies, regulations, and administrative standards local governments must have in their shoreline master programs, and define Ecology's authority and responsibilities in administering and enforcing the Act.

Please see Implementation and Enforcement, above, for how Ecology will inform and educate local governments and our own staff about the rule amendments.

In addition, Ecology will communicate via an email list (the shoreline rule listserv) to provide updates to affected local governments. Ecology will attach the Rule Adoption Notice to the email notices. Ecology encourages local governments, in particular the associations of Washington cities and counties, to pass this information along to all interests. To sign up to receive notifications, go to: <http://listserv.wa.gov/cgi-bin/wa?A0=ECOLOGY-SHORELINE-RULE>.

### **Aquaculture Businesses and Tribes**

Another primary audience of the rules is the aquaculture business community. This community includes existing aquaculture businesses that are in the geoduck growing business, or may be in the future. New commercial geoduck aquaculture projects are subject to the rules, once a local shoreline master program has been updated and locally adopted after the effective date.

Many of Washington's federally recognized tribes also have an interest in the rules. Even though the tribes are exempt from local permits for harvest of geoduck wildstock or aquaculture on reservation lands, a 2007 settlement between Puget Sound commercial shellfish growers and 17 treaty Indian tribes in western Washington was a landmark agreement that addressed treaty shellfish harvest rights. (See <http://nwifc.org/about-us/shellfish/commercial-shellfish-growers-settlement/>.) This settlement established a \$33 million trust for the tribes – providing them a financial incentive and opportunity to engage in commercial geoduck aquaculture beyond tribal lands, and making them subject to local policies and regulations.

Ecology worked closely with the Pacific Coast Shellfish Growers Association, the Northwest Indian Fisheries Commission, and individual tribes on crafting the final geoduck aquaculture provisions. These affected parties are part of the shoreline rule listserv. Ecology will send an email notice to the listserv and letters directly to natural resource directors at each of the



federally recognized treaty tribes in Washington to ensure these parties are informed about the rule amendments. Ecology will attach a Rule Adoption Notice to the email notice and letters.

## **Environmental Interests and Shoreline Property Owners**

Other parties with a significant interest in the rule amendments are the environmental community and shoreline property owners. These stakeholders also are on the shoreline rule listserv and will receive the email notice and attached Rule Adoption Notice.

## **Shellfish Aquaculture Regulatory Committee (SARC)**

Many of the stakeholders described above participated or had representatives on the Shellfish Aquaculture Regulatory Committee which was formed by the legislature in 2007 to provide recommendations for geoduck aquaculture provisions. SARC members also are on the shoreline rule listserv and will be provided notice and a Rule Adoption Notice.

A special email will be sent to the SARC prior to the broader email notice, with additional information about the final geoduck provisions. The SARC will meet at least once in 2011 and this meeting will provide an opportunity to discuss the rule language in more detail. The SARC website will also be updated to reflect this key accomplishment (<http://www.ecy.wa.gov/programs/sea/shellfishcommittee/index.html>).

## **General Public**

The SEA program will publish a news release announcing the rules' adoption. The program also will update any cross-references or information necessary within its Citizen Guide to Shoreline Master Program web pages. Information will also be included in pertinent future presentations to external audiences, such as those given to the Puget Sound Partnership's EcoNets or Ecosystem Coordination Board.

## **Promoting and Assisting Voluntary Compliance**

The main audience for the rules is over 260 local governments required to have shoreline master programs. Many methods for promoting and assisting voluntary compliance already exist (see Implementation and Enforcement, above). In addition, Ecology provides grants to promote local government compliance with statute (RCW 90.58.080). As long as funding continues to be provided by the legislature, local governments will be provided a strong incentive to voluntarily comply with the Shoreline Management Act and related rules.

## **Evaluating the Rule**

The purpose of the adopted rule amendments is to:

- Respond to a legislative directive (RCW 43.21A.681) to 'adopt, by rule' guidelines that address the potential use conflicts resulting from commercial geoduck aquaculture in shoreline areas.

- Clarify WAC 173-26-201(1) regarding limited (non-comprehensive) amendments of local shoreline master programs.
- Complete some housekeeping changes – updating the rules to make them more consistent with recent changes in state law.

Ecology will know the rules have achieved their intended purpose based on five outcomes:

1. Local governments locally adopt shoreline programs that comply with the rules.
2. Local governments submit limited amendments that meet the new criteria in WAC 173-26-201(1).
3. Ecology reviews a conditional use permit for each new commercial geoduck aquaculture proposal from counties where the geoduck provisions are in effect.
4. There are fewer successful appeals of locally submitted geoduck aquaculture project proposals in Pierce and Thurston counties, once their shoreline programs are updated based on the new geoduck provisions.
5. Shoreline master programs completed in geoduck growing areas are based data and information specific to geoduck aquaculture siting and operations, as required by the newly amended Chapter 173-26 WAC.

Ecology will know if the five outcomes have been achieved through our ongoing role in reviewing and approving shoreline master program updates and related permits. Because local updates of shoreline programs is ongoing and is on an irregular schedule, it may take up to ten years to see any significant affect of the geoduck provisions and other rule amendments.

Within the next ten years, state and local budget and staffing cuts or statutory changes may significantly hinder the completion of shoreline program updates. Given this, Ecology will need to qualitatively rather than quantitatively evaluate outcomes. Ecology will likely need to update the Shoreline Management Act rules again within the next ten years, and we will be able to adjust any unworkable language at that time.

## **Training and Informing Ecology Staff**

Training and informing Ecology staff is closely tied to that for local governments. Please see Informing and Educating Persons Affected by the Rule for information related to Ecology staff.

## **List of Supporting Documents that May Need to be Written or Revised**

Guidance on geoduck aquaculture will be folded into the existing Shoreline Master Program handbook (<http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/index.html>) and the existing web pages within the Shoreline Planners Toolbox (<http://www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox.html#Process>), or new stand-alone handbook and web pages will be written.

## **More Information**

For more information on the Shoreline Management Act: Rulemaking 2010-11  
<http://www.ecy.wa.gov/programs/sea/shorelines/smp/rulemaking.html>

For copies of shoreline rule documents  
<http://www.ecy.wa.gov/laws-rules/SMA2010/1007.html>

For more information about Shoreline Master Programs  
<http://www.ecy.wa.gov/programs/sea/shorelines/smp/index.html>

## Contact Information

Local governments should direct their questions to Ecology's regional planner assigned to them. See <http://www.ecy.wa.gov/programs/sea/sma/contacts/index.html> for a list of regional planners, or call 360-407-7291.

General questions may be directed to:

Cedar Bouta  
Washington Department of Ecology  
Shorelands and Environmental Assistance Program, Headquarters  
PO Box 47600  
Olympia, WA 98504-7600  
Direct line: 360-407-6406  
Email: [Cedar.Bouta@ecy.wa.gov](mailto:Cedar.Bouta@ecy.wa.gov)