



## Cherry Point Aquatic Reserve Implementation Committee Meeting Summary

**Thursday, November 17<sup>th</sup>, 2016, 1:00 p.m. – 3:00 p.m.**

Department of Ecology Bellingham Field Office | 1440 10th St. Suite 102, Bellingham

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**Participants:** Elizabeth Kilanowski, Bert Rubash (*Whatcom County MRC*); Marie Hitchman, Kim Clarkin, Lyle Anderson (*Cherry Point Citizen Stewardship Committee*); Sandy McMullen (*Birch Bay Water & Sewer District*); Fred Felleman (*Friends of the Earth*); Eleanor Hines (*REsources*); Michael Kyte (*Independent Biologist*); Andrew Gamble, Travis Linds (*Petrogas Pacific*); Barry Wenger (*retired Dept. of Ecology*); Steve Irving (*Audubon*); Ted Morris (*Wa. Parks and Recreation – Birch Bay State Park*); Todd Sandell, Adam Lindquist (*Washington Department of Fish & Wildlife*); Pete Sim (*BP Cherry Point Refinery*); Kyle Loring (*Friends of the San Juans*); Birdie Davenport, Dennis Clark, Dave Palazzi, Mary Huff, Betty Bookheim & Jamie Kilgo (*Department of Natural Resources*)

### **1:00 p.m.**

Welcome & Introductions, Meeting Agenda & Outcomes

Petrogas Pacific was welcomed as the newest member of the Implementation Committee. Petrogas purchased the Intalco pier and was assigned the DNR lease formerly granted to Intalco. Andrew Gamble expressed Petrogas' commitment to taking good care of the pier.

### **1:15 p.m.**

Cherry Point Herring Monitoring, Discussion, and Q&A

*Adam Lindquist & Todd Sandell, Washington Department of Fish and Wildlife*

#### What do we know about Cherry Point herring stock?

- Genetically distinct from sampled B.C. and other Puget Sound stocks (Beacham et al. 2001, 2002, 2008; Small et al. 2005; Mitchell 2006; Hauser [unpub. 2014])
- Anecdotal evidence of large historical fluctuations in abundance
- General decrease in size and age (i.e. fewer older fish) since 1970s
- Decrease in shoreline/spawning grounds used for spawn deposition. There has been a general decrease/compression of shoreline used for spawn deposition as biomass decreased. In 2016, spawn was only detected at Birch Point- none at Point Whitehorn.
- Contaminant levels in Cherry Point herring are relatively low compared to other areas of Puget Sound (West et al. 2008, 2014). Less PCBs, PBDEs, DDTs than urban areas like Port Orchard and Squaxin. Contaminants at Cherry Point have declined over time (will be in a paper coming out soon by Jim West)
- Consistently small larval size and yolk deficiencies in CP stock; reproduced in lab controls and at other sites; not considered to be site related (Hershberger et al. 2005)

- Ichthyophonous disease at Cherry Point on average with other areas in Puget Sound
- Spawn timing suggests CP stock is independent of other stocks in Puget Sound, and much of southern Strait of Georgia as well. This is likely a mechanism for maintaining genetic isolation.
- Cherry Point herring prefer to spawn on *Sargassum*, a tall floating non-native plant, which leaves the eggs particularly vulnerable to bird predation (Shelton 2016).
- Tessa Francis and Megsie Siple's (UW) work has shown that bird predation on herring eggs is particularly high at Cherry Point Also some spawning on *Desmarestia ligulata* ("Acid kelp") beds in deeper water; this species secretes acid and can be lethal for herring spawn.

#### 2016 Funding from DNR for Cherry Point herring monitoring

- Funding allowed us to deploy variable mesh gill nets at Cherry Point over a 5 week period to determine the age structure of the population.
  - Almost all of the spawning herring were captured at Birch Point
  - 7+ year old spawners were captured which is very unusual in recent history. Biometrics taken (measurements, scales, otoliths for aging) as well as heart tissue and fin clips for genetic work
  - Captured some 3-4 year old herring at Pt. Whitehorn that were months away from spawning.
- Collected genetic samples from herring from around Puget Sound and the southern Strait of Georgia, and SE Alaska so that we have a sample collection that will allow us to analyze regional stock structures via SNP assay being developed by Lorenz Hauser's lab at UW. The goal is to be able to identify CP stock herring as they move throughout the region.
  - If we can determine that Cherry Pt. fish are also present in southern BC then we can work to protect the stock across international boundaries
- Herring were also sampled for parasitic nematodes in the gut (*Anasakiids*); these were sent to the NOAA lab in Newport, OR for genetic analysis and comparison with worms recovered from herring in other parts of Puget Sound, Canada, and SE Alaska

#### Is there any good news?

- The early run of fish that spawn at Birch Point and in Drayton Harbor (Semiahmoo stock) and the Quilcene Bay stock in Hood Canal are at high levels, compared to historic numbers.
- Changes in salmon hatchery releases at Lummi Ponds may help future Cherry Point herring survival. Changed from a Coho and Chinook release to Chum stock. Herring will have moved away before the Chum are released that could prey upon them.

