

Hood Canal Environmental Council

Fall 2021

Protecting Hood Canal since 1969

OPPOSITION TO PROPOSED NORTH SHORE GRAVEL MINE PREVAILS

(Donna Simmons)

The Hood Canal Gravel Mining Opposition Association (HCGMOA) has prevailed in its 3-year battle against a proposed gravel mining operation. A June 7, 2021, ruling by Federal Court Judge Zilly denied an appeal of Mason County's decision to prevent Grump Ventures LLC (Grump) from developing and operating a 66.5-acre gravel mine on the North Shore of Hood Canal. In denying Grump's appeal, this ruling affirms Mason County's decision and dismisses the case with prejudice, which means that it cannot be reconsidered or brought back to court. The decision also effectively dismisses a related class action lawsuit brought by the HCGMOA.

Background/History

In 2017, Mason County issued a certificate allowing Grump an exemption from zoning regulations to operate the gravel pit in an area zoned residential by the county in 1996. After complaints from the HCGMOA and other groups, including the HCEC, the county issued a stop work order after Grump began an unpermitted mining operation. In January of 2020, the county issued an Administrative Determination rescinding its original approval, thus prohibiting Grump from acquiring a reclamation permit from the Department of Natural Resources.

Soon after, Grump filed an appeal of the county's decision. In August 2020, Grump's appeal was denied by the Mason County Hearings Examiner, which upheld the county's rescission of its surface mining certification based on the fact that Grump lost its nonconforming use gravel mining rights as no commercial gravel mining had taken place over a 2-year time period. Grump appealed the County's decision and made claims against the county under federal law which moved the appeal to Federal District Court.

Update

Since Grump's appeal was denied, a general release and settlement (agreement) between Grump Ventures LLC and Mason County was signed by the county in August of this year. Under the agreement, Grump will receive \$10,000. In return, it agrees to release all claims against the county as set forth in their complaint in the federal court case.

The HCGMOA will continue to monitor any developments and activities in the North Shore area that may negatively impact the environment and local residents' quality of life. The HCEC endorsed the organization when it was created and will continue to provide support as opportunities arise and resources allow.

For more information contact HCGMOA President, Bill Anspach, by e-mail at bill@seattlewatch.com

BRINNON GROUP GETS GRANT

(Barbara Moore-Lewis for the Brinnon Group)

The Brinnon group has received a \$10,000 grant to prepare a plan to monitor impacts of the Pleasant Harbor Planned Resort Development on Hood Canal.

Support for this grant was provided by the Puget Sound Stewardship and Mitigation Fund, a grantmaking fund enabled by Puget Soundkeeper's Clean Water Act enforcement program which protects the health of Puget Sound and its residents by enforcing water quality laws against serious violators. The Fund's goal is to mitigate past pollution harms by supporting community-based efforts to protect or improve the water quality of Puget Sound. The Rose Foundation for Communities and the Environment administers the Fund.

Dr. Richard Horner will be preparing the monitoring plan. Richard R. Horner received engineering B.S. and M.S. degrees from the University of Pennsylvania and the Ph.D. in civil and environmental engineering from the University of Washington in 1978. Following 13 years of college teaching and professional practice, he joined the University of Washington research faculty in 1981. His principal research interests involve analyzing the effects of human activities, especially in urban areas, on freshwater ecosystems and solutions that protect these resources. Now in emeritus status, Dr. Horner held appointments in the Departments of Civil and Environmental Engineering and Landscape Architecture as well as the Center for Urban Horticulture. He remains active in consulting in the same areas as he performed research. Dr. Horner was a member of the National Academy of Sciences National Research Council committee on Reducing Stormwater Discharge Contributions to Water Pollution. Its charge was to analyze the links between stormwater discharges and impacts on water resources, to assess the state of the science of stormwater management, and to apply the findings to make policy recommendations to the U.S. Environmental Protection Agency.

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To join our monthly online meeting, email Donna Simmons at nana@hctc.com or Phil Best at pbest@wavecable.com.

Hood Canal Commercial Shellfish Farm Permitting (Jan Wold)

In The Coalition to Protect Puget Sound v. Army Corps of Engineers (Corps), the federal District Court invalidated the U.S. government's blanket Nationwide Permit 48 (NWP48) for commercial shellfish operations in Washington state. The District Court found that the Corps failed to properly analyze the cumulative effects of operations under NWP48, failed to comply with the federal Clean Water Act (CWA) and the National Environmental Policy Act (NEPA), and provided inconsistent and unreliable estimates of affected tideland acreage. The case was appealed to the federal 9th Circuit Court of Appeals, which upheld the District Court.

In June 2020, the District Court vacated all Corps NWP 48 commercial shellfish farm permits and required new Corps permits for all commercial shellfish farms in Washington state. The judge allowed shellfish farmers to continue operating under their original permits if they applied for a new permit by December 2020 and allowed limited farming activities through December 2022 on the existing farms as the Corps processed permits.

