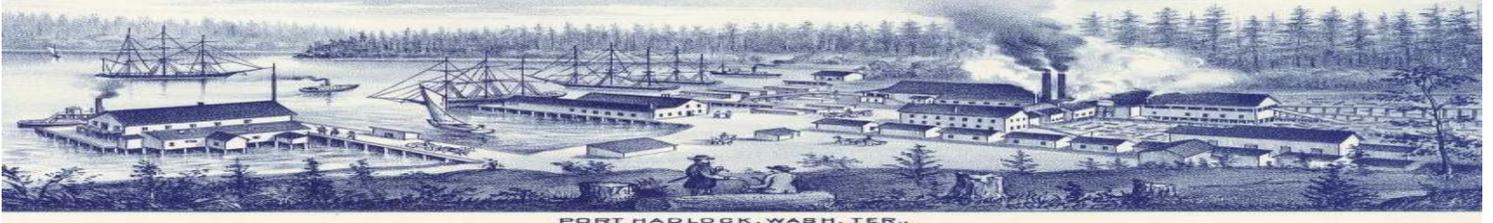


SOUTH PORT TOWNSEND BAY MANAGEMENT PLAN



EXECUTIVE SUMMARY

Background

South Port Townsend Bay (SPTB) is located near Port Hadlock in Jefferson County, between the west side of Indian Island and the mainland, just inside Admiralty Inlet. SPTB, like other areas of the Puget Sound, has multiple and sometimes competing uses. SPTB is an important shellfish area with both commercial shellfish operations and natural shellfish beds that have the potential for harvest by the tribes and the general public. SPTB is also a popular harbor for traveling boaters and serves as a homeport for upland landowners, area residents, and others. SPTB is also home to the NW School of Wooden Boatbuilding; the Port Hadlock Yacht Club; Port of Port Townsend dock and boat launch; the Port Hadlock Marina; and other commercial, residential, and tribal interests. The number of boats using SPTB has increased over the past several years, to the point where they are impacting commercial shellfish operations.

Shellfish

In 2011, the Washington State Department of Health (DOH) expressed concern about shellfish beds in SPTB due to the number of boats moored and anchored in the bay. The number of boats exceeded National Shellfish Sanitation Program (NSSP) standards that must be adopted by states that export shellfish commercially. Among other requirements, the NSSP requires the closure of commercial shellfish areas when the number and density of boats exceeds specified numerical limits called the "marina threshold levels".

Along with privately owned companies, western Washington's tribes are also active in commercial shellfish operations and have treaty rights providing access to shellfish beds. Shellfish have been harvested by northwest tribes for thousands of years and shellfish have been farmed commercially for more than 150 years. The shellfish industry represents a significant portion of Washington State's economy and provides thousands of family-wage jobs in coastal communities. Not only do shellfish bed closures affect commercial companies, but are also a direct impact to the Treaty Tribes' ability to access shellfish beds and infringes upon their treaty rights. To learn more about the specific issues and concerns, a *Question and Answer Factsheet* was developed (see Appendix A).

The Plan

To address the problem of too many boats anchored or moored near shellfish beds in SPTB and the threat of shellfish harvest closures, a group of stakeholders began to meet in early 2012, to find a workable and sustainable solution. The group's goal is to manage boater usage in a manner that ensures continued, year-round harvest of commercial shellfish while balancing that interest with the legitimate use of the bay for public recreation and other commercial use. The stakeholder group includes local, state, and federal agencies; four treaty tribes; commercial shellfish interests; local businesses, waterfront landowners and boaters. (see Appendix B).

