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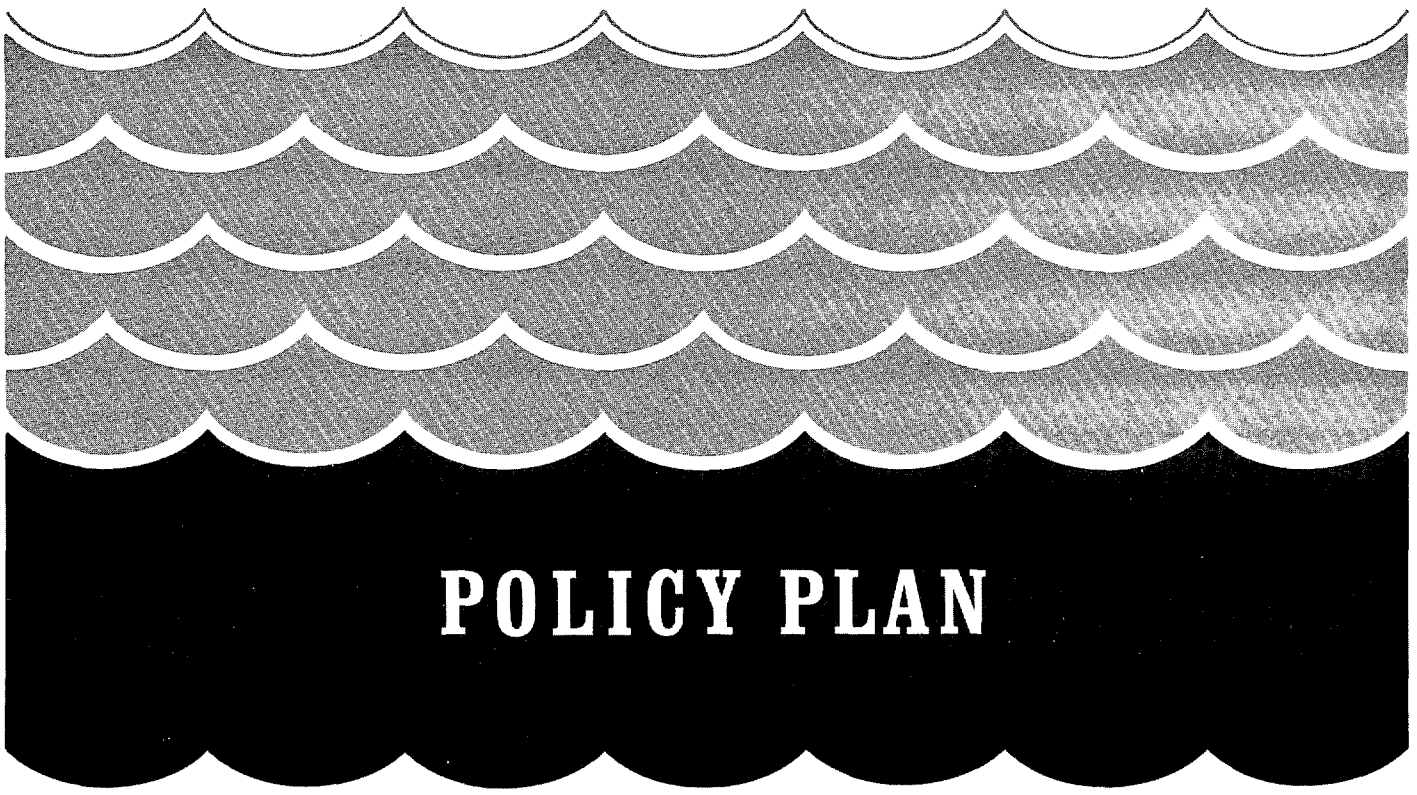
AQUATIC LAND



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STATE OF WASHINGTON
DEPARTMENT OF
NATURAL RESOURCES
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Supervisor

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Department of Natural Resources

OLYMPIA, WASHINGTON
98504

BRIAN BOYLE
Commissioner of Public Lands

June 1, 1984

Dear Reviewer:

The aquatic lands of Washington state are of tremendous social, environmental and economic value. An irreplaceable public heritage, they belong to all the citizens of the state, both today and tomorrow. The Department of Natural Resources developed the Aquatic Land Policy Plan with this heritage in mind.

This plan has been recommended to me by the the department's aquatic lands staff. After a two-month period during which I will be seeking views of the public and affected interest groups, the plan will be reviewed and finalized. New regulations will then be prepared using these policies as direction.

This document includes a description of how the state's aquatic lands were acquired and how the role of the department as aquatic land manager has evolved. It summarizes the relationship between the Harbor Line Commission, the Board of Natural Resources and the department. Concepts important to aquatic land management are discussed. This is followed by the department's aquatic land management goals and the proposed policies that will guide the department's daily activities on our aquatic lands.

The department is interested in your thoughts and concerns regarding these proposed policies. In July, we will hold several public meetings to get your ideas on the proposals and suggestions for improvements. Please see the inside back cover for the public meeting nearest you.

The department has also completed a State Environmental Policy Act (SEPA) checklist for the draft policy plan. The checklist is available upon request at the department's Olympia and Area offices (see inside back cover). A determination of environmental significance will be made on the plan after the public review process is completed this summer.

Written comments will be accepted until August 15 at the Department of Natural Resources, Marine Land Division, QW-21, Olympia, WA 98504.

Thank you for your interest and participation in this important effort.

Sincerely,

Brian Boyle
Commissioner of Public Lands

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COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

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AQUATIC LAND

POLICY PLAN

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May 1984

STATE OF WASHINGTON
DEPARTMENT OF
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Brian Boyle
Commissioner of Public Lands
Art Stearns
Supervisor

The preparation of this plan was financially aided through a grant from the Washington State Department of Ecology with funds obtained from the National Oceanic and Atmospheric Administration, and appropriated for Section 306 of the Coastal Zone Management Act of 1972.

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INTRODUCTION

INTRODUCTION

Washington's aquatic lands were acquired from the federal government when Washington entered the union on November 11, 1889. The federal doctrine of "equal footing" guaranteed that each new state received the same rights as the original thirteen states, including ownership of its aquatic lands. This allowed the new state of Washington to assert title to the beds and shores of all navigable waters within its borders.

Article XVII of the State Constitution declares that the State of Washington "asserts its ownership to the beds and shores of all navigable waters in the State...". Between 1889 and 1971 the state sold an estimated 61 percent of its tidelands and 30 percent of its shorelands. Currently, the state asserts ownership to approximately 11 square miles of harbor area, 140 square miles of shorelands and 205 square miles of tidelands. In addition, the state's ownership includes the beds of all navigable lakes and rivers, the bedlands of all marine waters within 3 miles of shore, and all the bedlands of the Puget Sound. (See diagram on page 5.)

DEPARTMENT MANAGEMENT OF AQUATIC LANDS

Department Organization

The Department of Natural Resources evolved from several commissions and agencies created to administer state lands. The Legislature first established a State Land Commission in 1889 to supervise and control public lands. In the years that followed, several boards and commissions were formed to manage different parts of the state's upland trusts. In 1957, the Legislature consolidated these activities into the Department of Natural Resources, granting the agency authority to manage some 5 million acres of state-owned land.

The aquatic lands under department jurisdiction are spread across the state. The responsibility for management of these lands is divided between the Olympia staff and DNR Area offices. The Olympia staff is responsible for program and central policy development, research and development, record keeping and managing harbor areas. The Areas carry out, on a day-to-day basis, the programs and policies developed in Olympia. This includes site inspection, and lease valuation, negotiation and administration.

Board of Natural Resources/Harbor Line Commission

The act which created the department in 1957 also formed a five-member Board of Natural Resources to set policies and regulations governing the department. The Legislature intended the Board to provide both public accountability and professional expertise for the new agency. Board members include the Governor; the Commissioner of Public Lands; the Superintendent of Public Instruction; the Dean of the College of Agriculture, Washington State University; and the Dean of the College of Forest Resources, University of Washington.

The Harbor Line Commission was originally formed in 1890 to govern the establishment of harbor areas in the state. The Commission was empowered to "locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of the state, whenever such navigable waters lie within or in front of the corporate limits of any city or within one mile thereof..." When the first commission went out of existence three years later, its duties were transferred to the Board of State Land Commissioners. Those duties were in turn given to the Board of Natural Resources in 1957.

The Board of Natural Resources now acts separately as the Harbor Line Commission. Department personnel act as staff to both the Board and the Commission.

Department Duties and Activities

The Department of Natural Resources acts as the proprietary agent for the state's aquatic lands. The department is authorized to issue leases, rights of way, easements and sale of valuable materials for aquatic lands. The terms and conditions for each use approval depend on the kind of aquatic land involved (see Appendix A).

The department manages aquatic lands both inside and outside harbor areas. The department's earliest duties were meant to assist orderly development of the state's economy. For instance, the department was given the authority to plat and sell or lease tidelands and to approve such uses as county wharves, public bridges, utility rights of way, oil and gas prospecting and impoundments of water over tidelands. In the 1950s, the Legislature added the authority to lease bedlands for sand and gravel removal and aquaculture.

In 1971, the Legislature passed two laws which added new dimensions to the state's aquatic land program. RCW 79.01.470 prohibited further sale or gift of first and second class tidelands. As of 1971, 61 percent of the state's tidelands had been sold. The Legislature determined with these new laws that the state should retain and manage the remaining lands for the public.

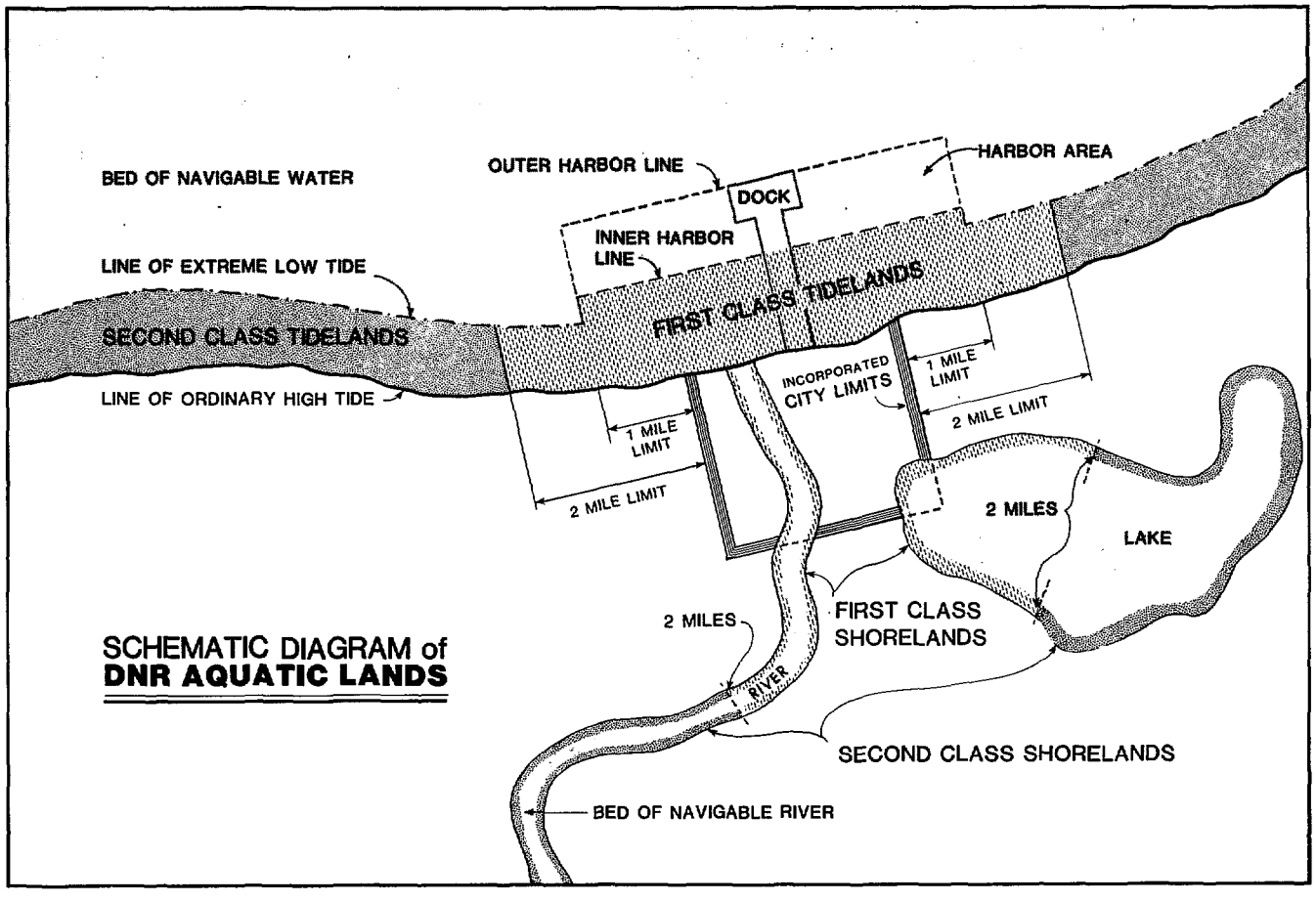
The second law passed in 1971, which directly affected the department's aquatic land programs, was RCW 79.68, "Multiple Use Concept in Management and Administration of State-Owned Lands". The Act defined "multiple use" as providing for several uses simultaneously on a single tract and/or the planned rotation of one or more uses on and between specific portions of the total ownership.

