



**Bricklin &
Newman
LLP**

Seattle Office:
1001 Fourth Avenue
Suite 3303
Seattle, WA 98154

Spokane Office:
35 West Main
Suite 300
Spokane, WA 99201

Contact:
Phone: 206-264-8600
Toll Free: 877-264-7220
Fax: 206-264-9300
www.bnd-law.com

Reply to: Seattle Office

April 21, 2010

U.S. Army Corps of Engineers
Regulatory Branch
P.O. Box 3755
Seattle, WA 98124
ATTENTION: Pam Sanguinetti

Washington Department of Ecology
SEA Program
P.O. Box 47600
Olympia, WA 98504-7600
ATTENTION: SEA Program, Federal Permit Coordinator

Re: NWS-2010-258
Seattle Shellfish, LLC

Dear Ms. Sanguinetti:

I write on behalf of the Coalition to Protect Puget Sound Habitat regarding the above-referenced project application. The Coalition and its members are very concerned about the proliferation of geoduck aquaculture in Puget Sound. Any one of these facilities is, by itself, of concern, but the larger problem is the cumulative impacts.

We have reviewed the "Informal ESA Consultation" submitted for this project by Environ (Mar. 3, 2010). It almost totally ignores the cumulative impacts that should form the heart of any evaluation of a project of this type in Puget Sound. There is a brief discussion of cumulative effects on pages 33 and 34 of the report, but the discussion is dismissive and based on rank speculation.

The cumulative effects discussion begins on the right note, observing that an "increase in the number of over-water structures could pose a source of cumulative impacts to the benthic habitat." *Id.* at 34. It then notes, correctly, that "there is some potential for an expansion of the nursery production by Seattle Shellfish, . . ." *Id.* But from that point on, the report strays from the mark. It states that "[b]ased on the amount of area available for culture, the proposed project should provide for adequate future production." There is absolutely no basis provided for this assertion in the report and no basis for this assertion from information available to CPPSH. Neither Seattle Shellfish nor any other geoduck operator is claiming that this one project will be sufficient for all future production requirements of the industry. If this new nursery operation is

economically successful, it is likely that Seattle Shellfish and other geoduck growers will develop similar in-water operations in the future.

Most, if not all, nursery operations currently occur on land. This project has the potential to be a catalyst for a significant migration of nursery operations from the uplands to the near-shore environment. The cumulative impact of this transformation of the geoduck nursery industry must be evaluated now.

The report goes on to claim that if expansion were to take place, "it would not significantly contribute to the total area of habitat covered by over-water structures in Spencer Cove." *Id.* Again, no factual basis is provided for this assertion and we are aware of no facts that would support it.

The Environ Report also is unjustifiably dismissive of other significant impacts threatened by this project. The report acknowledges that there is a high likelihood that migrating salmon will encounter the nursery floats. *Id.* at 25. The report acknowledges that "there have been documented observations of behavioral responses upon encountering docks, including pausing, migration delays due to disorientation, school dispersal, and migration directional changes." *Id.* at 25. But the authors refused to acknowledge these impacts as significant, because the impacts have not been quantified. *Id.* The authors conclude that these "behavioral changes . . . in the near-shore do not necessarily support a conclusion of adverse effects from these structures on migration." (Emphasis supplied.) But, tellingly, the authors do not assert that possible significant adverse impact will not occur either. Basically, the authors acknowledge that they do not have sufficient information to assess the magnitude of these impacts and then wrongly conclude because they do not know the extent of the impacts that there are no significant adverse effects. This conclusion is totally illogical and should be rejected by your agencies.

In like manner, the authors trivialize the adverse impacts caused by shading from the float structures, by comparing those adverse impacts to the impacts associated with the now-abandoned kitty pools. The baseline for comparison purposes should not be the conditions created when the kitty pools were in place, but to natural conditions. The authors' use of this inappropriate comparison led them to classify the shading impacts as minor.

The report notes that the project overlaps critical habitat area for endangered Chinook. *Id.* at 30. This habitat is used for both rearing and migratory purposes. *Id.* The report never explains why this "overlap" does not lead to significant adverse impacts.

In the next paragraph of the report, the authors note that there may also be adverse impacts to steelhead, particularly to forage and refuge habitat. The authors then go on to say that these impacts "may" not be significant or adverse – but they do not explain the basis for this reasoning and they do not rule out the converse – that the impacts will be significant and adverse. This is hardly an adequate analysis of this critical issue.

Similarly, the authors note that the area could be used by bull trout for foraging. *Id.* at 30. But again the report leaves open the issue of whether those impacts will be significant and adverse.

The adverse impacts to the marine environment are also addressed in the comment letter submitted by the Sierra Club. We adopt those comments by this reference. For the reasons set forth by the Sierra Club and in this letter, we request that you obtain a full biological evaluation before proceeding further with this permit application.

The Environ Report acknowledges that there is no time of year when work can be undertaken at this site without violating an applicable work window. The only safe work window given surface smelt use of this area is from April 1 to June 30, but those months are off limits because endangered salmon use this area during that time. Environ Report at 24. The conflict between these two work window requires that this application be denied. If the permit were to be issued, it should require that work only be done in the last week of June or the first week of July, *i.e.*, on the shoulder of each of the applicable work windows.

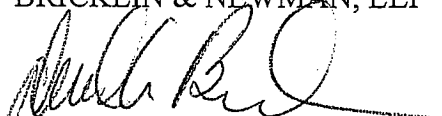
Further, if and when you get to the point of considering issuance of the permit, the permit should prohibit beach use during the forage fish spawning season (September through April). *See id.* at 27.

Finally, we request a public hearing on this application. This is a significant new use in a small cove that is prized by residents and boaters in the area. While the applicant and Environ emphasize that the uplands directly adjacent to the subject site are owned by the applicant, other portions of the uplands on the cove are owned by other private parties and, of course, the waters are used by many people other than the applicant. This project will interfere with the use and enjoyment of those waters as well as adversely impact the marine environment and create hazards for endangered species. Your agencies should provide the public with an opportunity to present their concerns at a public hearing.

Thank you for your consideration of these comments.

Very truly yours,

BRICKLIN & NEWMAN, LLP



David A. Bricklin

DAB:psc

cc: CPPSH