This plan is the result of the collaborative efforts of the stakeholder group and provides a unique model to help resolve multiple use conflicts in manner that may have broad application throughout Puget Sound. The group was guided by and operates under the legal framework and regulatory authority currently in place (see Appendix C). The SPTB Management Plan contains the following major elements:

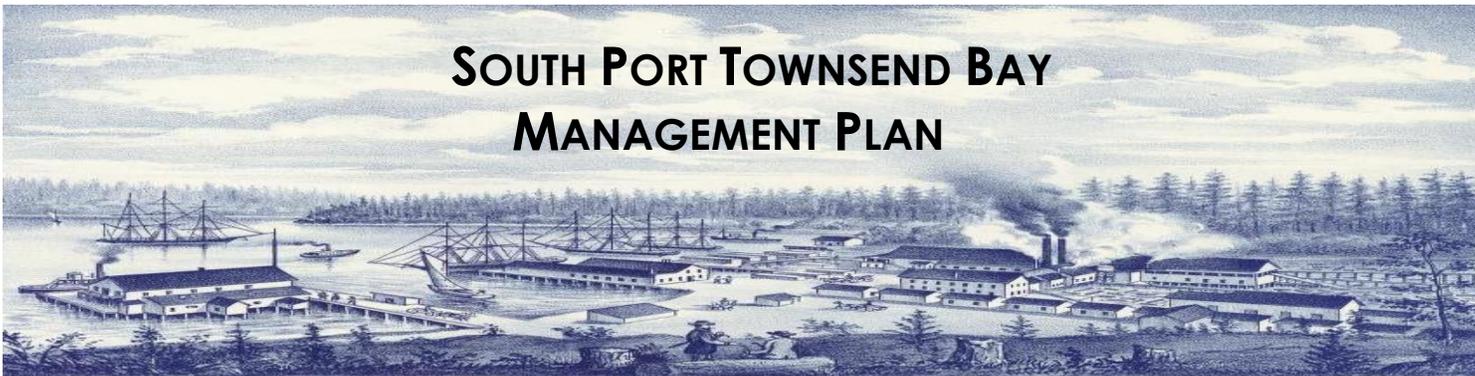
1. Permit and manage boat moorage to ensure that shellfish beds are not negatively impacted.
2. Proceed with enforcement process for mooring buoys and boats that have not applied or otherwise cannot be authorized.
3. Manage transient boaters through a voluntary "No Anchor Zone" in part of SPTB and manage mooring buoy authorizations that complement transient use.
4. Establish interpretive displays and material and conduct outreach.
5. Establish a long-term boat monitoring plan to assure that the numbers and densities of boats do not exceed the marina threshold levels.
6. Develop adaptive management to address ongoing changes.

In order to determine the success level of the plan, the stakeholder group will convene, at a minimum, once in the fall of 2012, after the boating season ends and once in the spring of 2013, before the boating season begins. The success of the plan will be ranked as follows:

- A successful outcome if there are no closures because of too many boats;
- An acceptable outcome if closures (due to boats) are no more than two and limited in duration to no more than 14 days total and the bay is quickly re-opened to harvest.

Note - If closures (due to boats) number greater than two, if closures last longer than 14 days cumulatively, or for any other relevant issue, the stakeholder group will reconvene as soon as practical, but no later than 45 days after notification, to evaluate the problem and take action, if necessary.

SOUTH PORT TOWNSEND BAY MANAGEMENT PLAN



South Port Townsend Bay Shellfish Protection

Objective 1 - Maintain an "Approved" classification of the shellfish growing areas to allow continued harvest.

Because shellfish are filter feeders and can concentrate disease-causing organisms and because they are commonly eaten raw or minimally cooked, the Washington Department of Health (DOH), in accordance with the National Shellfish Sanitation Program (NSSP), maintains strict standards for the areas where shellfish are grown. These standards include limits on the presence of pollution sources such as boats. The NSSP is managed nationally by the US Food and Drug Administration (FDA). The NSSP definition of a marina is any water area with a structure (docks, basin, floating docks, etc.) which is used for docking or otherwise mooring vessels; and is constructed to provide temporary or permanent docking space for more than ten boats. The FDA has stated that, under their marina definition, "Any area which has buoy moorage for at least 10 boats is also considered a marina".

When an area surpasses the marina threshold level, the surrounding waters cannot be considered safe for shellfish harvesting. In interpreting the NSSP Guide marina definition, the DOH uses a density threshold of one boat per acre as a screening tool to count boats towards the marina threshold. The density threshold may need to be decreased in water bodies that have poor dilution characteristics (like a shallow enclosed embayment).

