

File No.: SS-CL-2018.9 Penelakut  
Seafoods Incorporated

Ministry: FLNRORD  
Referral : 99341162-005  
Reference : 1414788

DATE OF MEETING: September 27, 2018  
TO: Salt Spring Local Trust Committee  
FROM: Ian Cox, Planner 1  
Salt Spring Island Team  
COPY: Penelakut Seafoods Inc.  
SUBJECT: Crown Lease Referral For Booth Bay Shellfish Aquaculture Tenure Application.

## PURPOSE

The purpose of this memorandum is :

- To inform the Local Trust Committee (LTC) of an application by Penelakut Seafoods for a shellfish aquaculture tenure in the Booth Bay area described as the **“Unsurveyed Crown foreshore or land covered by water being part of the bed of Booth Bay, Cowichan District”**.
- To provide the LTC with a copy of Islands Trust Staff referral response to the ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) regarding the tenure application.

## APPLICATION

The area of application encompasses 13.60 hectares of intertidal beach culture stretching from the mouth of Booth Canal northwest along the shoreline approximately 1 kilometre. The applicants intend to harvest Manila Clams, Pacific Oysters and Littleneck Clams from natural set source stock. No installation of aquaculture structures is proposed (e.g. culture rafts, work floats, living accommodations, etc.). However, predator netting will likely be used.

Please refer to Attachment 2 for Islands Trust staff referral response. As most of the subject area does not permit aquaculture, staff have advised FLNRORD that a rezoning application would be necessary to bring the proposed use into compliance with local bylaws.

## NEXT STEPS

No LTC action is required at this stage. However, in light of staff’s referral recommendation, the LTC could expect receipt of a rezoning application for the proposed tenure area in the future.

The applicant is required to give public notice of the proposal through printed newspaper ads in advance of any FLNRORD decision on tenure issuance.

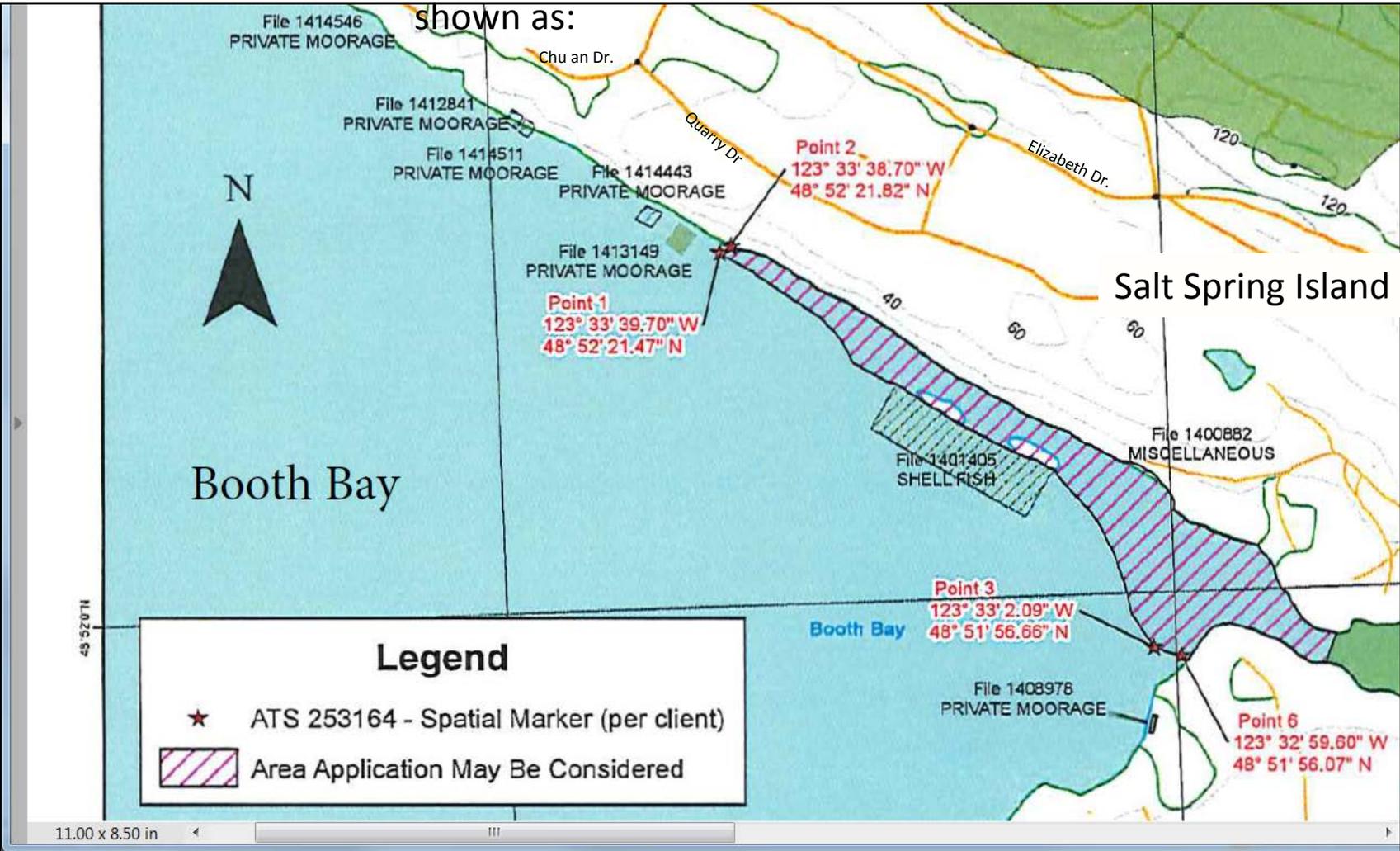
Submitted By:	Ian Cox, Planner 1	September 12, 2018
Concurrence:	Stefan Cermak, Regional Planning Manager	September 19, 2018

