

**REVIEW OF THE  
MANAGEMENT OF  
STATE-OWNED  
AQUATIC LANDS  
REPORT 08-6**

JUNE 18, 2008



STATE OF WASHINGTON  
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# REPORT SUMMARY

At statehood, Washington State's Constitution declared state ownership of the 2.8 million acres of tidelands, shorelands, and bedlands within the boundaries of the state. Statute directs the Department of Natural Resources (DNR) to manage these state-owned aquatic lands.

In 2007, the Legislature directed the Joint Legislative Audit and Review Committee (JLARC) to analyze DNR's management of state-owned aquatic lands. This report analyzes the history of the state's ownership of aquatic lands, and reviews how DNR is structured to manage aquatic lands and the source of funding for that management. The report provides an in-depth analysis of DNR's compliance with both broad and specific legal obligations from statute and case law. The report also provides an analysis of DNR's compliance with the principles of sound public property asset management.

## The History of State Ownership of Aquatic Lands

Article XVII of the state's Constitution declared state ownership of aquatic lands. Until 1971, the state sold some of its tidelands and shorelands. As the table below illustrates, 64 percent of tidelands and 29 percent of shorelands are now in other ownership.

Aquatic Land Type	State-Owned Acres	% of Total	Acres Owned by Others	% of Total	Total Acres
Marine Bedlands	2,162,531	100%	0	0%	2,162,531
Marine Tidelands	88,540	36%	156,079	64%	244,619
Freshwater Bedlands	320,002	100%	0	0%	320,002
Freshwater Shorelands	33,454	71%	13,982	29%	47,436
Other Aquatic Lands	13,691	100%	0	0%	13,691
<b>Totals</b>	<b>2,618,218</b>	<b>94%</b>	<b>170,061</b>	<b>6%</b>	<b>2,788,279</b>

## Aquatic Lands Management, Expenditures and Revenues

Within DNR, the Aquatic Resources sub-program (Aquatic Resources) has primary responsibility for managing state-owned aquatic lands. In the 2005-07 Biennium, Aquatic Resources' operating expenditures totaled \$29.8 million. The Policy & Program Development, Administration, and Operations sections are located in Olympia (57 FTEs), with additional staff based in three districts (27 FTEs), for a total of 84 FTEs.

Statute authorizes various uses of state-owned aquatic lands, which DNR manages. Such uses generated \$41.6 million in the 2005-07 Biennium. Just over half the money—\$21.5 million or 52 percent—comes from the sale of geoducks, with leases for such things as marinas equaling \$16.8 million or 40 percent. The remainder—\$3.3 million, or 8 percent—comes from a variety of sources such as rights-of-way and mineral sales. Traditionally, Aquatic Resources' operations are funded from these revenues, creating a link between managing the lands and the ability to generate revenue from the lands. The Legislature also funds a number of aquatic lands enhancement projects from this revenue, through the Aquatic Lands Enhancement Account.

## Complying with Broad Legal Obligations

Unlike the forest lands managed by DNR, state-owned aquatic lands *are not* established as fiduciary trusts with a guiding principle of generating sustainable revenue. Rather, aquatic lands have statutorily established general management guidance, called the "Four Plus" benefits. Benefits that are to be provided by state-owned aquatic lands include: encouraging

direct public use and access, fostering water-dependent use, ensuring environmental protection, and utilizing renewable resources. The “Plus” is that generating revenue, in a manner consistent with the other four benefits, is considered a benefit. DNR is charged with balancing these benefits.

JLARC determined that DNR’s activities support each benefit. However, statute does not specify how to measure the balance, and DNR cannot demonstrate whether these benefits are “balanced.”

### Complying with Specific Legal Obligations

Statute also sets specific directives. We focus on the most relevant 27 directives summarized into eight areas, ranging from how to sell geoducks to how to lease lands for uses such as marinas. DNR is in compliance with five areas and not in compliance with three specific statutes: charging fair market value for nonwater-dependent use, charging for easements, and implementing a plastic debris action plan.

Court decisions have impacted state-owned aquatic lands management in numerous ways. There are two areas where DNR has legal obligations that are defined completely by case law rather than by statute: the public trust doctrine, and a major tribal shellfish decision. For both areas, DNR is in compliance.

There are also two emerging compliance issues for DNR: a habitat conservation plan and Puget Sound Partnership.

DNR is currently in the process of developing a habitat conservation plan (HCP) for all state-owned aquatic lands. HCPs are submitted to the federal government to comply with the Endangered Species Act when a landowner or land manager recognizes that its activities may result in the taking (e.g., harming or killing) of endangered species. DNR is in the process of estimating the costs and defining any needed policy changes associated with mitigating the impacts of its activities.

In 2007, the Legislature created and charged the Puget Sound Partnership with developing an action agenda to restore the environmental health of Puget Sound by the year 2020. The exact impact on DNR as the manager of state-owned aquatic lands has not been identified.

### Complying with the Principles of Sound Asset Management

JLARC reviewed literature in the field of public property

asset management to learn theories on benchmarks or best practices in the management of public lands. Comparing DNR’s performance against the guidance found in the literature provides useful insights into how well DNR is doing in managing state-owned aquatic lands. We summarize the literature into five questions to use in assessing DNR’s management of state-owned aquatic lands, with the report detailing our concerns.

Question	Answer
Does DNR know where the asset is?	Yes
Does DNR understand the legal mandates regarding managing the asset?	Yes
Does DNR know the condition of the asset?	No
Is DNR preserving the productive capacity of the asset?	?
Does DNR have clearly stated goals for aquatic lands management and measures for reaching those goals?	No

Asset condition is a key concern. While DNR has substantially increased its knowledge of the asset’s uses and condition through various efforts such as the development of the habitat conservation plan, a more comprehensive knowledge is needed to insure the ongoing provision of the Four Plus public benefits.

### Report Recommendations

The report concludes with five recommendations to DNR regarding asset management and compliance with statute.

#### Asset Management

**Recommendations 1 and 2:** Building on the work of the Habitat Conservation Plan, DNR should complete a feasibility study of how it will develop a comprehensive knowledge of the condition of the state-owned aquatic lands asset. In addition, DNR should develop a strategic plan, specific to state-owned aquatic lands, with quantifiable performance targets that demonstrate how DNR is balancing the Four Plus benefits.

#### Complying with Statute

**Recommendations 3-5:** DNR should comply, and report to the Legislature on their plan for complying, with statutory guidance regarding: charging fair market value for nonwater-dependent leases; charging the fee for public utility easements; and coordinating and implementing the plastic debris action plan.