In SPTB, there are currently two areas that surpass the marina threshold level: Port Hadlock Marina and the area in and around the Port Hadlock Yacht Club leasehold (See Appendix D1; yellow outline is shellfish beds; black outline is area negatively impacted by boats). In order to maintain an "Approved" classification for the commercial shellfish bed in SPTB, it is necessary to ensure that these two existing areas do not change in such a way that would affect shellfish beds. Therefore, it is essential to address mooring buoy management and transient boater use. Currently, there are unauthorized transient vessels moored in close proximity to the commercial harvest area that must be moved in order to achieve this objective. For the long term success

of this plan, future authorized or transient uses must not be allowed in this area (See Appendix D2 for the target outcome once the plan is enacted).

Mooring Buoy Management - Permitting and Enforcement:

Objective 2 - Continue necessary permitting and enforcement measures to ensure the marina closure zone for the Port Hadlock Yacht Club mooring field does not result in a downgrade of adjacent shellfish beds by December 31, 2012.

Since fall 2011, the Department of Natural Resources (DNR), Jefferson County, and the Office of Regulatory Assistance (ORA) have worked together to inventory boats and mooring buoys in South Port Townsend Bay. The list and map showing the status of mooring buoys in the bay can be found in Appendices E1-3 (Note – this information can frequently change). Appendix E4 is a map of SPTB prior to development and implementation of this plan.

Objective 2a - Proceed with authorization process for mooring buoys that can be authorized by the DNR.

On November 7, 2011, Jefferson County approved and adopted a moratorium on new mooring buoy applications in South Port Townsend Bay (see Appendix F). The DNR has continued to accept applications during this moratorium period. Once the moratorium is over, DNR will move forward with processing any applications or registrations that have been on hold, assuming:

1. The applicant possesses or obtains valid permits or approvals under the Shoreline Master Program (SMP) or is otherwise in good standing with Jefferson County,
2. The applicant possesses or obtains a valid permit from the US Army Corp of Engineers (Corps) or is otherwise in good standing with Corps requirements,
3. The mooring buoy is already in place, or if not, the applicant possesses or obtains an Hydraulic Project Approval (HPA) from Washington State Department of Fish and Wildlife (WDFW) for installation,
4. The mooring buoy and vessel is located or relocated such that its presence would not:
 - a. result in DOH closing an existing commercial shellfish bed,
 - b. cause DOH to downgrade a growing area's classification, or
 - c. surpass the marina threshold level in proximity to tidelands that have the potential for commercial, recreational, or tribal harvest in the future.
5. The mooring buoy and vessel is located such that its presence would achieve Objective 3b of this plan, and
6. The use meets all other conditions and criteria as required by the DNR and other regulatory agencies.

Future permitting process – Jefferson County will not accept new buoy permit applications until the county lifts the moratorium on mooring buoys in South Port Townsend Bay. At that time, the permitting process would proceed in accordance with

the standards and criteria set by the individual permitting authorities. Permitting and authorizing agencies will consider granting use authorization for new buoys if the proponent meets the conditions stated in Objective 2a.

Objective 2b - Proceed with enforcement process for mooring buoys and boats that have not applied to DNR for an authorization or otherwise cannot be authorized based on conditions outlined in Objective 2a.

The primary permitting and authorizing agencies for mooring buoys in South Port Townsend Bay are the DNR, Jefferson County, the Washington Department of Fish and Wildlife (WDFW), and the US Army Corp of Engineers (Corps). A description of the authority and responsibility of these agencies can be found as the South Port Townsend Bay Legal Framework document in Appendix C.