#### Questions & Discussion

**Comment:** *Sargassum* as a non-native species is detrimental to marine vegetation and should be recognized as an invasive species by the State Noxious Weed Board, as it is in other states.

- **A:** There has been a huge spike in the Quilcene herring stock with spawn primarily on *Sargassum* even though eelgrass is available.

**Q:** Are there plans to tag herring and see where they go?

- **A:** Problem with tagging is there must be a fishery to recover them. No retention is allowed in Washington.

- **Q:** What about the Canadian fishery?
  - **A:** We would have to tag so many fish [in order to get returns from a Canadian fishery]

**Q:** What about using acoustic tags?

- **A:** Would have some mortality with acoustic tags. There is no receiver line across the Strait of Georgia. The technology just changed and the frequency changed, so the existing receiver lines are no longer functional. It would take a lot of money to reestablish the receiver lines. An alternative is a SNP assay, which could be even more affordable in the future. The genetic samples taken last year will provide a 1 year snapshot of where fish are.
- Figuring out where the herring are going is why we are doing the midwater trawls. We are hoping that the midwater trawl study is funded again.

**Q:** What are you doing to protect the Cherry Point herring holding area?

- **A:** No fishing is currently allowed in the holding area

**Comment:** We need to pull together funding to support herring research. Attention needs to be focused on the Cherry Point nearshore, not offshore. Why don't we put together the proposal that we can sell and then seek funding? The technology exists, we need the political will.

- **A:** WDFW is co-Principle Investigators on grant with Tessa Francis on a project identify data gaps and then set up a work plan with priorities.

**Comment:** You could model where the larvae go by studying the currents.

*2:00 p.m.*

## Cherry Point Aquatic Reserve Boundary Change Process

*Dave Palazzi*

Proposal to modify the existing boundary of the Cherry Point Aquatic Reserve by including the 45-acre "cutout" originally established for a marine terminal in 2000 into the boundary of the Cherry Point Aquatic Reserve to be managed by DNR according to the goals and objectives of the Management Plan.

- Convened a Technical Advisory Committee on October 23<sup>rd</sup> to completed scientific review of the proposal and provide feedback on whether a boundary change is warranted
- State Environmental Policy Act (SEPA) comment period was opened November 4-16<sup>th</sup> and DNR received over 2000 comments to date.
- The TAC recommendations and SEPA comment summary will be presented to the Commissioner of Public Lands for the final decision

### Questions & Discussion

**Q:** Is the Technical Advisory Committee recommendation available to the public?

- **A:** Yes, it will be added to our website [Note: both the Technical Advisory Committee recommendation and the boundary change proposal are on the [Cherry Point Aquatic Reserve website](#)]

**Q:** How does a lease work?

**A:**

- Leases contractually convey ownership interest for specific use
- Standard lease term is 12 years and may extend up to 30 years

**Q:** Are there reopener clauses in leases if things change?

**A:**

- Typically not. We try to balance between providing certainty to the lessee and changing circumstances.
- Any changes or amendments have to be agreed upon by both parties (DNR and lessee). It generally must be in the state’s interest to make a change.
- Amendments do not require public comment, but if there is a large change in use DNR could seek public input.
- “Preference right” exists. Private owners of tidelands have a veto right over the use of bedlands next to their tidelands –limit is 200 feet or -3 fathoms (whichever is less) beyond their second class tidelands. DNR cannot lease those lands to a third party if the private owner refuses consent.

**Q:** The cutout was for a specific lease, pending lease. The permits were denied, so why do we need to go through the process to change the boundary?

- **A:** The “cutout” is part of the legal description in the Cherry Point Aquatic Reserve Management Plan and the Aquatic Reserve Implementation Guidance outlines the process for boundary changes. Following this process also allows for technical review and public comment.

**Q:** Are there any examples of changes to the public trust doctrine? Any case precedence for reclaiming tidelands?

**A:**

- About 70 % of Washington state tidelands were sold up until 1971. Property rights are not exclusive - you can navigate over them. Tidelands do reside with the fee owner.
- There are no examples of changes to public trust doctrine. However, there are examples of conservation easements on privately-owned tidelands and cases where land trusts have bought tidelands from willing sellers and donated to DNR.

**Q:** Are the leases public?

- **A:** Yes, and the Cherry Point leases/easement can be viewed on the Whatcom County Auditors website.

**Q:** Do leases for the refineries include the right to export crude oil?

- **A:** Would need to look at the exact lease language in section 2 of each lease.