New permit applications for shellfish farms mandated by the court are being processed by the Corps, apparently either as individual permits or Letters of Permission. Individual permits provide an opportunity for public comment. Corps permits under a Letter of Permission process are not publicly shared and apparently lack any opportunity for public comment.

A Draft Corps Cumulative Impacts Analysis for shellfish farms prepared in 2017 included the following information:

- Twenty-six percent of Gray's Harbor, Willapa Bay, Hood Canal, and South and North Puget Sound tidelands combined were covered with commercial shellfish farming permits at the time of the Corps' analysis.
- At that time there were commercial shellfish permits approved for 19 percent of Hood Canal tidelands.
- Forty-one percent of the continuing active acreage of commercial shellfish farms in Hood Canal are potentially co-located with eelgrass.
- About 10% of the total tideland acreage in Hood Canal is potentially blanketed by shellfish cover nets.
- Fifty-four percent of the total active Hood Canal acres of shellfish farms were co-located with forage fish spawning areas for herring, surf smelt and sand lance.
- The proposed action could adversely affect designated critical habitat for several species listed under the ESA including Puget Sound Chinook salmon, Hood Canal summer run chum salmon and Puget Sound Steelhead.

Although the Corps assumed that the 2017 NWP 48 permit would be used about 250 times during a five-year period, it has apparently issued at least 900 commercial shellfish permits in Washington state since 2017. Consequently, these statistics likely greatly underestimate the impact.

Squamish Harbor Shellfish Farm Permitting

The Corps approved a new individual permit for the Rock Point Case Shoal (**Rock Point site**) active shellfish farm in western Squamish Harbor near Shine, which includes cultivation of 44.35 acres of Pacific oysters, Kumamoto oysters, Manila clams and geoducks, and running a harrow over one to two acres of tidelands per year.

The Endangered Species Act (ESA) required the Corps to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) on all actions that may affect a listed species or affect designated critical habitat. About thirty-five species are listed or proposed for listing in or near this shellfish farm. Populations of many of these species are dropping precipitously. The Corps does not acknowledge whether the status of these species was reviewed by NMFS or USFWS. The Corps may be relying on Biological Opinions by NMFS and USFWS from 2014 and 2016, which are outdated due to changed situations for significant species, including Marbled Murrelets, Sunflower Sea Star, Orca, and salmon. The number of shellfish farms and acreage used as the basis to complete these five- and seven-year-old Biological Opinions was considerably less than the number of farms and acreage approved by the Corps under the invalidated NWP 48, thus underestimating the impacts.

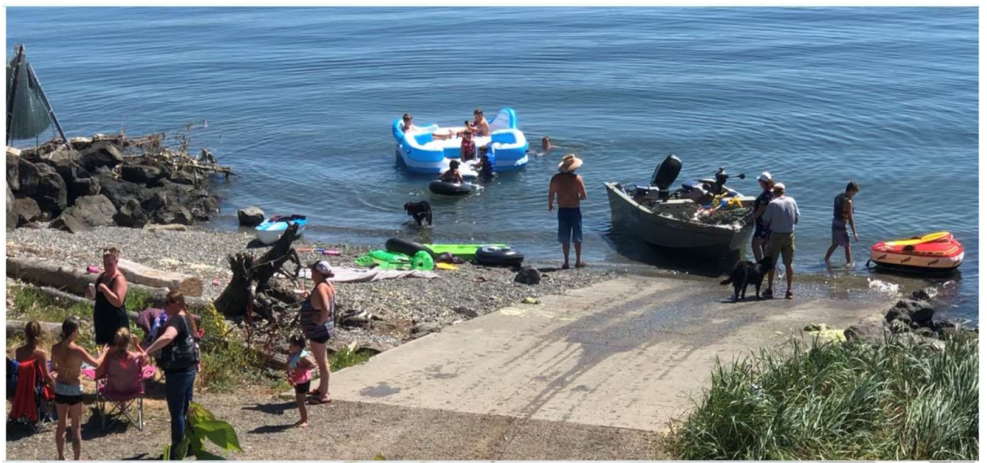
An active 3.58-acre commercial geoduck farm (**BDN site**), located on the north side of Squamish Harbor approximately 1.5 miles west of the Hood Canal Floating Bridge, is seeking a new Corps commercial permit to replace the court invalidated existing permit. Harvesting on this geoduck farm continues. Public requests to the Corps about permit status, and Freedom of Information Act (FOIA) requests are still unanswered some eleven months after they were filed.