Section .080 of this law, "Fostering Use of Aquatic Environment - Limitation," adds a requirement to the multiple use management concept that encourages certain marine uses. They include the commercial and recreational use of the aquatic environment for production of food, fibre, income and public enjoyment from state-owned aquatic lands.

In 1984, the Legislature passed a comprehensive new law affecting the state's aquatic lands. SSHB 1231 identifies water-dependent uses as priority uses for state aquatic lands. The law directs the department to manage aquatic lands to

provide a balance of public benefits, including public access, enviromental protection, renewable resource use and revenue generation consistent with the purpose of the Act. The Act allows for port management of some aquatic lands in public port districts. Ports will manage these state aquatic lands in conformance with state aquatic land policy and department regulations. The Act sets up a new rate structure for aquatic land leases, provides incentives for water-dependent uses and exempts from payment certain public recreation uses of state aquatic lands. The Act also dedicates a portion of aquatic land revenues to aquatic land enhancement projects. (See Appendix B.)

The department identifies and asserts state ownership to aquatic lands under its jurisdiction. Detailed records are kept of publicly owned lands and the state enters into claim questions when the rights of the public are limited or challenged by ownership disputes. The department leases aquatic lands for private use when suitable and ensures that the state receives fair compensation. Public benefit programs, such as public beach enhancement and identification, are important elements of our management activities. Research is conducted to find ways to better identify and use renewable resources on the state's aquatic land and to improve operation methods.



PURPOSES OF THE AQUATIC LAND POLICY PLAN

This plan explains the department's proposed goals and policies which are designed to incorporate legislative and judicial direction into department decisions. Detailed direction for specific programs, such as the geoduck fishery or harbor area management, will come later.

This plan is designed to help the department and the public better understand aquatic land issues. These goals are consistent with the constitutional and legislative direction under which the department acts. The goals also build upon the requirements of the new aquatic lands legislation (SSHB 1231). The policies set forth in the final plan will guide department aquatic land management activities.

The mission and goals statements which follow define overall department interests. The sections on policy cover specific management issues. Proposed policies are stated on the left side of the page. The text on the right explains the issue and the reasoning behind the proposed policy. Uncommon terms are defined in the glossary. The appendices contain information on department authorities, other agency's jurisdictions on aquatic lands, and a copy of SSHB 1231 passed in 1984.

MISSION AND GOALS

MISSION

The Department of Natural Resources will manage Washington's public aquatic lands to provide a balance of public benefits for all citizens of the state.

GOALS OF AQUATIC LAND MANAGEMENT

Conserve and enhance aquatic lands and associated resources

Meet or exceed environmental quality standards.

Maintain or improve the productivity and usefulness of aquatic lands.

Provide high quality habitat for wildlife on state aquatic lands.

Provide social and economic benefits

Promote access to and recreational use of state aquatic lands.

Encourage water dependent uses.

Promote the production on a continuing basis of renewable resources.

Allow suitable state aquatic lands to be used for energy and mineral production.

Generate income from use of aquatic lands.

SUMMARY OF RECOMMENDED POLICIES

SUMMARY OF RECOMMENDED POLICIES

STATE AQUATIC LAND OWNERSHIP

- Navigable waters are considered to be all tidal waters and nontidal waters found navigable by the courts, bounded by meander lines or for which there is evidence of capability or susceptibility of use for commerce. (See page 19.)

- The ordinary high water mark is considered to be the line of upland vegetation or, in the absence of vegetation, the line of mean high water. (See page 20.)

- Standards for establishing lines of navigability will be developed and applied where necessary to resolve boundary questions. (See page 21.)

- Shorelands will not be sold, pursuant to RCW 79.94.210, until there is legislative clarification on when shoreland sales would be in the public interest. (See page 22.)

- Aquatic lands will not be sold. The needs of public agencies will be accommodated through interagency agreement, permit or other instrument. (See page 23.)

- Bush and Callow Act lands may be used for shellfish culture or open space. Other uses may be allowed after full ownership has reverted to the state. (See page 23.)

- Reversionary rights to Bush and Callow Act lands will not be sold. Bush Act deed holders may propose exchanges with the state for more suitable properties. (See page 23.)

- Site specific management plans for aquatic lands fronting state parks will be developed in cooperation with the State Parks and Recreation Commission. (See page 23.)

- The department will actively assert ownership to state-owned aquatic lands and will provide information to the public on the extent of state ownership. (See page 24.)

AQUATIC LAND USE AND ENVIRONMENTAL QUALITY

- The department will cooperate with local governments and the Department of Ecology to develop shoreline management plans for state aquatic lands. Whenever possible, the department will implement its aquatic land management objectives through local shoreline management plans. (See page 25.)

- In addition to local shoreline planning, the department may develop plans to guide aquatic land uses in which DNR has a direct management interest or which place severe demands on state aquatic lands. (See page 25.)

- The department may develop plans for aquatic land areas needing special protection or which are faced with severe user competition. (See page 25.)

- Use authorizations will be issued only when they are in compliance with the State Environmental Policy Act (SEPA) and other applicable environmental standards. (See page 26.)

- Mitigation or replacement can be required of developments which cause significant loss of resource productivity, habitat or public use. Special use requirements may be imposed where necessary to protect environmental quality for statewide interests such as public use and aquaculture. (See page 26.)

- The department may withdraw from lease or apply use restrictions to aquatic lands identified by the department as environmentally sensitive. (See page 26.)

- Commercial and industrial development will be encouraged to locate in developed areas or in areas planned for those uses. (See page 26.)

- The department will encourage aquatic land uses on the basis of their water dependency. (See page 27.)

USE AUTHORIZATION

- Lease duration will be based on consistency with aquatic land management goals and policies. (See page 29.)

- Trespasses on state aquatic lands will be brought under lease if they meet all normal lease requirements. (See page 29.)

- Trespasses constructed before June 30, 1972 that do not comply with normal requirements may be allowed to remain under "unauthorized use and occupancy" (U&O) status. (See page 30.)

- Trespasses constructed between June 30, 1972 and June 30, 1984 that do not comply with normal requirements will be allowed to remain for up to five years and required to pay a penalty fee. (See page 30.)

- Trespasses placed or constructed after June 30, 1984 that do not meet normal requirements must be removed. (See page 30.)

RESEARCH AND DEVELOPMENT

- Research and development activities will be conducted to improve the productivity of renewable resources, enhance recreational opportunities and/or ensure protection of the environmental quality of aquatic lands. (See page 31.)

PUBLIC USE AND ACCESS

- The department will actively improve public access and recreational use of state-owned aquatic lands. (See page 32.)

- Public access and recreational use of aquatic lands will be encouraged through lease terms and conditions. (See page 32.)

- Public use and access programs will be coordinated with local recreation planners and the Interagency Committee for Outdoor Recreation. (See page 31.)

AQUACULTURE

- The department will promote aquaculture by developing information on aquaculture techniques, by providing economic incentives for experimental aquaculture industries and by assisting aquaculturists in obtaining approvals for use of prime state-owned aquaculture lands. (See page 33.)

- The department will encourage local governments to reserve and protect suitable prime aquaculture areas on state-owned aquatic lands. In addition, the department may identify, reserve and protect from incompatible use, state-owned aquatic lands with prime suitability for aquaculture. (See page 34.)

NAVIGATION AND COMMERCE OUTSIDE HARBOR AREAS

- The department will conduct or support studies to identify suitable sites for water-dependent commerce and industry outside harbor areas. (See page 36.)

- The department will work with shoreline management programs to ensure space is available outside harbor areas to serve the needs of water-dependent commerce and industry. (See page 36.)

- In the absence of other control, the department may apply development controls to protect navigation parallel to the shore or between the water and upland. (See page 37.)

HARBOR AREAS

- The department will encourage coordinated planning for harbor area development to meet the needs of preferred uses and to integrate other uses where compatible with preferred uses. (See page 39.)

- Maritime trade and other commercial navigation uses are preferred uses of harbor areas. Public use and access should be encouraged when consistent with preferred uses. (See page 39.)

- Nonpreferred uses may be allowed in harbor areas when not detrimental to the long-term availability of harbor area space for preferred uses. (See page 39.)

- Waterways shall be used primarily to provide access to uplands for loading and unloading of watercraft and secondarily for short-term moorage. (See page 40.)

- Waterway use will be managed consistent with statewide interests. The department will encourage local governments to regulate short-term transient waterway use. (See page 41.)

DREDGE SPOIL DISPOSAL

- The department will encourage beneficial use of dredge spoils before allowing in-water disposal. The priority for disposal is uplands first, deep water sites second and state-owned wetlands only when no other practical alternative exists. (See page 42.)

- Appropriate sites will be designated in consultation with the Interagency Open Water Disposal Site Evaluation Committee and monitored to ensure that material is dumped at the designated sites. (See page 43.)

- Disposal fees will be set to cover the cost of program operation and monitoring compliance with permit conditions. Public agencies will either be charged for disposal or required to certify compliance with monitoring standards established by the department. (See page 43.)

MATERIAL EXTRACTION

- Sand and gravel extraction will be authorized only when no preferable upland site or dredge material exists. (See page 45.)

- Surface drilling is prohibited on state-owned aquatic lands. (See page 46.)

POLICIES

Navigable waters are considered to be all tidal waters and nontidal waters found navigable by the courts, bounded by meander lines or for which there is evidence of capability or susceptibility of use for commerce.

Extent of State Ownership

Washington's constitution claimed ownership of lands under "navigable" rivers, lakes and marine waters. Under the law, all tidal waters are clearly navigable but there is no legislative guidance on how to determine which rivers and lakes are navigable. The department constantly is faced with questions about the extent of state ownership. A policy is needed to guide department responses to ownership questions.

The narrowest definition of navigability considers freshwater bodies state-owned only if they have been declared navigable by the courts. Under this definition the department could exert proprietary control over only a small part of the state's freshwater area. Large rivers and lakes would not be included because they are assumed to be navigable but have never been so named in court cases. Under this definition, water bodies found to be navigable would not be protected for the public until the courts were able to act.

The most inclusive policy would consider all freshwater bodies "navigable" if suitable for recreational navigation. This would include the shallowest lakes and rivers.

The approach most consistent with court interpretation considers freshwaters navigable if they are bounded by meander lines or there is evidence of "capability or susceptibility of use for commerce". Meander lines (established in original government surveys to segregate uplands from navigable waters) indicate historical suitability. However, they are not legal evidence of navigability. "Capability and susceptibility for commerce" is a measure of federal jurisdiction in navigable waters under the Commerce Clause of the U.S. Constitution.

Ordinary High Water

The landward boundary of nontidal navigable waters is called the line of "ordinary high water" (where shorelands have not been sold). This term is not quantitatively defined in state statute or case law.

The ordinary high water mark is considered to be the line of upland vegetation or, in the absence of vegetation, the line of mean high water.

At issue is the ultimate ownership of thousands of acres statewide which lay between the elevation indicated by annual grasses and the elevations reached during normal high water periods. The department needs a working definition of the high water mark to respond to day-to-day ownership questions.

The department could base its actions on the most recent federal court decision. However, this decision is being appealed and is based on a Whatcom County Superior Court case. (The state was not a party to the Whatcom County case and did not have an opportunity to present its interests.) That case was complicated by the presence of meander lines and only concerned a lake. River banks may undergo much greater changes in vegetation than lakes.