For mooring buoys and vessels currently in SPTB that are not authorized, have not applied to DNR for an authorization, or cannot be authorized based on conditions outlined in Objective 2a, the DNR, Jefferson County, and other stakeholders will collaborate to take the following action:

1. Vessels, anchored or attached to a mooring buoy, and mooring buoys with known ownership:
 - i. Final Notice: A final 30-day notice will be made, either by certified mail or by posting on the vessel and mooring buoy, informing the owner that they must vacate their use of State-owned aquatic lands within 30 days.
 - ii. Enforcement Action: Enforcement may occur in several different ways, including, but not necessarily limited to the following:
 - An authorized public entity, like the DNR or the County, may proceed under the Derelict Vessel regulations, RCW 79.100. If a vessel has been left moored or anchored in the same area without the consent of the aquatic land owner then the vessel is considered to be an abandoned vessel. An authorized public entity can obtain custody of an abandoned vessel, then dispose of the vessel and seek reimbursement from the vessel owner.
 - DNR may charge a Use and Occupancy Fee, per RCW 79.105.200 and WAC 332-30-127, which allows us to charge a fee sixty percent higher than the full fair market rental.
 - DNR or another landowner could file a trespass action.
2. Mooring Buoys that do not have a vessel attached and where ownership is unknown:
 - i. Final Notice: A final 30-day notice will be made, by posting a tag on the mooring buoy, informing the owner that they must vacate their use of State-owned aquatic lands within 30 days.
 - ii. Enforcement Action: Buoys will be removed from State owned aquatic lands.

Future enforcement actions- Jefferson County and other regulatory agencies, along with the DNR, will work collaboratively using their individual authorities to address unpermitted and unauthorized uses in South Port Townsend Bay. Jefferson County and the DNR may, from time to time, conduct surveys of boat use in the bay, but will predominately rely upon the monitoring protocol, as described in objective 4 of this plan, for determining when enforcement action is needed in South Port Townsend Bay.

Transient Vessel Management

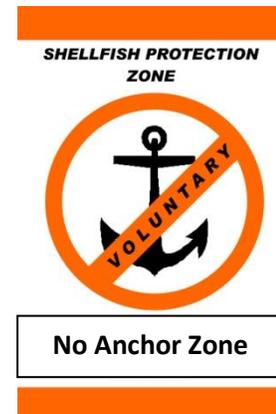
Objective 3 - Minimize transient anchoring in South Port Townsend Bay.

Aquatic lands in South Port Townsend Bay (outside of private tidelands) are managed by the DNR and are subject to the Public Trust Doctrine, which gives the public the right to engage in navigation. Navigation is construed by the DNR to include temporary anchoring of a vessel. Transient boaters can legally anchor in the same area for periods up to 30 consecutive days and for a total of up to 90 days in any 365-day period, without needing to obtain authorization from the DNR. Note - "in the same area" means within a radius of five miles of any location where the vessel previously anchored.

In determining whether the marina threshold level is exceeded, the DOH counts all boats — both those moored as well as those temporarily anchored in the bay. This creates a management challenge. In an effort to avoid promulgating and enforcing new regulations that would formally designate a portion of South Port Townsend Bay as a no anchorage zone, the Transient Vessel Management section has been developed. Note - Vessels remaining in South Port Townsend Bay longer than 30 days without an authorization are in trespass and subject to enforcement action.

Objective 3a - Establish a voluntary "No Anchor Zone" in portions of South Port Townsend Bay.

A voluntary "No Anchor Zone" in a portion of South Port Townsend Bay, similar to what has been successfully implemented along the Port Townsend waterfront and in Mystery Bay, could be established to protect shellfish by keeping boat numbers within permitted levels. Marker buoys designating the area as a "No Anchor Zone" would have a picture of an anchor in a circle with a line through it to designate the area as a no anchor zone and would also read, "Shellfish Protection Zone" (see figure at right for an illustration of the marker buoy). These marker buoys would be strategically placed to help persuade transient vessels to anchor their vessels elsewhere. The Jefferson County Marine Resources Committee (MRC) will be contracted to oversee permitting and installation of the marker buoys (Appendix E2 – proposed marker buoy locations are the black flags on the yellow line connecting the dock and Skunk Island).



Objective 3b - Manage SPTB Mooring Buoys and Other Uses to Complement Transient Use.