**2:30 p.m.**

## DNR Aquatic Land Management update

*Dennis Clark*

### Birch Bay Mooring Buoy Removals

- In May 2016 DNR removed about 30 unauthorized mooring buoys in Birch Bay between the state park and Point Whitehorn.
- DNR conducted a compliance trip to Birch Bay in September and there were only 2 new buoys. It is our hope that neighbors understand why this was done to protect the resource and are supportive. About 15 older buoys remain and DNR intends to remove all buoys in spring 2017.

- **Q:** Any plans to restore the eelgrass? **A:** Damage is not as noticeable now. The eelgrass in Birch Bay is robust and seems to be recovering on its own now that damage is not ongoing.

### Assignment of the Intalco Lease to Petrogas

- As discussed at the last meeting, Intalco requested to assign their pier lease (20-A08488) to Petrogas Pacific LLC. Petrogas Pacific's parent company has been using the Intalco pier since 2014 to ship liquefied petroleum gas (LPG) products.
- Petrogas staff described their ability and commitment to invest in the capital asset that is the 50-year old pier.

## Questions & Discussion

### Lease Assignment

**Q:** Several question about Petrogas pier piling replacements and whether they have been/will be required to be concrete or steel. Concern about whether replacements contribute to the goals and objectives of the aquatic reserve.

**A:**

- Since 2012 several pilings have been replaced with ACZA treated wood pilings. ACZA is much less toxic than creosote but still introduces toxins into the water column and sediment.
- DNR and Intalco agreed that subsequent piling replacements starting in 2013 would be replaced with sleeved plastic or fiberglass over new ACZA-treated pilings or over existing creosote-treated pilings. The sleeving isolates the pilings from the water column and sediment.
- Problem with replacing wood pilings with steel or concrete pilings is that the pier has lots of movement. You cannot start mixing in concrete and steel pilings with wood pilings because mixing them does not work structurally.

**Q:** Can additional conditions be added when leases are reassigned?

- **A:** Any changes to a lease during the term must be agreed upon by both parties. There were no amendments to the lease when it was assigned to Petrogas and the lease goes through 2033. DNR cannot unreasonably deny or condition assignment of leases.

**Comment:** Request that the Aquatic Reserves Program ask for money from industries to support studies and research.

**Comment:** Consider putting additional sleeves on intertidal pilings and on other pilings below the water line.

### LNG Pipeline Permit Process

**Q:** What is permitting process for the proposed underwater LNG pipeline to Vancouver Island by Williams Pipeline?

- **A:** Requires a Shoreline Permit through Whatcom County and is then reviewed by Department of Ecology.

**Q:** What is going on with the proposed LNG pipeline? Does it require a DNR lease?

- **A:** A pipeline would require a DNR use authorization. DNR has not heard anything from Williams Pipeline Company since an initial meeting in fall 2015. No application has been received.

**Q:** Is it the same location as the 2003 proposal?

- **A:** Yes.

**2:55 p.m.**

## Partner Updates

### Whatcom Wildlife Advisory Committee – *Barry Wenger*

- Inventory analysis of habitat types and corridors in Whatcom County
- Seadoc has done LIDAR work up to Bellingham and there is going to be a lot of new data, including an inventory analysis of the seafloor for different habitat types.

### Cherry Point Aquatic Reserve Citizen Stewardship Committee – *Eleanor Hines*

Visit [aquaticreserves.org](http://aquaticreserves.org) for 2013-2015 reports for marine bird monitoring and intertidal monitoring. DNR is working to do a better job of displaying data and linking to the other citizen science projects. Cherry Point Sea Star surveys will be completed on the nights of December 13<sup>th</sup> and 14<sup>th</sup>

### Vessel Traffic Risk Assessment update – *Fred Felleman*

- Vessel traffic risk assessment originally completed in 2005, updated 2010, now another update in 2016.
- Provides a baseline understanding of where ships go and the likelihood of a spill occurring and how that would change with increase of new projects through the area, most of them from Canada.
- Of note is increase in risk on Haro Strait sites due to of tripling vessel traffic because of the Kinder Morgan Pipeline. Alternative route to Cherry Point may need to be a point of discussion. Vessel traffic should be discussed more.

**Comment:** BP never completed final EIS

**Comment:** Ships coming in to fill up at pipeline will be dumping ballast water here. This is a huge vessel traffic change and is an invasive species vector. Cherry Point is the 4<sup>th</sup> highest area in Washington State for ballast water exchange.

**3:20 p.m.**

## Aquatic Reserve Program Updates

*Birdie Davenport*

- The Aquatic Reserves Program is managing a new National Estuary Program grant to support citizen groups. We're currently developing new committees at two reserves. The citizen groups are involved in intertidal, kelp, and bird monitoring, among many other projects.
- We've re-engaged the Implementation Committee for Protection Island Aquatic Reserve
- Lake Kapowsin was established as our first freshwater aquatic reserve in September 2016
- New project staff position for citizen groups will be working out of Sedro-Woolley

### Next steps

- Follow up on vessel traffic and ballast water risk assessment at the next meeting
- Next meeting will be spring 2017

**3:30 p.m. – Adjourn**