Before the Whatcom County case, the State Land Office defined the ordinary high water mark as the line of permanent vegetation. This is different from the agriculture test because agriculturally useful grasses may invade a river bank for a season or two and then be scoured away by normal high waters. Permanent vegetation indicates the normal upper limit of these high water occurrences. Due to the special nature of the Whatcom County decision, the state has continued, without court challenge, to define ordinary high water as the line of permanent vegetation.

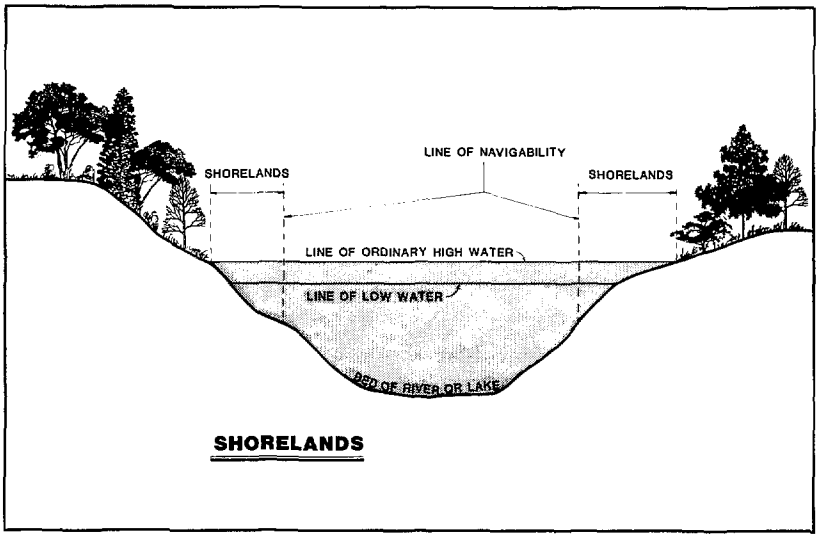
In some cases, there is no vegetation present to judge the high water mark against. The high water mark in these cases could be determined by topography or by using a given river level such as mean high or low water. Objectively evaluating the river level would be difficult using topography alone. Using mean high water would correspond to tideland practice and to Constitutional language. Using low water would eliminate vast areas from potential public ownership and might be interpreted as giving away the state's property without compensation.

Standards for establishing lines of navigability will be developed and applied where necessary to resolve boundary questions.

Boundary of Private Shorelands

Until 1971, the department was authorized to sell tidelands and shorelands. Tideland deeds have a clearly defined waterward boundary of private ownership but many shoreland deeds do not. The Legislature and the courts have determined that the waterward boundary of private shorelands is the line of ordinary navigation or line of navigability. While these terms have the same meaning, they have no workable definitions. The Harbor Line Commission is authorized to define the ownership boundary on first class shorelands (which were originally sold as second class shorelands) by defining the inner harbor line. The Legislature clearly has authority to set lines of navigability on second class shorelands. However, there has been no specific delegation of this authority.

When requested to address the navigability issue, methods could include: 1) letting the courts handle the matter, 2) establishing lines of navigability on a case-by-case basis, or 3) establishing statewide standards and setting lines of navigability accordingly. Leaving the matter to the courts would eliminate administrative settlement of these issues and would create a



burden on the court system. Establishing lines on a case-by-case basis could result in windfalls to the state or to private shoreland owners, depending on how particular cases are determined. Standards would ensure that private property owners and the state are treated equally in each case.

The Harbor Line Commission has given shoreland owners assurance that the state will not establish lines of navigability without the owner's consent and involvement. In March, 1984, the Commission adopted Resolution 447 which states:

> ... the Department of Natural Resources [shall] not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

Sale of Shorelands

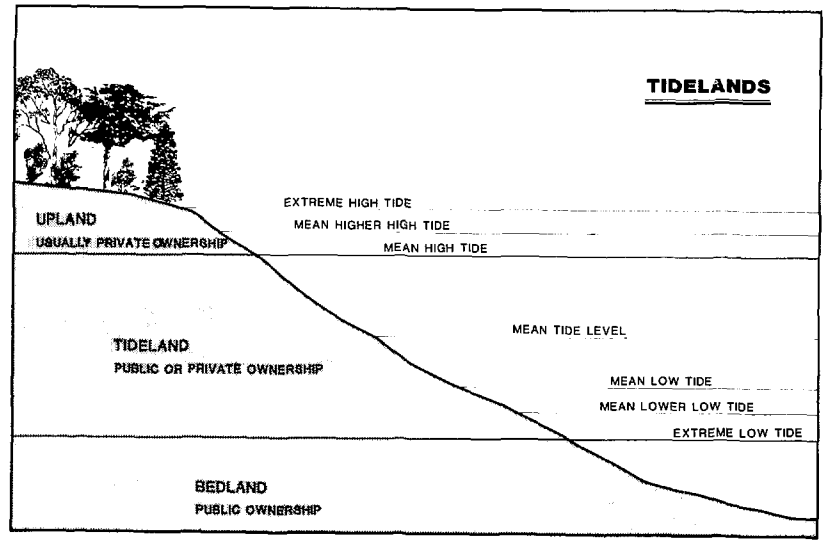
Shorelands will not be sold, pursuant to RCW 79.94.210, until there is legislative clarification on when shoreland sales would be in the public interest.

RCW 79.94.210 authorizes the sale of rural lake shorelands having minimal public value when in the "public interest". Diamond Lake in Pend Oreille County was the first lake considered for sale. After reviewing the department's recommendations and public comments, the Board of Natural Resources adopted a resolution rejecting shoreland sales around Diamond Lake until the Legislature better defines which lands should be sold.

Sale of Aquatic Lands to Public Entities

Aquatic lands will not be sold. The needs of public agencies will be accommodated through interagency agreement, permit or other instrument.

The laws authorize the sale of tidelands and shorelands to public entities (RCW 79.94.150(2)). The department has not found a time when sale of aquatic lands to public entities would be in the public interest. (The sale of Smith Cove Waterway to the Port of Seattle was mandated by the legislature.) There are other ways to allow public use of aquatic lands which would not permanently transfer the land out of state ownership.



Bush and Callow Act Lands

Bush and Callow Act lands may be used for shellfish culture or open space. Other uses may be allowed after full ownership has reverted to the state.

Reversionary rights to Bush and Callow Act lands will not be sold. Bush Act deed holders may propose exchanges with the state for more suitable properties.

The Bush and Callow Acts allowed the state to sell aquatic lands on condition they be used for shellfish culture only. The deeds specified that if the lands were used for other purposes, ownership would revert to the state. In some cases, the law allowed oyster growers to trade their aquatic lands for others owned by the state or to purchase the reversionary rights. However, the Legislature prohibited sale of aquatic lands in 1971. In 1983 the Legislature repealed the original legislation which authorized sale of reversionary rights.

Coordination with the State Parks and Recreation Commission

Site specific management plans for aquatic lands fronting state parks will be developed in cooperation with the State Parks and Recreation Commission.

The Commissioner of Public Lands may withdraw aquatic lands from sale for state park purposes. The Commissioner made a number of such withdrawals before the Legislature prohibited sale of aquatic lands in in 1971. The department and the State Parks and Recreation Commission are developing joint site specific management plans for the aquatic lands which abut state parks. The new aquatic land legislation (SSHB 1231) reaffirms the importance of such cooperation. Aquatic land leases in front of state parks now require consultation or approval from the Commission.

The department will actively assert ownership to state-owned aquatic lands and will provide information to the public on the extent of state ownership.

Ownership Assertion

Private parties often claim ownership of aquatic lands the department believes are state-owned. This is partly due to lack of public knowledge about the law, and partly due to disagreements over legal interpretation. The department could address these cases as they occur or begin action to identify potential conflicts and resolve them.

The department will cooperate with local governments and the Department of Ecology to develop shoreline management plans for state aquatic lands. Whenever possible, the department will implement its aquatic land management objectives through local shoreline management plans.

In addition to local shoreline planning, the department may develop plans to guide aquatic land uses in which DNR has a direct management interest or which place severe demands on state aquatic lands.

The department may develop plans for aquatic land areas needing special protection or which are faced with severe user competition.

Land Use Planning

The department may develop multiple use management plans for state-owned aquatic lands. These plans provide for several simultaneous uses on a single tract or for planned rotation of one or more uses between parts of the ownership. Plans must consider natural, economic and social factors. (RCW 79.68).

The department is also responsible for siting and relocating harbor lines and waterways. These planning activities are similar to upland zoning and platting.

Aquatic land use plans must be consistent with the Shoreline Management Act (RCW 90.58.340), Department of Ecology guidelines and local shoreline plans. The Act allows DOE to recommend land use controls for state-owned aquatic land and requires that local shoreline plans consider Department of Natural Resources land use recommendations. (RCW 90.58.)

The department may adopt policies and rules necessary to carry out the intent of the Legislature. (RCW 43.30.150.)

All agencies could rely on the Shoreline Management Act for general aquatic planning. However, specialized department responsibilites such as fostering aquaculture, encouraging public use and reserving harbor areas for navigation and commerce benefit from planning. For example, the department has assumed responsibility for coordinating the use of deep water spoil disposal sites. This requires regional analysis of aquatic land use needs and capabilities which can be accomplished by coordinating with local shoreline planners wherever possible and developing additional plans when needed.

Environmental Quality

The department's duties to protect environmental quality on state-owned aquatic lands stem from our enabling legislation and from the State Environmental Policy Act (SEPA).

Use authorizations will be issued only when they are in compliance with the State Environmental Policy Act (SEPA) and other applicable environmental standards.

Mitigation or replacement may be required of developments which cause significant loss of resource productivity, habitat or public use. Special use requirements may be imposed where necessary to protect environmental quality for statewide interests such as public use and aquaculture.

The department may withdraw from lease or apply use restrictions to aquatic lands identified by the department as environmentally sensitive.

The legislature recently enacted SSHB 1231 which requires the department to "consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representive ecosystem or spawning area prior to issuing any initial lease or authorizing any change in use." In addition, the department "may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values."

The department could protect the aquatic environment in several ways. Criteria could be developed to protect aquatic lands from all environmental degradation or the department could focus on protecting environmental quality for aquatic uses of statewide interests. Other agencies' controls are now in effect for water quality, aesthetics and fisheries. Rather than duplicate those programs, the department should rely on them whenever possible. There are certain statewide interests in which the department has special expertise and responsibility, such as the protection of aquatic lands for aquaculture and public use and those values specifically cited in SSHB 1231. In these cases, the department may want to implement specific environmental protection measures.

Protection of environmental quality may be done on a project-by-project basis only or with supplemental planning to protect sensitive areas. Advance identification of environmentally sensitive areas helps to control cumulative impacts of individual projects. It also alerts developers and the department to areas where development problems may occur.

Commercial and industrial development will be encouraged to locate in developed areas or in areas planned for those uses.

Concentration of Commercial and Industrial Development

Concentrating intensive development is a common practice in control of upland development. This is also practiced under the Shoreline Management Act. Clustering of commercial and industrial development usually allows better use of governmental services and utilities, and concentrates environmental impacts in developed areas.

The department could leave this type of aquatic land use decision to other agencies. However, this would ignore a major part of the responsibility the Legislature has given the department.

Other options would encourage or require commercial and industrial development to locate in developed areas. Requiring commercial facilities to locate in existing harbor areas is difficult to administer due to a lack of good information on what practical space is available. Also, some businesses such as aquaculture, gravel extraction and petroleum shipping have special locational requirements.

A policy to encourage development clustering would allow more flexibility. Specific clustering requirements could be added if necessary. The needs of aquaculture and other resource-based industries could be met by requiring that upland plans also be considered in location decisions.

Water Dependency

The department will encourage aquatic land uses on the basis of their water dependency.

In some areas there is intense competition for use of aquatic lands, particularly those near the shoreline. The concept of "water dependency" is an accepted criteria for allocating this space. However, the definition of the terms varies.

In SSHB 1231, the Legislature requires that management of state-owned aquatic lands:

> preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests. (Sec. 3. (1))

The legislation includes lease fee schedules which give preferential treatment to water-dependent uses.