South Port Townsend Bay should be managed in such a way that provides reasonable access for transient vessel use by minimizing the number of mooring buoys and other uses in some areas (Reasonable access means within a reasonable rowing distance to the Port dock facility or another public access area).

In other areas, especially closer to commercial shellfish beds, long term mooring buoys could be authorized in a way that effectively precludes transient vessel use and would act as a buffer for commercial shellfish beds. This could be achieved through strategic authorization and permitting of mooring buoys. When new long term moorage uses are proposed, agencies under their individual authority would consider whether the use would preclude or limit transient use.

In those areas where transient use is desired, authorizations for long term moorage could be avoided and for those areas where transient use is not desired, authorizations for long term moorage could be encouraged. Additionally, local stakeholders are encouraged to limit or avoid moorage of dinghies from unauthorized boats.

Objective 3c- Establish Interpretive Displays and Material and Conduct Outreach for the Public to Learn and Understand how South Port Townsend Bay is being Managed.

The Jefferson County MRC, with input from the stakeholder group, will work to establish interpretive displays on or near the South Port Townsend Bay dock, Port Hadlock Marina, and the Northwest School of Wooden Boatbuilding. Brochures will also be available at these locations as well as the Jefferson County DCD permit center and local DNR office for distribution to the public. The display and brochures will educate the public about South Port Townsend Bay and explain how the bay is being managed and include a map showing the commercial shellfish beds, mooring buoy authorizations, marina, port management area, and the voluntary "No Anchor Zone". Additional outreach will be conducted through various means including bulletin boards, local publications, applicable web sites, and direct outreach to relevant interest groups such as boating clubs.

Monitor Mooring Buoy Usage and Transient Anchorage in South Port Townsend Bay to Determine if Marina Threshold Levels Are Exceeded.

Objective 4 – Monitor Voluntary No Anchor Zone Area and Remainder of SPTB

DOH will note locations of boat moorage in the proximity of Broders Clam Farm during routine marine sampling runs and may also count boats during periods of concern. The Port of Port Townsend will also monitor boat moorage in the proximity of Broders Clam Farm during their routine visits to the Port dock. Increased activity will be noted and

reported as described in Objective 6. The remainder of SPTB will be monitored by a combination of area stakeholders, the county, DNR, and DOH.

The monitoring should focus on anticipated high use periods during the boating season (May 1 – September 30), especially on weekends and known high use events (e.g., regattas and the Wooden Boat Festival).

Boat Moorage Safety/Security

Objective 5a – Damage and Economic Loss

During the development of the SPTB Management Plan's section on Boat Moorage Safety/Security, an issue arose regarding the lack of insurance coverage by many boat owners. No matter how careful and diligent some boat owners are accidents and storms have caused boats to break free from their anchorage or mooring and cause subsequent damage and economic loss to other boat and property owners in the area. There have also been occasions where human health and safety have been jeopardized by loose boats crashing into the marina and other properties. There have also been several close calls. While the threat to safety and security of authorized vessels and property will be significantly reduced through permitting and enforcement (see objectives 2 and 3), it will not be altogether eliminated. Insurance coverage may not compensate for damages in every instance, i.e., storms and Acts of God, but at least some events causing damage and economic loss may be covered.

Currently, insurance is only required in some instances; for example, DNR requires insurance for users that lease state owned aquatic lands (e.g. marinas, and commercial mooring buoys) and marina owners typically require insurance for boats moored at their facilities. There are several instances where insurance is not specifically required, including:

- DNR license holders: recreational vessel owners authorized by DNR to install and maintain a mooring buoy on state-owned aquatic lands under a mooring buoy license are not required to have insurance.
- Abutting Residential owners: RCW 79.105.430, the law which allows abutting residential owners to place a mooring buoy on State-owned aquatic lands does so without requiring insurance as a precondition.
- Transient Users: In addition transient vessel users operating or anchoring their vessels pursuant to the public trust doctrine are not required to have insurance.

The stakeholder group explored whether insurance requirements could be expanded beyond those now in place, but concluded that this issue is outside the scope of the group and that the ultimate solution would require a broader effort and perhaps even

new legislation. However, the issue was important enough too many in the group to warrant mention here in the SPTB Management Plan.

