

## Meeting Summary

# Mystery Bay

## Open House

June 15, 2009

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Location	<b>Fort Flagler Recreation Center, Port Hadlock, Washington</b>
Purpose	<b>Hear what has happened thus far, Ask Questions, Offer Ideas for Long-Term Solutions</b>

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### Agency Staff in Attendance

Bob Woolrich, Department of Health  
Mark Toy, Department of Health  
Brady Scott, Department of Natural Resources  
Wade Alonzo, Department of Natural Resources  
Kristin Swenddal, Department of Natural Resources  
Bridget Kaminski-Richardson, Department of Natural Resources  
Frank Benskin, Jefferson County  
Neil Harrington, Jefferson County  
Jake Johnson, Shellfish Growers Association  
Robin Downey, Shellfish Growers Association  
Alan Bogner, Governor's Office of Regulatory Assistance  
Heather Rowton, Governor's Office of Regulatory Assistance

### Introduction

The purpose of the meeting was explained and ground rules were stated. The main purpose of the meeting was three-fold: Explain what has been done so far in Mystery Bay, provide an opportunity for the audience to ask questions, and discuss ideas for long-term solutions.

After brief presentations from the Shellfish Growers Association, Washington Department of Health (DOH), Washington Department of Natural Resources (DNR) and Jefferson County, a question and answer session ensued.

During its brief presentation, DOH explained that the standards for commercial shellfish harvesting areas were stringent because clams and oysters are filter feeders and people often eat shellfish that are not thoroughly cooked. In order to allow shellfish from Washington to be shipped interstate, DOH has adopted national standards, and within those standards a "marina" is defined. Parts of Mystery Bay meet the "marina" definition, so DOH is planning to revise the classification of the bay. DOH's latest evaluation shows that the inner part of the bay does not meet the definition of a marina and can stay classified as 'Approved,' but the outer part of the bay needs to be closed during the boating season – May 1 through September 30, which lowers its classification to 'Conditionally Approved.'

## Question and Answer Session

- **Can more boats be exempted, aside from just upland owners who agree to sign an affidavit to not spend the night on their boats?**
  - It should be stressed that this is the first time that DOH has considered exempting boats from being counted. FDA guidance is that any boat capable of discharge should be counted. That said, there are reasons for limiting this exemption to upland owners. First, it limits the number of boats that are eligible for exemption. Second, if the buoy owners are directly upland, they can easily monitor the buoy and access upland toilet facilities. A review of harvest site records also indicates that a good portion of boat owners living directly upland also lease tidelands around their buoy for commercial harvest, and therefore have more of a vested interest in managing their site.
  
- **Can the size of the Marina be changed to allow more boats?**
  - In order to accommodate current shellfish harvest operations, the most appropriate location for boat moorage in Mystery Bay is adjacent to and directly east of the State Park. If compactly placed, up to 32 boats can be relocated from other areas to this location without risking closure to existing shellfish harvest sites. Construction of a dock with slips may be necessary to accommodate this many boats in this area.
  
- **If the water quality is good, is the only reason for potential closure more than 10 boats?**
  - There have been documented outbreaks in other areas because of boat discharge. Boats are difficult to sample and discharge travels to shellfish very quickly. The state Department of Health has adopted the national model ordinance, which states that more than 10 boats constitutes a marina and poses a potential threat to public health. If the national standard was not adopted, there could be a restriction placed on shellfish sold in Washington State that would restrict interstate sales and potentially in-state sales as well.
  
- **How, when and what is the cost of sampling?**
  - The Department of Health samples 6 times per year in Mystery Bay and the schedule is made in advance. The samples are analyzed for fecal coliform only. Sampling locations do not change. The DOH conducts the sampling with help from other agencies and certifies the samples.
  
- **Agencies were asked to note the difference between boats with people and boats without. Boats in Mystery Bay do not have people on them. There is a big difference between these types of boats and transient boaters. Also, a marina is defined as a structure with 10 or more boats. There appears to be no structure here to constitute a marina determination.**
  - The Department of Health stated that the Attorney General has helped to interpret this and determined that mooring buoys and docks count as structures. The FDA also agrees with this interpretation.
  
- **Is fecal coliform testing limited to humans or all species?**
  - There are techniques to determine the source of the fecal coliforms, but that is not an issue here because the determination for closure zones are based on the number of boats based on the potential for disease.