In addition to lease rates, the department can vary the lease period (term) and apply lease conditions which favor water-dependent uses. Manipulating the lease term can ensure that space is available for water-dependent uses when needed in the future. Varying lease conditions can ensure that nonwater-dependent uses don't reduce the value of adjoining property for water-dependent uses.

Lease Duration

Lease duration will be based on consistency with aquatic land management goals and policies.

The department has proprietary authority over state-owned aquatic lands. The department may conclude leases, easements, rights of way and other agreements for use of state-owned aquatic lands. Uses, lease terms and conditions differ according to the type of aquatic land involved.

Bedlands and harbor areas may be leased for a maximum of 30 years; tidelands and shorelands for 55 years. There is no legal guidance on when to vary from the maximum term. Lease duration could always be set at the legal maximum. It could also be based on the needs of the lessee or on the project's consistency with the state's aquatic land management legislative goals and policies. It could also be based on some combination of the last two factors.

The law allows the Commissioner of Public Lands to base lease duration decisions on the "public interest". However, more practical guidance is needed for day-to-day lease administration. Always issuing leases for the maximum term would mean that projects must always be in the public interest. Shorter leases could not be issued for an "interim" use.

Setting lease duration entirely on the basis of lessee needs would, like using the maximum, limit the department's ability to negotiate.

The department has greater control in regulating use of aquatic lands by varying the lease period. This allows the departmemt to accept some short-term uses which otherwise would not be allowed due to possible long-term problems.

Trespass

Trespasses on state aquatic lands will be brought under lease if they meet all normal lease requirements.

Until 1972, the department did not actively try to identify unauthorized uses on state aquatic lands. Structures built in trespass or illegal uses were occasionally found and either put under lease or put on "unauthorized use and occupancy" (U&O) status. There was no penalty for using aquatic lands without permission, and structures were rarely required to be removed.

Trespasses constructed before June 30, 1972 that do not comply with normal requirements may be allowed to remain under "unauthorized use and s. occupancy" (U&O) status.

Trespasses constructed between June 30, 1972 and June 30, 1984 that do not comply with normal requirements will be allowed to remain for up to five years and required to pay a penalty fee.

Trespasses placed or constructed after June 30, 1984 that do not meet normal requirements must be removed.

In 1972, the department began surveys to identify unauthorized uses and attempted to bring them under lease. The department also began to monitor permit requests from other agencies so that developers could be alerted to the need for use agreements.

There are many U&Os in effect now and many developments not yet identified. For those constructed in the past, there are several options: allow them to continue as U&Os or with no official approval at all; allow those constructed long ago to remain and phase out later ones; or require removal of all unapproved developments. Allowing known unapproved developments to continue would be illegal and unfair to approved lessees. To require removal of all developments built before the state began active enforcement might be unfair especially if the improvements don't substantially interfere with public use of the water. Developments constructed since use authorization require- have become common knowledge can be treated differently.

Research and development activities will be conducted to improve the productivity of renewable resources, enhance recreational opportunities and/or ensure protection of the environmental quality of aquatic lands.

State law requires the department to "foster the commercial and recreational use of the aquatic environment for production of food, fibre, income and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters". To do this, the law authorizes the department to "develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers" (RCW 79.68.080). These are research and development activities.

The authorization for research and development is fairly broad. The department could end research and development or it could engage in theoretical research that might have no practical benefit for the state. The department could also target research and development to relate to such practical needs as producing income, protecting the environment, improving recreation and fostering aquaculture.

Ending research and development would ignore the expressed interest of the legislature. Research with no practical value would not achieve the results the legislature intended.

Department Involvement in Recreation and Access

The department will actively improve public access and recreational use of state-owned aquatic lands.

In 1971, the legislature directed the department to foster recreational use of state-owned aquatic lands (RCW 79.68.080). This law was reinforced through the legislation passed in 1984 (SSHB 1231) which calls for the department to "enhance opportunities for public recreation and shoreline access". SSHB 1231 also establishes a fund to support these activities.

The department fosters recreation and access both directly and indirectly. As part of its direct fostering activities, the department has provided underwater reefs for recreational enhancement, marked public beaches, published booklets on the location of public beaches in Puget Sound and planted oysters on public beaches.

A policy limiting the department to indirect fostering activities could curtail public beach marking and advertising. The department believes that ending direct enhancement efforts would not comply with the intent of the legislation or be in the best interest of the public, which consistently identifies recreation as a high priority use of public aquatic lands.

Public access and recreational use of aquatic lands will be encouraged through lease terms and conditions.

The department already promotes public access through fee reductions on selected harbor area leases. SSHB 1231 eliminates lease fees for certain public recreation facilities. Public access could be further encouraged through lease terms and conditions for projects outside harbor areas.

Public use and access programs will be coordinated with local recreation planners and the Interagency Committee for Outdoor Recreation.

Several state and federal agencies have direct responsibility over recreational development. The Interagency Committee for Outdoor Recreation (IAC) coordinates a statewide effort of identifying recreational needs and assigns funds for the highest priority projects. The Department of Game also has an interest in recreational use of state aquatic lands. There is a need for interagency coordination in establishing department priorities for aquatic land recreation and access development.

The department will promote aquaculture by developing information on aquaculture techniques, by providing economic incentives for experimental aquaculture industries and by assisting aquaculturists in obtaining approvals for use of prime state-owned aquacultural lands.

Fostering Aquaculture

Except for oysters and clams, aquaculture is a young industry in Washington. Within the last 20 years, pen rearing of salmon and raft rearing of mussels have become successful commercial enterprises. However, most aquaculture is in the stage that agriculture was 100 years ago, relying on the experimentation and experience of individuals, rather than on proven research.

The Legislature recognized the potential benefits of organized research in 1972.

> The department of natural resources shall foster the commercial...use of the aquatic environment for production of food, fibre, [and] income...from state-owned aquatic lands under its jurisdiction and from associated waters, and...may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers....(RCW 79.68.080.)

During the 1970s and early 1980s, the department conducted research on growing seaweed for industrial chemicals and food. Joint research was also begun with the Department of Fisheries on methods to replant geoducks. Smaller research projects investigated techniques for re-seeding intertidal hardshell clams and for improving mussel setting. Public education activities included publishing the "Shellfish Aquaculture Handbook" and conducting public workshops on the value of seaweed culture.

In the future, the department could reduce, maintain or increase its level of aquaculture activity. Eliminating all aquaculture research and promotion would not be consistent with the legislative direction in RCW 79.68.080. Low levels of activity might provide public education about aquaculture practices and technical support to aquaculturists about sites and permits. A midlevel effort might provide economic incentives to experimental aquaculture industries and conduct research on promising techniques. The most active role might include

establishing "industrial parks" where access, utilities and operating permits are secured.

The low level activity option and the do nothing option are not compatible with RCW 79.68.080. The most active option would place the department in the inappropriate role of a developer.

Protection of the Resource Base

The department will encourage local government to reserve and protect suitable prime aquaculture areas on state-owned aquatic lands. In addition, the department may identify, reserve and protect from incompatible use, state-owned aquatic lands with prime suitability for aquaculture.

Aquaculture sites are limited by both social and physical factors. They compete for aquatic land space with other uses such as recreation, residential amenity and sewage disposal. Aquaculture is also limited to sites with special current, wind, water quality and habitat characteristics. As development pressures on aquatic lands increase, sites with both natural and social suitability will disappear unless positive steps are taken to preserve them.

The department is authorized to guide and foster use of aquatic lands for aquaculture. The aquatic land legislation of 1984 (SSHB 1231) directs the department to consider natural value in every aquatic land lease. Protecting prime aquaculture sites is a type of natural value protection, since aquaculture can only exist in high water quality areas.

RCW 79.68.080 authorizes planning for several, simultaneous uses of aquatic land. The law also allows the department to "foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment..." The Shoreline Management Act requires aquatic land authorizations to be consistent with local master programs and allows the department to participate in development of those plans.

The most limited role for the department in managing aquaculture siting would be to comply with local master programs but not contribute to their development. This could result in loss of prime aquaculture resources because local governments are often not aware of the statewide importance of sites within their communities.

Alternatively, the department could establish aquaculture reserves primarily for aquaculture use which would be protected in spite of the desires of local government. This approach could be hampered by local governments who might prevent use of any site by controlling adjacent upland development.

The best role for the department appears to be similar to past practice. The department would work closely with local governments in their shoreline management planning. The department could help identify prime aquaculture lands and find ways to make aquaculture development compatible with other competing shoreline uses. Shoreline management plans could be supplemented with the department's authority to protect suitable aquatic lands through lease arrangements and land withdrawals.

Providing for Future Space Needs of Water Dependent Commercial and Industrial Development

The department will conduct or support studies to identify suitable sites for water-dependent commerce and industry outside harbor areas.

The department will work with shoreline management programs to ensure space is available outside harbor areas to serve the needs of water-dependent commerce and industry.

The department has a mandate to protect aquatic lands for harbor development at cities through establishment of harbor areas. However, there has been and will be increasing need for harbor development in rural areas. Worldwide, the trend in port development is to relocate from urban centers to rural locations. Changing port technology requires less labor and more land, and benefits from being separated from adjoining commercial and residential development. Developments at Cherry Point and March Point in Puget Sound are examples of this trend.

The Washington Public Ports Association has prepared 20-year projections of facility needs for port-managed activities. These deal mainly with expansion of port operations in urban areas and do not include petroleum handling. The Department of Ecology has done studies on potential sites for coal export and outer continental shelf platform construction. The Corps of Engineers and Sea Grant have done studies of marina siting needs.

Local governments have identified, in their shoreline management plans, areas suitable for harbor development. (Whatcom County identified the Cherry Point area as suitable for certain types of industrial piers.) However, shoreline plans are usually based on existing development patterns and on available studies of statewide need.

The department could respond to proposals for rural harbor development on a case-by-case basis and rely on shoreline management plans for guidance on individual lease actions. This has been the practice. However, needs for rural harbor development will continue to change and there is currently no advocate for statewide needs. This would be an appropriate role for the department as manager of state-owned aquatic lands.

In the absence of other control, the department may apply development controls to protect navigation parallel to the shore or between the water and upland.

Protection of Navigation in Rural Areas

There are a number of areas in the state where shoreline develoment has disrupted or threatens to disrupt navigation. Piers built at odd angles or too far into the water can block entrance to creeks or interfere with traffic along the shoreline. In harbor areas, harbor lines limit the extent of waterward development and waterways protect traffic routes between open water and upland. Although no longer enforced, Corps of Engineers' pierhead lines once guided development outside harbor areas. Local shoreline management plans establish preferred and permitted uses for shoreline segments. The plans don't often establish the waterward limit of development or identify necessary navigation ways.

In laying out lease tracts, the department sets waterward lease limits and sideline boundaries. In the absence of harbor lines or construction limit lines, department staff evaluate lease proposals on a case-by-case basis. This approach can result in developments that interfere with each other and with navigation.

The department could continue with past practice or, in intensively developed areas, establish construction limit lines. To continue a case-by-case approach would allow congestion to increase. Once a development pattern is set (such as the angles of piers to the shore) it is difficult to change.

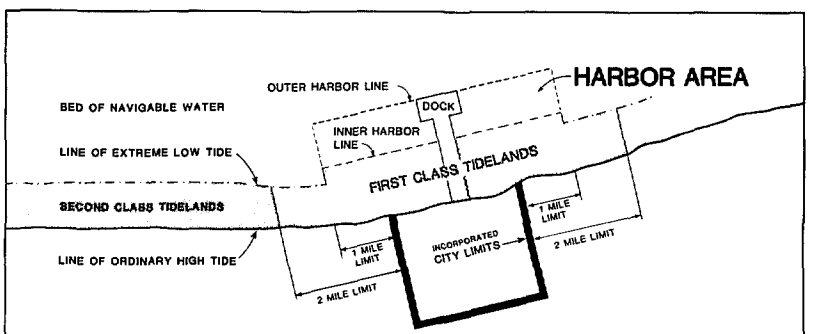
Construction limit lines and lease area sideline boundaries should be set with consideration given to the needs of shoreline developers, boaters and viewers.

Article XV of the Washington State Constitution requires the Legislature to provide for establishment of harbor areas. These are to be located in navigable waters within one mile of cities having "harbors, bays, estuaries, or inlets." Harbor areas have been established at a number of cities; most are in Puget Sound. The Constitution requires that harbor areas remain in state control and be "forever reserved for landings, wharves, streets and other conveniences of navigation and commerce." The waters beyond the outer harbor line must remain open for navigation.