Objective 5b – Improve Emergency Communication Procedure

- In order to improve emergency response contact information for people holding mooring buoys authorization in South Port Townsend Bay can be obtained from the DNR. This list can be updated upon request and provided to:
 - Port Hadlock Marina
 - Vessel Assist
 - Port Hadlock Yacht Club
 - Port of Port Townsend
 - Jefferson County Sheriff
 - Others upon request
- DNR will request all authorized mooring buoy owners post their emergency contact information on their vessel.
- Jefferson County will request mooring buoy owners post emergency response contact information on their vessel and provide emergency contact information to DNR for inclusion on an emergency response contact list.

Objective 5c – Emergency Response Procedure

1. Vessel Assist Port Hadlock receives notification of a problem situation (four to five incidents annually), typically from several sources: Port Hadlock Marina, Northwest School of Wooden Boat Building, or various shore watchers. Typically, the issue is a “vessel adrift”, originating from the area in and around the South Port Townsend Bay mooring field.
2. Vessel Assist Port Hadlock attempts to verify vessel description, ownership, and implications of emerging situation, i.e., collision potential, beaching probability, and pollution risks. Typically, however, verification and assessment of implication is most effective by getting a vessel underway and on scene.
3. Once visual inspection is possible, and if registration numbers are recorded, three resources are notified; U.S. Coast Guard Sector Puget Sound, Port of Port Townsend, and DNR's Derelict Vessel Removal Program in an attempt to discover ownership and subsequently establish contact with owner. None of these resources will, however, release direct contact information as per regulations. Each resource attempts ownership trace and, if successful, will relay situation to the owner. Onus is then on the owner to resolve the incident.
4. If implications assessed in #2 are deemed critical and imminent, Vessel Assist will take the vessel in tow and move it to safe mooring at either Port Hadlock Marina or Port of Port Townsend Boat Haven. At this point, by law, if ownership has not been established and contact made, all risks and costs are the liability of the

tower or salvor and the probability of recovering costs are unlikely. (Note - an MOU exists between the Port of Port Townsend and Vessel Assist Port Hadlock to share equally in those risks provided reasonable efforts are made to secure commitment from DNR to assist in cost recovery.)

What Can the General Public Do?

Objective 6a – Monitor Transient Vessels

The general public can help in the monitoring and enforcement process by voluntarily keeping records documenting transient vessel use in SPTB. As described above, if any vessel has anchored in the same area longer than 30 days, or for more than 90 days in any 365-day period, without DNR authorization, they are in trespass ("in the same area" means within a radius of five miles of any location where the vessel previously anchored). The public can assist enforcement agencies by keeping written records documenting:

- 1) Identifying characteristics of the vessel,
- 2) Location it is anchored or moored, and
- 3) Dates the vessel is present.

Once the vessel has remained longer than the time allowed, the public may notify DNR or Jefferson County of the unauthorized use. In the case of legal proceedings, it may be necessary for volunteers to sign an affidavit attesting to the fact that the information is true and correct. To facilitate monitoring efforts, the following materials will be developed:

- A map of South Port Townsend Bay with existing boat/buoy locations, annotated with number of boats in each area which will necessitate a closure.
- Calendar with anticipated high boat use periods.
- Boat count documents.

Objective 6b – Responsible Boat Ownership and Moorage

Boat owners can minimize risk and more efficiently use time and resources with coordination amongst other boat owners in the area.

- Carry liability insurance on your boat.
- Post Emergency Contact Information on your boat in a visible location.
- Honor the voluntary "No Anchor Zone" and help educate others about this.
- Maintain your ground tackle. Coordinate inspection with neighboring buoy/boat owners to reduce costs.

- Be properly authorized and permitted in accordance with federal, state and local laws and regulations.