- **Is Skow Bay next on the list of potential closure areas?**
  - According to the state DOH, there is a potential for closure of Skow Bay and Port Hadlock.
- **Why is there no enforcement of illegal buoys?**
  - The state Department of Natural Resources (DNR), as land manager, enforces and authorizes buoys. The county also has some enforcement authority. DNR is already planning removal of some buoys and others are under investigation. The County and DNR are working closely on enforcement issues, though enforcement is difficult due to reduced staffing at the county and state level. It also has been difficult to determine who owns the buoys. (However, eight unauthorized buoys were removed on June 23.)
- **Why is the inner bay open all year when it has as many buoys as the outer bay, which is closed for part of the year?**
  - The Department of Health stated that some boats in the inner bay qualify for exemption, some buoys will be removed, and there is a more detailed strategy in place for the inner bay that will reduce the number of boats to ten, making it no longer a marina. Transient boats tend to remain in the outer bay and there are more boats there because of the state park dock. Transient boats do cause an issue in the outer bay because it is difficult to track how many are there and they can anchor on state lands for up to 30 days with no permits.
- **Shellfish harvest on the East Coast was mentioned as being subject to substantially different rules than the West Coast; there are far more boats. The amount of filtering done by a shellfish per day was also questioned – some understand that shellfish only filter 30 gallons per day, not 50 as stated during the presentation. Land is another source of fecal coliform that is not being considered here. All the homes on Mystery Bay are on septic systems. Is there a way to tell the difference between fecal coliform coming from land and that coming from boats?**
  - There is no way to tell where the fecal coliform comes from. The standards are national standards that all states are to conform with but the Department of Health will contact Maine to see how they are implementing the rules. They have already spoken with Massachusetts.
- **There was a concern that allowing more transient boats in the outer bay would cause an even bigger problem.**
  - The Department of Natural Resources re-stated that transient boats are allowed to anchor on state-owned aquatic lands for 30 days with no permit under the Public Trust Doctrine. They are not illegal now and the state park does attract transient boaters.
- **Can the transient boats be tested to see if their y-valve is open?**
  - The Department of Natural Resource noted that could be an interesting solution to pursue.
- **A question was asked about localizing the federal model guidelines.**
  - The Department of Health said this is the minimum requirement and federal model guidelines have been adopted in the state rule. The guidelines cannot be localized because the federal government would not allow interstate sales of Washington State shellfish if their guidelines are not followed.

- **An interest was expressed in the amount of time and sequence of sampling. Based on the amount of sampling, it is no wonder pollution is missed.**
  - The Department of Health said shoreline surveys are conducted with the help of the local Health Department. All drainages are sampled and potential pollution sources examined. There have been no problems found in Mystery Bay.
- **Will Jake Johnson remain in business over the summer?**
  - The Department of Health said Jake will remain business, but not on the lands he has in the outer bay. Jake said most of his land is in the inner bay but water quality in the outer bay matters.
- **Why are there no fines for illegal buoys? If the buoys are illegal now, why would the agencies consider permitting them?**
  - The Department of Natural Resources has no citation authority; they can only file a civil action. Not issuing a permit would be another action they could take. The county also has no enforcement authority but is trying to find out who is there and help them get legal permits because most of the people they have spoken to want to have legal mooring buoys.
- **Why would the county help people get permits if the goal is to get to a 10-boat limit?**
  - Jefferson County and the Department of Health do not have the same mandates. Upland owners have a right to mooring buoys and it is considered a preferred use. Representative VanDeWege said he has some potential proposals for the legislature including: fines for illegal buoy placement; an account for illegal buoy removal (but cuts in funding may make this difficult at this time); streamline the authorities of the County and Department of Natural Resources; since the Department of Health needs clearer guidance, maybe the legislature can provide the definition for a marina; the legislature could potentially also provide other guidance on how big a marina should be; and the legislature could establish no transient boating zones where shellfish beds are present. (It may be noted that the state legislature cannot relax federal rules, but can add stronger rules.)
- **Where does the Tribe stand on additional fecal coliform testing?**
  - Jake said he sends samples once per week in the summer months. The Tribes said they would accept no change to policies that would impact their treaty rights. Bay closures are not acceptable. Jake added that if this were to expand beyond Mystery Bay, it would have a larger impact on the Tribes.

## Discussion and Suggestions by Participants

- The area needs to be better defined. The 10 boat limit should include a waterbody area. Work on the definition of “marina”. Jake said this is being examined and looked into now.
- If the state exempts upland owners, it can exempt others as well. As long as the y valve is sealed while boats are in Mystery Bay the threat of wastewater discharge will be reduced.
- The Food and Drug Administration will be auditing in August so a solution needs to be developed by then. When considering new management approaches for the bay, DOH must consider whether or not it has the capacity to manage them. There are some ideas but a conditional area management for the outer bay is needed now.
- There was a suggestion that a community group could apply to lease the entire area from the Department of Natural Resources. This group could have a Harbor Master that would address the Department of Health concern regarding a manageable plan.

- The U.S. Coast Guard is stationed in Port Townsend. Can they help in some way? DOH inquired but the Coast Guard only certifies Marine Sanitation Devices (MSDs) at installation. There are no ongoing monitoring or maintenance requirements. Someone else added that the Coast Guard has boarded their boat and cited people here for violations. The Department of Natural Resources will check with them again. The County did add that the Coast Guard sometimes conducts courtesy checks.
- There was a suggestion that the state work with the Parks Department to enforce. However, the Parks Department only has volunteers and they cannot enforce, they can only inform rangers. Parks is not able to be the Harbor Master.
- One upland owner stated he would not sign the affidavit because he does spend the night on his boat. The Department of Health said that would be fine but that boat would not be exempt.
- A question was raised regarding what is done about anchored boats that are there for more than 365 days. The Department of Natural Resources said if the boat is there over 30 days, an authorization is required and if it is not authorized, the Department of Natural Resources will proceed with a civil action.
- A suggestion was made that the word “sustainable” be better defined. Is it for future generations too? Boat storage in-water may not be sustainable. The Department of Natural Resources said there is no easy answer to this question because it depends on many factors. Whether the process that has been started in Mystery Bay is sustainable may depend on whether better permitting processes can be developed.