Since statehood, many changes have occurred in aquatic land management. Public ports have been created and local governments have instituted their own land use controls. The Shoreline Management Act recently added statewide policy and a comprehensive shoreline management framework. The constitutional directive for harbor areas remains, however, and applies to all state agencies and units of local government.

Use of Harbor Areas

The Department of Natural Resources is authorized to lease aquatic lands in harbor areas. The department's use authorizations must conform to



SCHEMATIC DIAGRAM of a
TYPICAL HARBOR AREA

The department will encourage coordinated planning for harbor area development to meet the needs of preferred uses and to integrate other uses where compatible with preferred uses.

Maritime trade and other commercial navigational uses are preferred uses of harbor areas. Public use and access should be encouraged when consistent with preferred uses.

Nonpreferred uses may be allowed in harbor areas when not detrimental to the long-term availability of harbor area space for preferred uses.

constitutional use restrictions. Not long after harbor areas were established, pressures began to build for authorization of other than purely navigational use of harbor areas. Successive court interpretations have allowed more flexible use of harbor areas. The most recent decision allowed part of a sawmill to locate on a pier. This decision was based on the large amount of vacant harbor area aquatic land, on the state's ability to control harbor area use, and on the fact that the sawmill would not interfere with navigation and commerce development.

The demand for nonnavigational use of harbor area is increasing sharply. This is especially true on older central waterfronts such as Seattle, Port Angeles, Tacoma and Port Townsend. Shipping technology has changed since these areas were developed. Major industry has moved away leaving vacant or underused structures and creating opportunities for waterfront redevelopment.

The simplest department policy would restrict harbor area use to maritime trade. Cargo handling, ship repair and ferry terminals would be allowed but recreational marinas would not. However, this would ignore the public demand for nontrade-related commercial navigation and for interim uses. It would also ignore the Legislature's interest in encouraging use of harbor area space for public use and access.

A more flexible approach would allow maritime trade and other navigational uses outright, and interim uses on a case-by-case basis. This policy was followed until 1982. Its major drawback is that it does not consider the cumulative impacts of interim uses or recognize the benefits of harbor-wide planning.

The recommended policy is the most flexible. It provides for the needs of maritime trade and allows interim uses when consistent with plans for harbor use. This policy would consider all demands for harbor area use and make optimum use of harbor space.

Waterways shall be used primarily to provide access to uplands for loading and unloading of watercraft and secondarily for short-term moorage.

Waterways

State law requires waterways to be established landward from outer harbor lines. These waterways are to include all navigable streams and other locations as necessary. Waterways have been established in all harbor areas. Seattle's Salmon Bay Waterway is the largest but there are many valuable shorter ones. Waterways are to be reserved from sale or lease and to "remain as public highways for watercraft until vacated" (RCW 79.93.010).

Since the law gives no authority to lease waterways (unless a Corps of Engineers' pierhead line exists waterward of the waterway line), the department has not had a policy on waterway use or management. Over the years, some waterways have been substantially obstructed by landfills, abandoned vessels or permanent moorage. On Lake Union abuses of waterways became so flagrant that the city began policing short-term waterway use.

There are still major unresolved questions about proposals for long-term use of waterways by adjacent land owners.

The department could continue with no policy on appropriate use. However, there would be no statewide consistency in waterway use and abuses would likely continue. If the department were to adopt a policy, it could be strict or flexible. A strict policy might limit waterway use to providing access to uplands for loading and unloading watercraft. A more flexible policy might allow short-term moorage as a secondary use. There appears to be no legal authority to allow long-term obstruction of waterways.

The department recommends a flexible approach to waterway use, recognizing the different demands on waterways. Some, such as Salmon Bay, are heavily used by boat traffic and should not be obstructed, even temporarily. Other waterways can be used for short-term moorage and still serve public needs.

Waterway use will be managed consistent with statewide interests. The department will encourage local governments to regulate short-term, transient waterway use.

The department could continue its past practice of asserting no direct control over waterway use. However, this has resulted in major waterway abuses and ignores the department's responsibility to manage these state-owned aquatic lands. Alternatively, the department could manage short- and long-term waterway use. Regulating short-term waterway uses would overlap local government's normal police functions.

The recommended approach is to allow local governments to regulate short-term waterway use while the department retains responsibility for overall management and authorization of any long-term uses.

The department will encourage beneficial use of dredge spoils before allowing in-water disposal. The priority for disposal is uplands first, deep water sites second and state-owned wetlands only when no other practical alternative exists.

Priority of Disposal

For many years, disposal of spoils and other wastes occurred in Washington waters without the approval of regulatory agencies. Concerned with the potential for environmental damage and conflicts with other uses, the agencies formed a siting committee (the Interagency Open Water Disposal Site Evaluation Committee) in 1970 to address deep water disposal issues.

Disposal is limited by interagency agreement to specific sites, selected so as not to conflict with other marine land uses. Regulatory review is intense. After a site is selected by the committee, the department obtains a Shoreline Substantial Development Permit from the county. A Corps of Engineers' notice is usually issued for each dredging project for the site and the applicant provides spoil material samples to the Environmental Protection Agency (EPA) and the Department of Ecology (DOE) for analysis of the chemical and physical contents. Material must be certified by EPA and DOE as suitable for in-water disposal before it can be dumped at the site.

The department administers 16 deep water sites; issuing disposal permits, acquiring county permits and monitoring disposal when necessary. In the past the department has encouraged the beneficial use of dredge spoil. Recognizing the high value of state aquatic lands, a priority was established for placement of spoils: first, beneficial upland use; second, open water disposal.

In the future, the department could rearrange its priorities for disposal, decreasing the emphasis on beneficial or alternative upland use. However, such a change does not appear to be in the public interest or follow the philosophy of the state Shoreline Management Act.

Given the newly recognized problems with toxicants in the sediments of the Puget Sound, and the lack of available department funding for monitoring, a policy option could prohibit in-water dredge disposal. However, this would just transfer the problem to the uplands and make many dredging projects infeasible due to high disposal costs.

Appropriate sites will be designated in consultation with the Interagency Open Water Disposal Site Evaluation Committee and monitored to ensure that material is dumped at the designated sites.

Disposal fees will be set to cover the cost of program operation and monitoring compliance with permit conditions. Public agencies will either be charged for disposal or required to certify compliance with monitoring standards established by the department.

Establishing Sites and Associated Fees

The Interagency Open Water Disposal Site Evaluation Committee believes that site establishment is ecologically less damaging than random disposal. Providing convenient, acceptable sites greatly reduces the cost of dredging projects and provides a place for materials not suitable for landfills. Conflicts with other uses can be reduced through careful siting and adhering to water quality standards administered by state and federal agencies.

The cost of the deep water disposal program as administered by the department has greatly increased in the past few years. The department fee was originally set to cover program administration, site surveillance and interagency research. However, the Corps of Engineers, who uses the sites more than any other user, has not paid the disposal fee. Consequently, recent revenue has only covered program administration.

In addition to reduced revenue, newly discovered chemicals found in the sediments of our inner harbors have raised the demand for greater chemical testing of proposed waste spoils. As a result of better testing ability, sediments formerly considered safe for open water disposal may be found to have levels of chemicals that prevent in-water disposal.

Several management options are available to the department. These include evaluating sediment, researching disposal impacts, and raising the disposal fee. Alternatively, the department could collect no fee and eliminate the program completely. Applicants would obtain their own permits and would still be responsible for complying with the EPA standards for hazardous compounds. Eliminating the program would likely result in more illegal dumping and a return to the situation which existed prior to interagency involvement.

The interagency committee supports fees and increased monitoring by the department. Currently, the department proposes to monitor for permit

compliance, not for chemical analysis. Such analysis is the responsibility of the EPA and DOE; the department believes that a duplication of effort is unnecessary and would place an additional burden on users.

A midrange effort would allow the department to continue to designate sites in cooperation with the committee and limit the monitoring activities to permit compliance (i.e., the material is being dumped on-site). Quality certification would still be done by DOE and EPA.

Sand and Gravel Extraction

Sand and gravel extraction will be authorized only when no preferable upland site or dredge material exists.

Upland deposits of sand and gravel are nonrenewable resources. Many potential sites have been taken out of production by local zoning and by land uses which are incompatable with gravel extraction. Many upland sites also have aesthetic characteristics which could be damaged if sand and gravel operations were allowed. As dry land sites are withdrawn, the industry looks to increased use of the renewable river gravels administered by the department.

Use of river gravels can also cause changes. Sand and gravel extraction may affect aquatic habitat for fish spawning and rearing. Public gravel bars provide access for numerous aquatic land recreationists. Public aquatic areas are often the usual and accustomed fishing places for Washington's treaty Indians. Fish and wildlife habitat is protected by the Hydraulics Project Approval (HPA) of the Departments of Fisheries and Game. However, recreational and treaty Indian interests are unprotected by the HPA.

The Department of Natural Resources currently has 23 active material purchase agreements for sand and gravel on aquatic lands. Most of these contract holders produce commercial sand and gravel for use in the construction industry.

A range of policy choices are available to the department. The department could authorize removal of sand and gravel whenever requested, provided the lease met all the environmental requirements. While such a practice would follow the intent of the department's requirements, it might not adequately protect the state's valuable aquatic resources.

The department also has the option to end all sand and gravel leases. Recognizing that all such operations will disrupt the environment to some extent, the policy could deny any sand and gravel extraction on state aquatic lands. This policy might, however, unnecessarily limit the industry.

The recommended policy would allow sand and gravel extraction on aquatic lands, but only when no

preferable upland site is available. The definition of "preferable" will depend on site location, available transportation routes and material needs. This will best be judged by local department staff working in the proposal area.

Oil and Gas

Surface drilling is prohibited on state-owned aquatic lands.

Washington's oil and gas reserves hold discovery and production potential. The Oil and Gas Conservation Act (RCW 78.52) regulates mining of oil and gas on publicly and privately owned uplands and aquatic lands statewide. The Act and implementing regulations are administered by the department's Division of Geology and Earth Resources. A separate law, RCW 79.14 authorizes the department to lease state-owned aquatic lands and uplands for oil and gas exploration and drilling. The Lands Division is currently preparing a program plan and environmental impact statement to guide implementation of this law. The program plan may define policy and standards for exploration or surface drilling on state-owned uplands in proximity to aquatic lands.

At the present time, it is not appropriate to allow surface drilling on state-owned aquatic lands. Fresh water bodies are small enough that oil and gas reserves can be tapped by directional drilling. The Shoreline Management Act prohibits surface drilling for oil and gas in and within 1,000 feet of Puget Sound and the Strait of Juan De Fuca. Because there is no statewide policy on offshore drilling it is premature to consider such drilling.

GLOSSARY

GLOSSARY

Aquaculture - Farming of food fish, shellfish and other aquatic plants and animals.

Aquatic Land Ownership - The state asserts its ownership to the beds and shores of all navigable waters up to and including the line of ordinary high tide (mean high water) in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes (Article XVII, Section 1, State Constitution).

Beds of Navigable Waters - Submerged lands lying below the line of extreme low tide in navigable tidal waters; and below the line of navigability in lakes, rivers and streams. Under the laws of the United States, navigable waters have always been and shall forever remain common highways. **Bedlands** is synonymous with beds of navigable waters.

Capability or Susceptibility of Use for Commerce - A criteria for a body of water to be considered navigable. It refers to physical characteristics (capability) and geographical setting (susceptibility) that would allow the body of water to be used for transportation by watercraft common to the locality.

Dredging - Enlarging or clearing a river channel, harbor, etc., for navigational purposes or to remove sand and gravel.

Extreme Low Tide - The line below which the tide would not be expected to ebb. In the Puget Sound area, generally, this point is estimated to be about 4.5 feet below the datum plane of mean lower low water (0.0); along the Pacific coast and the Strait of Juan de Fuca, it is somewhat lower.

Extreme Low Water - In areas unaffected by tidal influence, it is the line of lowest (extreme) water level or flow of record.

Federal Navigational Servitude - All navigable waters are under the control of the United States for the purpose of regulating and improving navigation, and although the title to the shore and submerged soil is in the various states and individual owners under them, it is always subject to the servitude in respect of navigation created in favor of the Federal Government by the Constitution.