**ATTACHMENTS**

1. Proposed Lease Area
2. Islands Trust Staff Ministry Referral Response

Accepted Sketch Crown Land File  
1414788 Application Area 13.60Ha+/-

shown as:





1 - 500 Lower Ganges Road  
 Salt Spring Island, BC V8K 2N8  
 Tel: 250-537-9144  
 Fax: 250-537-9116  
 Toll Free via Enquiry BC in Vancouver 604.660.2421  
 Elsewhere in BC 1.800.663.7867  
 Email ssiinfo@islandstrust.bc.ca  
 Web www.islandstrust.bc.ca

September 14, 2018

File Number: **SS-CL-2018.9 (Penelakut Seafoods)**

Your reference number: 1414788

Your referral number: 99341162 - 005

Sent via email to:  
 Jordan Wagner  
 Front Counter BC  
 Lands Officer, Aquaculture  
 Jordan@wagner.gov.bc.ca

Dear: Jordan Wagner,

**Re: Proposed License – Shellfish Aquaculture New Site Application (Booth Bay/Baker Beach)**

Please find the Islands Trust referral response for the above-noted shellfish aquaculture license application for the lands described as the **“Unsurveyed Crown foreshore or land covered by water being part of the bed of Booth Bay, Cowichan District”**, located in southern Stuart Channel on the western side of Salt Spring Island, south-east of Vesuvius Bay.

**1. Does this application impact your agency’s legislated responsibilities?**

Yes.

**If yes, how will the proposal impact your legislated responsibility and please identify the relevant legislation (section) and what mitigative measures will be required to address these impacts.**

The Salt Spring Island Local Trust Committee (LTC) regulates use of the land and water surfaces on, and in the vicinity of, Salt Spring Island through:

- Salt Spring Island Land Use Bylaw No. 355
- Salt Spring Island Official Community Plan No. 434

The shellfish aquaculture operation proposed is inconsistent with current zoning that applies to much of the location proposed. This can be mitigated by a successful application to rezone the lands and waters in question.

Should a rezoning application be received, the Official Community Plan policies attached as Attachment 1 may, in part, guide the LTC’s deliberations.

The Islands Trust and its constituent Local Trust Committees’ legislated responsibility over zoning and land use derive from the following:

- *Local Government Act*
- *Islands Trust Act*
- *Islands Trust Regulation*
- *Islands Trust Policy Statement*

Rezoning the subject area may also necessitate an amendment to the area’s Land Use Designation under the Salt Spring Island Official Community Plan. If such is the case, the LTC may look to the Islands Trust Policy Statement for guidance. Islands Trust Policy Statement Policy No. 4.5.6 states:

*“It is Trust Council’s policy that aquaculture should be directed to sites away from:*

- *Areas of recreational significance,*
- *Areas where an aquaculture operation would conflict with established or designated upland land uses, and*
- *Areas where an aquaculture operation would conflict with established or designated anchorage or moorage.”*

**2. If the proposal proceeds, will the proponent require approval or a permit from your agency? If yes, please explain.**

**Yes.**

The subject waters are zoned PR6 (Passive Recreation 6), S5 (Shoreline 5), S6 (Shoreline 6), and S8 (Shoreline 8) in accordance with the Salt Spring Island Land Use Bylaw No. 355 (see Attachment 2). Aquaculture is not a permitted use in the PR6, S6 or S8 zones. Aquaculture is a permitted use in the S5 zone, where an existing shellfish aquaculture firm currently operates.

