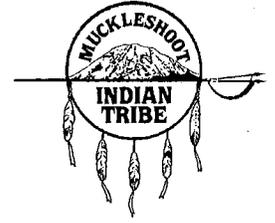




MUCKLESHOOT INDIAN TRIBE
Fisheries Division

39015 - 172nd Avenue SE • Auburn, Washington 98092-9763
Phone: (253) 939-3311 • Fax: (253) 931-0752



December 22, 2011

Ms. Margaret Glowacki
City of Seattle-DPD
700 Fifth Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

RE: Seattle Shoreline Master Program Draft Regulations (2nd draft)

Dear Ms. Glowacki:

The Muckleshoot Indian Tribe Fisheries Habitat Program has reviewed Seattle's Shoreline Master Program Draft Regulations dated October 2011. Attached are our comments regarding these regulations in the interest of protecting and restoring the Tribe's treaty-protected fisheries resources.

We request an opportunity to meet and discuss these comments further with you before the City's completes its next version of these regulations. This will give us an opportunity to clarify any of the comments as needed, as well as work on language changes that may be needed to address the comments.

Please call me at 253-876-3116 to set up this meeting. We appreciate the opportunity to review this proposal and look forward to meeting with you soon.

Sincerely,

Karen Walter
Watersheds and Land Use Team Leader

Cc: Joe Burcar, WDOE, NW Region

Comments to the Shoreline Master Program Regulations-Second Draft, October 2011

General comments

1. Aquaculture should be allowed in all shoreline designations. It is a priority use under the Shoreline Management Act and important for the Tribe's fisheries programs. Under the draft rules, aquaculture is only allowed as a conditional use in the UC; UG; UH; UI; UM designations. It is prohibited in the remaining designations. It is important to note that aquaculture facilities and activities can be as small as individual incubators or egg boxes per the City's SMP rule definitions section; there is no difference in size or scale. Aquaculture may be needed to restore fish and shellfish populations, as well as, for mitigation purposes; therefore, it should be allowed in all areas. The scale, type, species issues can be addressed through a conditional use permitting process.
2. We request the opportunity for Muckleshoot Indian Tribe Fisheries Division (MITFD) review of all shoreline applications proposed within the City of Seattle when deemed complete by the City regardless of whether they qualify for shoreline exemptions, variances, or substantial development permits. The MITFD needs to receive notification of shoreline projects that could affect the Tribe's treaty protected fisheries resources regardless of shoreline permit type prior to permit approval.
3. The rules should include standards for boatsheds that regulate their location, their structural elements (i.e. roofing, lighting, etc), the extent of overwater coverage, the activities that can be conducted within them, and the amount of total moorage allowed. In addition, the rules should address standards for the relocation of boatsheds.
4. Floating homes and house barges should be restricted from having live aboard residents on any vessels moored at these structures.
5. House barges should also be regulated to reduce the number, type (i.e. adding outboards and steerage to create a vessel vs. house barge), location, and ensure that water quality is not degraded where these structures are allowed.

Specific comments by section and page number

1. The rules should clarify the type of shoreline permit need for the removal of aquatic noxious weeds using non-chemical methods. Only the use of chemicals for this purpose is defined in the shoreline exemption section on page 15.
2. Section 23.60.122.D.2, pages 30-31. Generally we support the concept of habitat units based on best available science to determine project impacts and mitigation needs. As referenced on this page, please clarify how the habitat units specified in this subsection were determined.
3. Section 23.60.152, General development
Please include a hierarchy of moorage types that have the fewest impacts up to the greatest. For example, mooring buoys instead of docks/piers vs. joint or community docks/piers vs. individual docks/piers above

water on piles and individual docks/piers on floats for fresh and saltwater areas.

4. Section 23.60.152.P, page 35. Artificial night-time lighting on all structures within the regulated shoreline should avoid spilling over the built structures and lighting water surfaces. In addition, night-time lighting should avoid reflecting back to the night sky. Both of these conditions are contributing to predation of juvenile salmon currently and should be avoided in cases of new and redeveloped areas to the fullest extent possible.

5. Section 23.60.160.A.2.a, page 41. For inventory and impact assessment purposes, the area to assess should be expanded to include all waterbodies within 200 feet of the proposed action or action area. As the rule is currently written, only areas within 25 feet of the lot line are assessed, which may result in missing impacts to affected waterbodies and their buffers.

6. Section 23.60.160.B.1. Priority Saltwater habitat, page 42. We recommend the following edits to this section:

B. Priority saltwater habitats.

1. The following are designated as priority saltwater habitat:

a. kelp beds;

b. native eelgrass beds;

c. spawning and holding areas for forage fish, such as herring, smelt and sandlance;

d. Areas with existing or potential subsistence, commercial and recreational shellfish beds;

e. mudflats;

f. intertidal habitats with native vascular plants;

g. areas with which WDFW priority species have a primary association; and

h. habitat designated as priority salt water habitat by the Director under 25.09.200.E.

These edits are provided to better protect native species in these areas and to allow activities to manage and control non-native species. Areas that have the potential to provide subsistence, commercial or recreational shellfish uses should also be identified, protected and restored.

7. Section 23.60.160.B.3.c, page 42. The words "*and federally-recognized Indian Tribes*" should be added after the word "state" in line 26.

8. Section 23.60.160.B.5, page 43. Please clarify this exemption for priority salt water habitats and anadromous salmon migration habitat.

9. Please clarify if the piers associated with floating homes must also meet the pier standards in Section 23.60.187 or just the standards in Section 23.60.202. We recommend that the most stringent standards should apply that keep floating homes piers to the minimum necessary.

10. Section 23.60.172. Table A, shoreline modifications, pages 52 and 53.

Heat exchangers or surface water exchangers should not be allowed in any of the shoreline designations, particularly in Lake Washington, Union Bay, Portage Bay and the Ship Canal as these areas already exceed state water quality standards for temperature and can have lethal and sub-lethal impacts to returning adult salmon, without additional heat from inwater exchangers. These structures should also not be allowed in other areas because of potential degradation in water quality and the difficulty in removing the exchangers once they are allowed and permitted.

11. Section 23.60.184.H, page 58. Please clarify if applications that propose to add additional riprap or replace a bulkhead in front of an existing bulkhead will require a shoreline permit. This activity should be regulated somehow under these regulations.

12. Section 23.60.187.B.8.e, page 61. Subsections e.1 and e.2 are confusing as written regarding the length of piers. One solution may be to combine the distance and depth values to clarify the intent of these rules.

13. Section 23.60.194.B, Aquaculture, page 70. Add the word "*native*" before the word "eelgrass" in line 25. There are non-native eelgrass species in existence that should not be protected equally with native eelgrasses.

14. Section 23.60.194.D, Aquaculture, page 70. Replace the word "nonnative" with the word "*invasive*". There are nonnative shellfish species currently cultivated in Puget Sound, such as Manila clams.

15. Section 23.60.382.C.4.c page 115. As referenced on this page, please clarify how the habitat units specified in this subsection were determined.

16. Section 23.60.384.C, page 117. As referenced on this page, please clarify how the habitat units specified in this subsection were determined.

17. Section 23.60.504.D.6, page 150. As referenced on this page, please clarify how the habitat units specified in this subsection were determined.