First Class Shorelands - State-owned lands bordering the shores of navigable rivers and lakes between the line of navigation and the line of ordinary high water and lying within or in front of the corporate limits of any city or within two miles of the limits.

First Class Tidelands - Lands lying within or in front of the corporate limits of any city or within one mile thereof and between the line of ordinary high tide and the inner harbor line; or within two miles of the corporate limits and between the line of ordinary high tide and the line of extreme low tide.

Harbor Area - The area of navigable waters between the inner and outer harbor lines as established by the State Harbor Lines Commission in accordance with provisions of the State Constitution. The right to place improvements upon this area may be leased from the State of Washington.

Harbor Lines - Outer harbor line means a line located and established in navigable waters beyond which the state shall never sell or lease any rights. Inner harbor line means a line located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line and constituting the landward boundary of the harbor area.

Interagency Openwater Disposal Site Evaluation Committee - This committee was established by WAC 332-30-166. Its membership is currently composed of the state Departments of Ecology, Fisheries, Game and Natural Resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency and Fish and Wildlife Service.

Interim Nonconforming Use - An activity not authorized within harbor areas by the State Constitution, but permitted when it will not intefere with the needs of navigation and commerce.

Intertidal - Lands over which the tide ebbs and flows.

Marine Lands - Lands measured on a horizontal plane from the ordinary high water mark waterward in marine and estuarian waters, including tidal lands.

Mean High Water - The average of all high water elevations reached at a given point over a designated period of time.

Mean Low Water - The average of all the low water elevations reached at a given point over a designated period of time.

Mean Lower Low Water - The average of lower water elevations of each pair of low waters of a tidal day. All other tidal elevations are based on this datum.

Meander Line - Fixed, determinable lines running along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the curves of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of bordering public lands.

Navigability - All bodies of water meandered by government surveyors are considered by the state to be navigable unless otherwise declared by a court. Court decisions have determined that waters are navigable if used for the general purposes of commerce and not those which are merely public highways for floating logs; that waters are navigable regardless of size; and that tidal water is navigable even if it is navigable only at high tide.

Renewable Resource - A resource capable of self-renewal.

Reserves - An area of special educational or scientific interest or utility, or an area of special environmental importance. Education reserves are accessible areas which are suitable for classroom projects. Scientific reserves are areas of environmental importance or historical, geological or biological interest which are threatened by overuse and require special protective management.

Second Class Shorelands - State-owned lands bordering the shores of navigable lakes and rivers between the line of navigability and the ordinary high water mark and located more than two miles from the corporate limits.

Second Class Tidelands - The area outside of and more than two miles from the corporate limits of a city or town, extending from the ordinary high tide line to the line of extreme low tide.

Subtidal - Lands lying below extreme low water or beyond the reasonable limits of an ebb tide.

Upland Access - Those portions of upland ownership that allow or provide direct interface with aquatic lands.

Upland Ownership - Lands abutting tidal waters or lakes extending from the meander line or high water mark (which ever is higher) landward, for lands patented prior to statehood in 1889; or from the line of mean high water landward, for lands patented after statehood.

Use Authorization - The legal documentation process of allowing specific activities to occur on public aquatic lands.

Water Dependency - THe inability to logically exist in any location but on the water.

Waterways - An area platted across harbor areas providing for access to open water.

APPENDICES

APPENDIX A
DNR AUTHORITIES FOR APPROVING AQUATIC AREA USE

Authorized Uses	Categories of State Aquatic Lands				
	Beds of Navigable Waters	2nd Class Tidelands	Platted 1st Class Tidelands, Shorelands	Unplatted 1st Class Tidelands, Shorelands	Harbor Area
	RCW	RCW	RCW	RCW	RCW
General Purpose	79.95.010[1]	SSHB 1231[2]	SSHB 1231[2]	79.94.280[3]	79.02.040[4]
Booming	79.95.010[5]	79.94.290[6]		79.94.280[7]	
Shellfish Cultivation and Aquaculture	79.96.010				
Geoduck Harvesting	75.24.100[8] 79.96.080				
Valuable Minerals Prospecting and Mining	79.01.616	79.01.616	79.01.616	79.01.616	79.01.616
Oil and Gas Prospecting, Development and Production	79.14.020	79.14.020	79.14.020	79.14.020	79.14.020
Rock, Stone, Gravel, Sand or Silt Removal	79.90.130 79.90.300	79.90.130 79.90.300	79.90.130 79.90.300	79.01.130 79.90.300	79.90.130 79.90.300
Natural Area Preserves	79.70.040	79.70.040	79.70.040	79.70.040	

[1] Beds may be leased to the abutting tideland owner or lessee for general purposes not covered under the other authorities.

[2] Second Substitute House Bill No. 1231, 1984, Section 3(4).

[3] Unplatted 1st Class Tidelands may be leased to the abutting upland owner for general purposes not covered under the other authorities.

[4] The lease of beds within harbor areas must be in conformance with the State Constitution. Article XV states harbor areas are to be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

[5] Beds may be leased to any person, firm or corporation for booming purposes, but only if the abutting tidelands and uplands are not improved or occupied for residential or commercial purposes.

[6] Any 2nd Class Tidelands may be leased for booming purposes except any oyster reserve containing oysters in merchantable quantities.

[7] Unplatted 1st Class Tidelands may be leased to any person, firm or corporation for booming purposes, but only if the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of such lands.

[8] Beds authorized for geoduck harvesting must lie below the minus 18-foot tide level and more than 200 yards offshore from mean high tide.

APPENDIX B

IN THE LEGISLATURE of the

STATE OF WASHINGTON

CERTIFICATION OF ENROLLED ENACTMENT

SECOND SUBSTITUTE HOUSE BILL NO. 1231

CHAPTER NO. .....

Passed the House February 29, 1984

Yeas 95 *Nays* 1

Passed the Senate March 8, 1984
as amended

Yeas 44 Nays 2

3-8-84: The House concurred in the Senate amendment and passed the bill as amended by the Senate.

Yeas: 97 Nays: 0

CERTIFICATION

I, Dean R. Foster, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is enrolled Substitute House Bill No. 1231 *as passed by the House of Representatives and the Senate on the dates hereon set forth.*

DEAN R. FOSTER, *Chief Clerk*

SECOND SUBSTITUTE HOUSE BILL NO. 1231

State of Washington 48th Legislature 1984 Regular Session

by Committee on Ways & Means (originally sponsored by Representatives Belcher, Wilson, Stratton, Sayan, Miller, Locke, Mitchell, Halsan, McClure, Fiske, Vekich, McMullen, Sommers, Sutherland, Haugen, Niemi, Burns and Powers)

Read first time February 23, 1984.

AN ACT Relating to aquatic lands; amending section 83, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.93.040; amending section 85, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.93.060; amending section 79, chapter 21, Laws of 1982 1st ex. sess. as last amended by section 1, chapter 153, Laws of 1983 and RCW 79.92.110; amending section 9, chapter 167, Laws of 1961 as last amended by section 4, chapter 8, Laws of 1982 2nd ex. sess. and RCW 79.24.580; adding new sections to chapter 79.90 RCW; adding a new section to chapter 79.93 RCW; creating new sections; decodifying RCW 79.96.900; repealing section 1, chapter 93, Laws of 1917 and RCW 53.32.010; repealing section 2, chapter 93, Laws of 1917 and RCW 53.32.020; repealing section 3, chapter 93, Laws of 1917, section 3, chapter 72, Laws of 1979 and RCW 53.32.050; repealing section 5, chapter 93, Laws of 1917 and RCW 53.32.060; repealing section 4, chapter 93, Laws of 1917 and RCW 53.32.070; repealing section 6, chapter 93, Laws of 1917 and RCW 53.32.900; repealing section 72, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.92.040; repealing section 73, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.92.050; repealing section 103, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.180; repealing section 104, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.190; repealing section 105, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.200; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department of natural resources the responsibility to manage these lands for the benefit of the public. The legislature finds that

water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. The purpose of sections 1 through 20 of this act is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.

NEW SECTION. Sec. 2. The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by aquatic lands are varied and include:

(1) Encouraging direct public use and access;

(2) Fostering water-dependent uses;

(3) Ensuring environmental protection;

(4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit.

NEW SECTION. Sec. 3. (1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to state-wide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-

priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department of natural resources, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.90 through 79.96 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

NEW SECTION. Sec. 4. The definitions in this section apply throughout chapters 79.90 through 79.96 RCW.

(1) "Water-dependent use" means a use which cannot logically exist in any location but on the water. Examples include, but are not limited to, water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(2) "Water-oriented use" means a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on

the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.

(3) "Nonwater-dependent use" means a use which can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(4) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(5) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(6) "Department" means the department of natural resources.

(7) "Port district" means a port district created under Title 53 RCW.

(8) The "real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(9) The "inflation rate" for a given year is the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the

department shall designate by rule a comparable substitute index.

(10) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(11) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers.

(12) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under section 6 of this act by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources.

NEW SECTION. Sec. 5. The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted without charge by an agreement, permit, or other instrument if the use is consistent with the purposes of sections 1 through 3 of this act and does not obstruct navigation or other public uses. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission.

NEW SECTION. Sec. 6. Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. Such agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term,

conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage such aquatic lands if: (1) The port district acquires the leasehold interest in accordance with state law, or (2) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.90 through 79.96 RCW and the implementing regulations adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

No rent shall be due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use such lands, the rental fee attributable to such aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department: PROVIDED, That a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent shall be due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and

approved by the board of natural resources.

NEW SECTION. Sec. 7. Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1 thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under subsection (3)(a) of this section.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with section 11 of this act in those cases in which the state owns the fill and has a right to charge for the fill.

NEW SECTION. Sec. 8. (1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in section 7 of this act, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board of natural resources.

NEW SECTION. Sec. 9. For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under section 7 or 8 of this act shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under section 7 or 8 of this act. If the first rent amount established under section 7

or 8 of this act is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under section 7 or 8 of this act. Thereafter, notwithstanding any other provision of this title, the annual rental established under section 7 or 8 of this act shall not increase more than fifty percent in any year.

This section applies only to leases of state-owned aquatic lands subject to section 7 or 8 of this act.

NEW SECTION. Sec. 10. If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

NEW SECTION. Sec. 11. Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute.

NEW SECTION. Sec. 12. If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for such use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for such parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies.

NEW SECTION. Sec. 13. If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department.

NEW SECTION. Sec. 14. Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

If improvements were installed under a good faith belief that a state aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required.

NEW SECTION. Sec. 15. The manager shall, by rule, provide for an administrative review of any aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board of natural resources. For leases managed under section 6 of this act, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be the average rate of return for the prior calendar year on conventional real property mortgages as reported by the federal home loan bank board. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies including those under chapter 34.04 RCW. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district.

NEW SECTION. Sec. 16. For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental.

NEW SECTION. Sec. 17. If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis.

NEW SECTION. Sec. 18. The lessee shall pay interest at the rate of one percent per month on rent or other sums owing to the department commencing thirty days after the date each rent or other sum is due and payable, unless there is review pending under section 15 of this act.

NEW SECTION. Sec. 19. The department shall adopt such rules as are necessary to carry out the purposes of sections 1 through 18 of this act, specifically including criteria for determining under section 7(4) of this act when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses.

NEW SECTION. Sec. 20. Nothing in this chapter or RCW 79.93.040 or 79.93.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW.

Sec. 21. Section 83, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.93.040 are each amended to read as follows:

((~~Whenever, in any waterways created under the laws of this state,~~)) If the United States government ((~~shall have~~)) has established pierhead lines within ((~~said~~)) a waterway created under the laws of this state at any distance from the boundaries ((~~thereof~~)) established by the state, structures ((~~shall be allowed~~

te)) may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line ((but)) only ((upon)) with the consent of the department of natural resources and upon such plans, terms, and conditions and for such term as ((approved--and fixed)) determined by the department. However, no permit shall extend for a period longer than thirty years.