In order to establish aquaculture as a permitted use in accordance with Salt Spring Island Land Use Bylaw No. 355, a rezoning application must first be approved by the Salt Spring Island Local Trust Committee.

If the applicant limits its proposed shellfish aquaculture operation to lands and waters within the S5 (Shoreline 5) zone, no rezoning would be required.

**Development Permit Area 3**

The area of application is within Development Permit Area 3 (DPA 3) for the regulation of the form and character of commercial and industrial development, protection of the natural environment, and to protect development from hazardous conditions (see Attachment 3). Works associated with the proposed shellfish aquaculture operation may require a development permit. A selection of guidelines potentially applicable to this application established to deliver the objectives of this DPA are as follows:

**E.3.4.13**

Docks should not be located over shellfish beds or lead to the removal of any kelp or eel grass beds.

**E.3.4.15**

Structures in contact with the water should be constructed of stable materials, including finishes and preservatives that will not degrade water quality.

**E.3.4.19**

Any plastic foams or other non-biodegradable materials used in construction of floats and docks should be well contained to prevent escape into the natural environment.

**E.3.4.29**

To assist in the preparation of development permits for larger projects, the Local Trust Committee could request an applicant to provide a report, prepared by a qualified professional with experience in

the protection of the natural environment. The report should indicate the type of conditions that should be incorporated into the development permit to achieve the objectives and comply with the guidelines of this Development Permit Area.

**3. Will on-going compliance monitoring be required by your agency as a result of your legislated responsibilities?**

**Unknown**

**4. Will this application affect public use of this area? If yes, please explain.**

**Yes.**

The proposed aquaculture license area is located within a popular beach and recreation area on the foreshore, which is accessed in at least two locations by small parks managed by the Capital Regional District. In light of the aforementioned and pending notification of the proposed lease application, the applicant may expect to receive comment from the public regarding the following possible concerns:

- Potential impacts on public recreational use in the proposed license area including swimming, kayaking, hiking, and passive recreational use;
- Potential loss of public access to the foreshore and marine environment;
- Potential environmental impacts resulting from the use of predator netting, fencing, and other equipment on fish, birds and wildlife (**see attached Zoning and Ecosystem map showing eelgrass and forage Fish presence**).
- Public and navigational safety concerns; and
- Aesthetic impacts (e.g. equipment, debris) on rural character and views – particularly in regard to adjacent upland parcels.

**5. Is the application area zoned for the proposed purpose?**

**Partly.**

The area of application covers multiple zones as mentioned in section 2. Of the four zones within which the proposed lease area falls, only the S5 Shoreline zone currently lists aquaculture as a permitted use.

**Recognition of Rights and Title**

While the Salt Spring Island Land Use Bylaw No. 355 PR6, S6 and S8 Shoreline zones do not permit aquaculture, Islands Trust recognizes and respects that Penelakut Tribe has fished and gathered food within its territory since time immemorial and respects its Aboriginal Rights and Title. Further, Islands Trust recognizes that as part of the Hul'qumi'num Treaty Group, Penelakut Tribe is currently in stage 4 of the treaty process for Negotiation of an Agreement in Principal and that the right to maintain a relationship with lands and resources with traditionally owned or otherwise occupied territories, waters and coastal seas, etc., is set forth in the United Nations Declaration on the Rights of Indigenous Peoples in Articles 25 and 32, particularly, as they relate to fishing activities.

**Recommendation**

It is recommended that the applicant submit a rezoning application for consideration by the Salt Spring Island Local Trust Committee, in order to amend the Salt Spring Island Land Use Bylaw No. 355 and Official Community Plan Bylaw No. 434 to establish a new water zone which would permit aquaculture use.

Please contact me by telephone at 250-247-2204 or email at [icox@islandstrust.bc.ca](mailto:icox@islandstrust.bc.ca) if you have any questions.

Sincerely,

Ian Cox, Planner I  
Local Planning Services

Attachments:

A1 - OCP Bylaw 434 Excerpts

A2 – Land Use Bylaw 355 Zoning Map and Marine Ecosystems

A3 – Development Permit Area 3

cc:

Loren James

Fisheries Manager, Penelakut Seafoods Inc.

loren@penelakut.ca