Adaptive Management and Effectiveness

In order to determine the success level of the SPTB Management Plan, the stakeholder group will convene, at a minimum, once in the fall of 2012, after the boating season ends and once in the spring of 2013, before the boating season begins. Additional meetings will be scheduled if necessary. The success of the plan will be ranked as follows:

- A successful outcome if there are no closures because of too many boats;
- An acceptable outcome if closures (due to boats) are no more than two and limited in duration to no more than 14 days total and the bay is quickly re-opened to harvest.

If closures (due to boats) number greater than two, if closures last longer than 14 days cumulatively, or for any other relevant issue, the stakeholder group will reconvene as soon as practical, but no later than 45 days after notification, to evaluate the problem and take action, if necessary. The request to reconvene must come from one (or more) of the stakeholders. The DOH will be the point of contact for this request. Possible actions are, but not limited to, the following:

- Increase public outreach and education
- Evaluate monitoring data
- Try different voluntary strategies
- Implement a mandatory "No Anchor Zone" (see #1 below)
- Impose a moratorium
- Increase formal federal agency action (see #2 below)
- Change county enforcement codes
- Seek legislative relief and/or state agency action

(1) If necessary, promulgate regulation that would designate South Port Townsend Bay as a no anchorage zone.

Transient uses can be regulated by Jefferson County under local ordinance. DNR also has the ability to promulgate no anchorage regulations. If the "Voluntary No Anchorage Zone" is not successful, then DNR and Jefferson County will coordinate to determine the most appropriate regulatory options and consider instituting a formal no anchorage zone.

(2) As described in Appendix C, the Corps' Regulatory Program requires permits for the construction of any structure or the placement of any fill in the Nation's waters.

In South Port Townsend Bay, the typical projects authorized in the past include the construction or installation of moorage facilities, docks, mooring buoys, bank

protection, and aquaculture related activities. The most common method for authorizing the installation of mooring buoys is Nationwide Permit (NWP) 10. All permits issued by the Corps must not impact tribal treaty rights. The Corps issued a special public notice on March 19, 2012, regarding the use of Nationwide Permit 10 in Puget Sound. Regional conditions became effective on March 19, 2012; and Washington State Department of Ecology's 401 Water Quality Certification conditions are expected in June 2012.

State Environmental Policy Act

If a lead agency sought to adopt this plan as an action under the State Environmental Policy Act (SEPA), first the proposal or adoption of rules, regulations and resolutions of any plan or program relating solely to governmental procedures containing no substantive standards would be exempt under SEPA, see WAC 197-11-800(19). Along with this exemption and in consideration of the programmatic overview provided by this management plan, the following existing environmental documents could be incorporated by reference per WAC 197-11-600 and 635 being available at the Jefferson County Department of Community Development for public inspection: Draft and Final Environmental Impact Statements (DEIS/FESIS) and addenda prepared in anticipation of adoption of the Comprehensive Plan in 1998. The DEIS and FEIS, dated February 24, 1997 and May 27, 1998, respectively, examined the potential cumulative environmental impacts of land use alternatives at the non project level in preparation of a comprehensive plan for Jefferson County. Finally, any proposals involving natural resource management such as issuance of leases for, and/or placement of mooring buoys designed to serve pleasure craft, are exempt from SEPA review under WAC 197-11-800(24).

Appendices

- Appendix A –Question and Answer Factsheet
- Appendix B – List of Stakeholder Group
- Appendix C – South Port Townsend Bay Legal Framework document
- Appendix D1 – Current Shellfish Beds and Closure Zone; yellow outline is shellfish beds; black outline is area negatively impacted by boats
- Appendix D2 – Target Outcome for Closure Zone
- Appendix E1 – A map of current location of buoys and boats in South Port Townsend Bay/North (see E3 for details)
- Appendix E2 – A map of current location of buoys and boats in South Port Townsend Bay/South with location of proposed “No Anchor Zone” buoys (see E3 for details)
- Appendix E3 – South Port Townsend Bay boat/buoy inventory list (Note – this information is subject to change).
- Appendix E4 – A map of South Port Townsend Bay prior to development and implementation of the management plan.
- Appendix F1 – Jefferson County approved and adopted a moratorium on new mooring buoy applications in South Port Townsend Bay.