((The-department-shall-require-of--the--holder--of--every--permit under--this--section--a--penalty--bond--with-sufficient-surety,-to-be approved-by-the-department,-in-an--amount--not--exceeding--twice--the amount--of--the--annual-rental,-but-in-no-case-less-than-five-hundred dollars.--The-bond-shall-secure-the-payment-of-the-rental-reserved-in the-permit,-during-the-term--of--such--permit--or--during--such--part thereof--as--said--department--in--its-discretion-shall-require-to-be covered-by-such-bond.--In-case-only-a-part-of-the-term-of-such-permit shall-be-covered-thereby,-the-department-shall-require--another--like bond,--to--be-executed-and-delivered-within-three-months-and-not-less than-one-month-prior-to-the-expiration-of-the-period-covered--by--the previous--bond,--to-cover-the-remainder-of-the-term-of-the-permit,-or such-part-thereof-as-the-department-in-its-discretion--shall--require to--be--covered-thereby.--The-department-shall-have-power-at-any-time to-summon-sureties-upon-any-bond-and-to-examine-into-the--sufficiency of--the--bond,--and--if--the--department--shall--find--the-same-to-be insufficient,-it-shall-require-the-holder-of-the-permit-to-file-a-new and-sufficient-bond-within-thirty-days-after-receiving-notice--to--do so,-under-penalty-of-cancellation-of-the-permit.))

The department ((shall--have-power-upon-sixty-days'-notice-to)) may cancel any permit upon sixty days' notice for a substantial breach by the ((holder--thereof)) permittee of any of the permit conditions((thereof,-or-for-lack-of-a-bond-therewith-as--required--by this-section)).

((In--case[s]--where-such)) If a waterway((s-shall-be)) is within the territorial limits of a port district ((organized-under-the--laws of--this--state)), the duties assigned by this section to the department ((shall)) may be exercised by the port commission of such port district((,--and--in--every--case-the-rentals-received-shall-be disposed-of-as-follows:--Seventy-five-percent-shall-be--paid--by--the

state--treasurer--to--the-county-treasurer-of-the-county-wherein-such port-district-is-situated,-for-the-use--of--said--port--district--and twenty-five-percent-into-the-state-treasury;--PROVIDED,-That-in-cases where--the--port-district-itself-shall-have-constructed-or-shall-have owned-structures-or-improvements-situated-upon-such-strip-of-waterway since-June-22,-1913,-the-entire-rentals-for-such--improved--strip--of waterway--shall--be-paid-directly-to-the-county-treasurer-for-the-use of-such-port-district)) as provided in section 6 of this 1984 act.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of such street, but the control of and the right to use such strip is hereby reserved to the state of Washington, except ((that-in-cases situate-in-a-port-district-such-control-and-use-shall--vest--in--such port-district)) as authorized by section 6 of this 1984 act.

Sec. 22. Section 85, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.93.060 are each amended to read as follows:

((Whenever-any)) If a waterway established under the ((authority of-the)) laws of this state, or any portion of ((such)) the waterway, ((shall)) has not ((have)) been excavated, or ((shall-not-be-in-use)) is not used for ((the-purposes-of)) navigation, or ((shall-no-longer be)) is not required in the public interest to exist as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner of public lands ((of--the--state--of--Washington whenever--he--shall--be)) upon request((ed-so-to-do)) by ordinance or resolution of the city council of the city in which such waterway is ((situate,-in-whole-or-in-part,-or,-in-case-such-waterway-is-situate, in--whole--or-in-part,-in-a-port-district-organized-under-the-laws-of the-state-of-Washington,-whenever-he-shall-be-requested--so--to--do)) located or by resolution of the port commission of ((such)) the port district((;-and-upon-the-making-of-such-order-the-waterway-or-portion thereof-shall-thereupon-be-deemed-to-be-and-shall-be-thereby-vacated; PROVIDED,-HOWEVER,-That)) in which the waterway is located. If the waterway or portion thereof ((so)) which is vacated ((be)) is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or

ordinance, together with a copy of ((said)) the vacation order of the commissioner of public lands ((certified--to--by--him;)) shall be submitted to the United States Army Corps of Engineers for their approval, and if they approve, the ((same-such)) waterway or portion thereof ((shall-thereupon-be-deemed-to-be-and-shall-be-thereupon)) is vacated: PROVIDED, That if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion thereof that abuts the port district property, shall be vacated.

Upon such vacation ((occurring;--in--either--of--the---manners aforesaid;)) of a waterway, the commissioner of public lands shall notify the city ((within;-or-in-front-of;)) in which((;--such)) the waterway is located, and the city ((shall-have)) has the right, if otherwise permitted by RCW 79.94.150, to extend across the portions so vacated any existing streets, or to select ((therefrom)) such portions ((thereof)) of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. Such selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway ((so-vacated)).

((Should-such)) If the city fails to make ((such)) a selection within such time, or ((within-such-time-make-such-selection)) selects only a portion of the waterway, the title of the remaining portions of ((such)) the vacated waterway ((so-vacated)) shall vest in the state, unless the ((same-be-situate)) waterway is located within the territorial limits of a port district ((created-under-the-laws-of-the state)), in which event, if otherwise permitted by RCW 79.94.150, ((such)) the title shall vest in ((said)) the port district. ((If subsequent-to-such-vacation;--the--vacated--waterway--or--portion--of waterway--shall--be--embraced--within--the--limits-of-a-port-district created-under-the-laws-of-the--state;--the--title--to--such--portions thereof-as-shall-then-remain-undisposed-of-by-the-state-shall-vest-in such--port--district;---Such-title-so-vesting-shall-be)) The title is subject to any railroad or street railway crossings existing at the time of such vacation.

NEW SECTION. Sec. 23. There is added to chapter 79.93 RCW a new

section to read as follows:

Copies of waterway permits or leases in existence on the effective date of this act shall be delivered to the department of natural resources except in those cases in which the port district enters into an agreement authorizing management of state-owned aquatic land as provided in section 6 of this act.

Sec. 24. Section 9, chapter 167, Laws of 1961 as last amended by section 4, chapter 8, Laws of 1982 2nd ex. sess. and RCW 79.24.580 are each amended to read as follows:

After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale ((of-tidelands;-and-shorelands;)) or lease of state-owned aquatic lands and from the sale of valuable material from ((tidelands;--shorelands;--beds--of-navigable-waters-and-harbor-areas and-from-the-lease-of-shorelands--and--beds--of--navigable--waters;)) state-owned aquatic lands shall be distributed as follows: (1) Forty percent shall be deposited in the aquatic lands enhancement account of the general fund which is hereby created. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects; and (2) the remainder shall be deposited in the capitol purchase and development account of the general fund, the creation of which is hereby authorized or, in the event that revenue bonds are issued as authorized by RCW 79.24.630 through 79.24.647, into the state building bond redemption fund pursuant to RCW 79.24.638.

Sec. 25. Section 79, chapter 21, Laws of 1982 1st ex. sess. as last amended by section 1, chapter 153, Laws of 1983 and RCW 79.92.110 are each amended to read as follows:

((The-rents-paid-under--leases--of--harbor--areas--and--tidelands belonging-to-the-state-of-Washington;-where-not-otherwise-directed-to a-particular-account;-shall-be-disposed-of-as-follows:

(1)--Except--as--otherwise--provided--in--this-section;-where-the leased-harbor-area-or-tideland-is--situated--within--the--territorial

limits--of--a--port--district;--twenty-five--percent--of--the-rentals received-from-such-leases-shall-be-paid-by-the-state-treasurer-to-the county-treasurer-of-the-county-wherein-such-port-district-is-situated for-the-use-of-such-port-district-and-said-rental--shall--go--into--a special-fund-to-be-expended-only-for-harbor-or-waterfront-improvement purposes;---The--remaining-seventy-five-percent-shall-be-deposited-in the-capitol-purchase-and-development-account-of-the-general--fund--of the--state-treasury;--PROVIDED,-That-in-cases-where-the-port-district itself-shall--have--before--April--28,--1967,--constructed--or--owned structures--or--improvements--situate-upon-the-leased-harbor-area,-or tidelands,-the-entire-rentals--from--such--improved--harbor--area--or tideland--shall--go--to--the--port--district;--PROVIDED-FURTHER,-That whenever-the-port-district-shall--after--April--28,--1967,--construct improvements--on--such--leased--harbor--area-or-tidelands,-the-rental attributable-to-such-improvements-shall-go-to-the-port-district.

(2)-In-all-other-cases-twenty-five-percent-of-the-rents-shall--be paid-by-the-state-treasurer-into-the-county-treasury-of-the-county-in which--the--leased-harbor-area-or-tidelands-are-situated,-the-same-to go-into-a-special-fund-known-as-the-"harbor-improvement-fund",-and-to be-disbursed-only-for-harbor-or-harbor-improvement-purposes;-and--the remaining--seventy-five--percent--shall--be--deposited-in-the-capitol purchase-and-development-account-of-the-general--fund--of--the--state treasury;--PROVIDED,-That-where-any-leased-harbor-area-or-tideland-is situated--within--the--limits--of--any--incorporated--city-and-is-not embraced-within-the-area-of-any-port-district,-the--legislative--body of--the--county--shall--allocate--the--funds--received-from-the-lease thereof-to-the-municipal-authorities-of-such-city,-to-be-expended--by said---authorities--for--harbor--or--waterfront--purposes;---PROVIDED FURTHER,-That)) (1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from such leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(((3))) (2) The state treasurer is hereby authorized and directed to make ((such)) payments to the respective ((county--treasurers--and municipal--authorities--for-the-use-of-such-port-districts,-counties,

or-towns,-as-the-case-may-be,)) towns on the first days of July and January of each year, of all moneys ((in-his-hands-on-such-dates)) payable under the terms of this section ((to--such--port--district, counties,-or-towns-respectively)).

NEW SECTION. Sec. 26. The department of natural resources may enter into agreements with the department of fisheries for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery.

The department of natural resources shall evaluate the progress of the intensive geoduck management program and provide a written report to the legislature by December 1, 1990, for delivery to the appropriate standing committees. The evaluation shall determine the benefits and costs of continued operation of the program, and shall discuss alternatives including continuance, modification, and termination of the intensive geoduck management program.

NEW SECTION. Sec. 27. The department of natural resources shall evaluate the progress of the seaweed aquaculture program and provide a written report to the legislature by December 1, 1987, for delivery to the appropriate standing committees. The evaluation shall determine the benefits and costs of continued operation of the program, and shall discuss alternatives including continuance, modification, and termination of the seaweed aquaculture program. The expenditure of state funds for seaweed aquaculture shall, after June 30, 1989, be limited to those funds received pursuant to RCW 79.64.040 which are derived from commercial seaweed leases of state aquatic lands, unless otherwise expressly provided by law.

NEW SECTION. Sec. 28. Sections 1 through 20 of this act are each added to chapter 79.90 RCW.

NEW SECTION. Sec. 29. RCW 79.96.900 is decodified.

NEW SECTION. Sec. 30. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 93, Laws of 1917 and RCW 53.32.010;

(2) Section 2, chapter 93, Laws of 1917 and RCW 53.32.020;

(3) Section 3, chapter 93, Laws of 1917, section 3, chapter 72,

Laws of 1979 and RCW 53.32.050;

(4) Section 5, chapter 93, Laws of 1917 and RCW 53.32.060;

(5) Section 4, chapter 93, Laws of 1917 and RCW 53.32.070;

(6) Section 6, chapter 93, Laws of 1917 and RCW 53.32.900;

(7) Section 72, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.92.040;

(8) Section 73, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.92.050;

(9) Section 103, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.180;

(10) Section 104, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.190; and

(11) Section 105, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.200.

NEW SECTION. Sec. 31. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 32. This act shall take effect on October 1, 1984.

Passed the House March 8, 1984.

Speaker of the House.

Passed the Senate March 8, 1984.

President of the Senate.

APPENDIX C

FEDERAL, STATE AND LOCAL INTERESTS IN AQUATIC LANDS - AN OVERVIEW[1]

ISSUES

The major laws governing aquatic land use at all levels of government (federal, state, local) concern the following issues:

Public Use and Enjoyment. Protection of the public's right to use and enjoy aquatic areas.

Fish and Wildlife. Recognition of the values provided by fish and wildlife and reduction of habitat dispruption. Special emphasis is put on marshes, swamps, tideflats, estuaries and riparian zones.

Navigation. Recognition of the need to prevent impediment of commerce on the navigable waters of the nation. This role at the federal level is split between the U.S. Army Corps of Engineers and the U.S. Coast Guard and is largely based on the Commerce Clause of the Constitution.

Water Quality. Restoration and maintenance of the chemical, physical and biological integrity of the nation's waters.

