

# Merrill, Hannah

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**From:** pearl hewett [REDACTED]  
**Sent:** Wednesday, January 16, 2013 11:28 AM  
**To:** zSMP; Miller, Sheila Roark; mary pierce pfaff  
**Cc:** Karl Spees; Jay Petersen; Sue Forde; notac@olypen.com; [REDACTED]; Brian and Brooke [REDACTED]; Martha Ireland; marv chastain; harry bell; Lois Perry; Keith Olson; Frank M Penwell; Norman MacLeod; Steve Gray  
**Subject:** AQUACULURE Comment on SMP

## **AQUACULTURE** Comment on SMP

DNR **taking** and/or leasing of Public land  
Pearl Rains Hewett  
Member SMP Committee

In response to Mary and Sheila's comments of concern of **WA State DNR taking** and/or leasing of a public resource, waters of the state for **aquaculture**, that may deny fishing, recreation and similar uses of shorelines to all citizens of the state.

**THE PUBLIC TRUST DOCTRINE** should be sited in the Clallam County SMP to prevent the **WA State DNR taking** and/or leasing of a public resource, waters of the state for **aquaculture**, that may deny fishing, recreation and similar uses of Clallam County shorelines to all citizens of the state.

## **WA STATE SMP and The DOE Public Trust Doctrine**

The essence of the doctrine is that the waters of the state are a public resource **owned by and available to all citizens equally** for the purposes of navigation, conducting commerce, fishing, recreation and similar uses.

**Local governments should consider public trust doctrine concepts when developing comprehensive plans, development regulations and shoreline master programs.** There are few "bright lines," however, as **the Public Trust Doctrine is common law, not statutory law. The extent of its applicability can only be determined by state court decisions.**

## **WA STATE SMP and The Public Trust Doctrine** (available on line)

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (Visit the [MSRC Web site](#) and search for the State Supreme Court case *Caminiti v. Boyle*, 107 Wn. 2d 662, 732 P.2d 989)

**The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark.**

Protection of the trust is a duty of the State, and the **Shoreline Management Act** is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled in major part by the planning and permitting requirements of the **Shoreline Management Act**. (Court case: [MSRC Web site](#) and search for *Portage Bay v. Shorelines Hearings Bd.*, 92 Wn.2d 1, 593 P.2d 151)

Local governments should consider public trust doctrine concepts when developing comprehensive plans, development regulations and shoreline master programs. There are few "bright lines," however, as the Public Trust Doctrine is common law, not statutory law. The extent of its applicability can only be determined by state court decisions. The document below is a good introduction to the case law in Washington State.

- The [Public Trust Doctrine and Coastal Zone Management in Washington State](#), Johnson, Ralph W., Craighton Goepple, David Jansen and Rachel Pascal, 1991.

For a national perspective, consider:

- **Putting the Public Trust Doctrine to Work**, 2nd Ed., by David Slade, examines the issue from a national perspective. Copies available for purchase from the [Coastal States Organization](#).