Federal Government

The federal government has expressed its management concerns in the following laws[2]:

- Marine Protection, Research and Sanctuary Act (PL 92-532)
- Estuary Protection Act (P.L. 90-454)
- National Environmental Policy Act of 1969 (P.L. 90-454)
- Coastal Zone Management Act (P.L. 92-538)
- Federal Water Pollution Control Act, as amended (P.L. 92-500)
- Fish and Wildlife Coordination Act (16 USC Sec. 661 et seq.)
- Endangered Species Act (P.L. 93-205)
- Rivers and Harbors Act of 1889 (33 USC 403)

The federal government plays a major role in reviewing aquatic land projects. A project must comply with federal agency reviews which may include the U.S. Corps of Engineers National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Coast Guard. (The last three agencies have review powers during Corps review.)

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[1] This appendix is meant to be an aid in understanding the multiagency management of aquatic lands. It is by no means a complete set of laws, duties or functions for these agencies.

[2] For detail on the intents of these laws, see Coastal Aquatic Management Policies of Washington State and Federal Agencies, DOE Report 80-8.

State and Local Government

State and local governments have the same range of interests regarding aquatic lands as the federal government, but view these concerns from a statewide perspective in the context of a Shoreline Master Plan or local zoning ordinance.

Numerous techniques and methods are employed by state and county agencies to insure that aquatic land development meets the requirements defined in their respective programs. Some of theses control methods stem from historical modes of authority (e.g., health, zoning). Other methods have recently been created, such as the Shoreline Management Act (SMA) and the State Environmental Policy Act (SEPA). Local governments also have significant permitting powers granted under the state SMA. The Act gives the local government extensive power to determine what developments will occur on local shorelands and adjoining areas.

FEDERAL AGENCY REGULATORY ACTIVITIES ON AQUATIC LANDS[3]

Through a variety of laws (see previous discussion) the federal government has extensive review powers over aquatic land proposals. The following agencies are involved to some extent:

U.S. Army Corps of Engineers (Corps) - Section 10 of the Rivers and Harbors Act of 1899 is administered by the Corps to regulate structures and work in navigable waters of the U.S. The law prohibits the "unauthorized obstruction or alteration of any navigable water in the U.S." Any proposal that requires a structure (e.g., raft, pen, pole system, dock, etc.) must obtain a permit. Under Corps procedures, each permit application is acknowledged by a public notice and is sent out for federal and state agency review. Each application is sent to the Environmental Protection Agency, U.S. Fish and Wildlife, National Marine Fisheries Service and the Washington State Department of Ecology where state agency responses are compiled and then forwarded to the Corps. The federal agencies review each project within their authorities and comment back to the Corps.

The Corps also administers Section 404 of the Federal Water Pollution Control Act (FWPCA) granting "permits for the discharge of dredged or fill material into navigable waters at specified disposal sites" The Secretary of the Army, acting through the Chief of Engineers issues such permits subject to a veto of use of any specific disposal site by the EPA Administrator. A permit is not required for "normal farming, silviculture and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food fiber, and forest products . . . ."[4]

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[3] Portions of this discussion are adapted from "Regulation of Washington's Coastal Aquatic Area: A Legal Analysis," an internal DOE report.

[4] In addition, Section 10 of the River and Harbor Act of 1899 gives the Corps jurisdiction to restrict filling or other modification of navigable waters. Any "[s]tructures or work in navigable waters of the United States" require authorization by the Corps. Although the Corps generally processes Sections 404 and 10 permits concurrently, there are differences in the geographical coverage of the two acts; Section 404's coverage is broader.

Although the language of the FWPCA seems to exempt discharges or dredged or filled material from the National Pollutant Discharge Elimination System (NPDES), the Washington State regulations implementing the NPDES plan do not, and specifically include many materials covered by Section 404, including "dredged spoil" and some common fill materials such as rock and sand. (WAC 173-220-030(7).) Accordingly, permits are required under both federal and state law for many discharges of dredged and fill material.

While the Corps process is the formal start of reviews, applicants are encouraged to contact all of the following agencies prior to project design. This will bring out potential conflicts early in the design phase and facilitate better cooperation.

U.S. Coast Guard (USCG) - the USCG reviews the Corps application to insure that navigation (both commercial and private) will not be impeded by the proposal. When necessary, USCG requires proper lighting and marking of structures. They also review for location, traffic and obstruction and add the location of new structures to navigational charts. The USCG encourages applicants to contact them directly, thereby getting an early input into project design.

Environmental Protection Agency (EPA) - During the Corps process, the EPA reviews the proposal for its potential impact on other natural resources. For example, EPA maintains that aquaculture is potentially a good use of marine waters, but the agency is concerned that development does not occur at the expense of other species. EPA comments are sent directly back to the Corps.

National Marine Fisheries Service (NMFS) - During the Corps review, the NMFS reviews aquatic land use for any adverse impacts on finfish habitats. As a federal agency, NMFS's role is broader than the state interests and the agency will view a project in light of regional fish concerns. NMFS will look at the project as it relates to natural stocks, water quality and habitat impact. The agency is charged with protecting the nation's fishery interests and safeguarding those public resources wherever they may occur. (In cases where part of a species lifecycle takes it into private or state-owned waters, NMFS maintains an interest in the species.)

U.S. Fish and Wildlife Service (USFWS) - With a somewhat broader interest than NMFS, the USFWS reviews a Corps application as it relates to the habitat of many species. USFWS is concerned with waterfowl, plants and animals, as well as fish. The USFWS makes it comments from national or regional perspective.

STATE AGENCY REGULATORY ACTIVITIES IN AQUATIC LAND USE

Washington State agencies have a significant role in the regulation of aquatic lands. The following state agencies are most involved: Department of Fisheries, Department of Natural Resources, Department of Ecology and Department of Social and Health Services. Other state agencies or groups involved less directly include: the Department of Game and the Parks and Recreation Commission. During the review of Corps permits, the Department of Archaeology and Historic Preservation and the Department of Transportation may review and comment on a proposal.

Department of Fisheries (WDF) - WDF has broad authority over all fish and shellfish (except game fish). The department is concerned with management of the resources and with personal and commercial uses on a sustained basis. The department is also concerned that new diseases are not introduced into the harvest population from new projects. A proposal, depending on the purpose, will be required to obtain at least some of the following WDF permits:

Clam Harvesting Permit. For mechanical harvesting ($300 per year).

Geoduck Harvesting Permit. Tract license ($100 per year). Also, a diver is required to have a nontransferable commercial fishing license ($50 per year).

Aquaculture ($100), Clam ($5), or Oyster ($5) Farm Licenses. Required for the cultivation of food fish and shellfish or other aquatic animals for commercial purposes.

Hydraulics Project Approval. Issued jointly with the Department of Game, this approval is required before construction in all surface waters. Conditions for protection of fish are attached to permit.

Department of Ecology (DOE) - DOE has broad responsibility for a variety of environmental programs. Included in these are the administration responsibilities for the Shoreline Management Act (SMA), the Noise Control Act, the Coastal Waters Protection Act of 1971 and the State Environmental Policy Act (SEPA).

With the powers delegated to DOE under these statutes, the agency is involved in aquatic land management in the following ways:

1. Under the direction of the SMA, the DOE formulated guidelines for development of local shoreline master plans, although the primary responsibility for administering the day-to-day regulatory program lies with the local government.

2. The Noise Control Act dictates that DOE shall adopt maximum noise levels, taking into consideration local land use policies and programs. This law has been cited in disputes involving mechanical clam harvesters and may be an important consideration for any proposal which includes a mechanized harvest method.

3. The Coastal Waters Protection Act of 1971 gives DOE the sole responsibility for setting water standards. The law applies to all surface waters and water courses within Washington jurisdiction. Proposals must comply with the standards set for water quality in the area.

4. Under the Federal Water Pollution Control Act the department administers a variety of water programs that include area-wide water quality planning (Sec. 208); long range allocation planning (Title III) and sewage treatment plant review and funding (Sec. 201). Elements in these programs may affect the feasibility of certain projects especially with regard to water quality.

5. DOE is also the clearing house for all SEPA activities. Proponents must comply with SEPA requirements before most other required permits will be handled. For details on this process, see SEPA Guidelines, revised by DOE in 1984.

Department of Social and Health Services (DSHS) - The State Board of Health has certification authority over the shellfish growing areas and shellfish processing. In the sanitation area, DSHS certifies the shellfish beds in an attempt to deal with specific concerns over contagious diseases.

Department of Game (WDG) - WDG's jurisdiction does not include species classified as "foodfish". However, WDG's interest in wild life hatibats includes certain tidal and subtidal areas as well as associated vegetation. WDG's opinion on a proposal is sought through the SEPA and Corps review processes, and in the hydraulic project approval issued jointly with WDF. WDG is especially interested in protecting habitats. Eel grass beds are of special interest both as spawning and rearing areas.

Parks and Recreation Commission (PRC) - The PRC has partial jurisdiction over park aquatic lands owned and operated by the state. While authority on some of these lands has been transferred to PRC from DNR, certain uses (e.g., mineral resources extraction) is still under DNR authority. Likewise, WDF and WDG continue to have certain jurisdictional authority on park lands (especially in regulation of food and shellfish). PRC also reviews SEPA documents and Corps applications. PRC has shown a concern for recreation boating access and navigation; not just on state park lands but throughout Washington waters. These concerns are addressed during review of Corps proposals.

Other state agencies such as the Department of Transportation (DOT) and the Office of Archaeology and Historic Preservation have review options in aquatic land projects. Usually these agencies respond only to a narrow range of interests on any given proposal and often refrain from comment.

Many state agencies view aquatic land use proposals from a limited perspective. While certain umbrella statutes (SEPA, SMA) provide the framework for process and review procedures, it has been up to the local jurisdictions to develop comprehensive shoreline management plans.

LOCAL SHORELINE MANAGEMENT

Local responsibility for the shoreline areas comes primarily from authorities granted under the state Shoreline Management Act. Adopted in 1971, this Act sought to protect and provide for Washington's unique coastal area. Under broad DOE administration and established guidelines, each county was required to prepare and adopt a master plan for shorelines in their jurisdiction (this includes riparian lands on lakes and rivers over a certain size).

Work began in the early 1970s on the master plans, with the majority adopted by 1979. When serious conflicts between the counties and the aquaculturists seemed evident with regard to clam harvesting, new DOE guidelines were issued in August 1980, requiring the counties with identified clam resources to reevaluate their policies on aquaculture. These revisions were completed in 1982.

Under the SMA, the local government has the power to require a substantial development permit for a shoreline development and to impose conditions on that permit. Local government may deny a permit based on environmental issues or other findings of fact, even though state agencies have made findings on the same issues with different conclusions. Recognizing this authority, the policies and management techniques embodied in the local shoreline master plans are critically important to proposed aquatic land use proposals.

PUBLIC MEETINGS

PORT TOWNSEND
Tuesday, July 10 - 7-10 p.m.
City Council Chambers
City Hall
540 Water Street

MT. VERNON
Monday, July 16 - 7-10 p.m.
Skagit Co. Courthouse
New Administration Bldg. Complex
Hearing Room A
Second and Kincaid

SEATTLE
Thursday, July 19 - 7-10 p.m.
University of Washington
So. Campus Center

LONGVIEW
Monday, July 23 - 7-10 p.m.
Cowlitz County PUD
Public Service Room
960 Commerce Avenue

OLYMPIA
Wednesday, July 25 - 7-10 p.m.
General Administration Bldg.
11th and Columbia

SPOKANE
Monday, July 30 - 7-10 p.m.
Spokane Co. Public Health Bldg.
1101 W. College Avenue

RICHLAND
Tuesday, July 31 - 7-10 p.m.
Federal Bldg.
825 Jadwin Avenue

All meetings will continue until all attendants have had an opportunity to comment. Written comments will be accepted through **August 15, 1984.** Send comments to ALPP, Department of Natural Resources, Mail Stop QW-21, Marine Land Management Division, Olympia, WA 98504.

AREA OFFICES

OLYMPIC
Route 1, Box 1375
Forks, WA 98331

NORTHWEST
919 No. Township Street
Sedro Woolley, WA 98284

SOUTH PUGET SOUND
28329 S.E. 448th Street
Enumclaw, WA 98022

SOUTHWEST
601 Bond Drive
Castle Rock, WA 98611

CENTRAL
1405 Rush Road
Chehalis, WA 98532

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