A Corps shellfish permit application and a Jefferson County Shoreline Development Permit application are pending for a proposed new 5.15-acre geoduck farm (**Smersh site**) about a half mile east of the BDN site. The Smersh site borders Jefferson County's Hick's Park and Boat Launch and would create navigation, safety, noise, habitat and visual impacts and release plastic into the marine environment. The County completed a public comment period on the Smersh permit and on the State Environmental Policy Act (SEPA) determination. A hearing before a Hearing Examiner will follow. Public input to the county is allowed until the hearing is closed. See the Fall 2020 HCEC newsletter for more information.

Over 200,000 plastic PVC tubes (4" X 10") would be installed into the substrate to hold geoducks. Hydraulic high-pressure hoses are used to liquify the tidelands during harvest. Another round of planting and harvesting continues in six- to seven-year cycles. The eelgrass is already declining, as established by Smersh's own eelgrass surveys, even before the geoduck farming begins. The eelgrass provides feeding, spawning and rearing habitat and cover from predators for many important marine species, including forage fish and chinook salmon, which are critical prey for orcas.



BDN's geoduck farm 1/2 mile from Hicks Park



Families enjoying Hicks Park. Rock jetty marks Smersh boundary line and proposed geoduck farm.

NEW RULES FOR SIGHTSEEING TOURS OVER NATIONAL PARKS

(Donna Simmons)

The National Parks Service (NPS) and the Federal Aviation Administration (FAA) are drafting new rules designed to manage commercial air tours over the Olympic and Mount Rainier National Parks. The [Air Tour Management Plans](#) will direct the future of commercial flights over the 2 parks. The new plans would cover only commercial flights and not private recreational flights, commercial airlines or military flights. The Hood Canal Environmental Council (HCEC) has joined other environmental groups in urging the NPS to conduct an Environmental Assessment to determine environmental, spiritual and other impacts and ban commercial air tours over the Olympic and Mount Rainier National Parks.

HCEC firmly believes that the sights and sounds created by airplanes are not compatible with the wilderness experience of solitude and quiet reflection which attracts park visitors. The majority of national park land in the Olympic National Park is designated wilderness, much of which lies within the Hood Canal watershed. These lands were specifically designated to protect the environmental and social values provided by national parks. Besides the impacts from sightseeing flights on wilderness users, they will very likely result in disturbance to wildlife sensitive to loud noises.

The NPS' new sightseeing tours plan will be completed after public comments have been reviewed and other information gathering is concluded. The resulting NPS proposal must be approved by the FAA before it is finalized. The final plan must be completed by the spring of 2022. HCEC strongly objects to the National Park Service instituting low-level commercial air tours over the Olympic and Mount Rainier National Parks. We will continue to follow the process.

For more information, contact Donna Simmons by phone at 360-877-5747 or e-mail to nana@hctc.com.

WILD OLYMPICS LEGISLATION PASSES U.S. HOUSE OF REPRESENTATIVES

(Donna Simmons)

In February of 2020, the U.S. House of Representatives passed the [Wild Olympics Wilderness & Wild and Scenic Rivers Act](#). This is a big victory for salmon recovery, growing local jobs and the economy, protecting clean water and other natural resources, on the Olympic Peninsula.

The Wild Olympics Act was introduced nine years ago by U.S. Senator Patty Murray and then U.S. Congressman, Norm Dicks. Since 2013, U.S. Representative, Derek Kilmer, has led the effort to pass the bill in the U.S. House of Representatives. If passed by the U.S. Senate, the Wild Olympics Act would designate over 126,000 acres of Olympic National Forest land as Wilderness and 464 miles of rivers on the Olympic Peninsula as Wild and Scenic. The bill is the result of years of collaboration to establish language in the bill that benefits tribes, sportsman groups, conservation groups, timber communities, business leaders, shellfish growers and local communities.

The bill has broad support around the Olympic Peninsula. Over 12,000 residents have written letters or signed petitions and more than 800 community leaders, area businesses, farms, faith leaders, sportsmen groups, elected officials, conservation groups, outdoor recreation, and civic groups have all endorsed the bill. The Wild Olympics Campaign has been spearheaded by Washington Wild.

The proposed wilderness designation for the upper South Fork Skokomish River watershed is of particular interest to the HCEC. Our organization has worked for many years to have this area designated as wilderness as a natural extension of the Wonder Mountain Wilderness which was included in the 1984 Wilderness Act.

Passage of the Wild Olympic bill by the U.S. House of Representatives is an important milestone toward ensuring that future generations will continue to enjoy the Olympic Peninsula's important natural resources and scenic beauty. The work to pass this bill is not finished as it must pass the U.S. Senate before it becomes law. The HCEC will continue to follow the legislation as it moves forward and will keep our members updated.

For more information, contact Donna Simmons by phone at (360) 877-5747 or by e-mail to nana@hctc.com.

FOND FAREWELL TO BILL MATCHETT



Bill Matchett, longtime HCEC Board member, passed away on June 20, 2021 at age 98. He was president of HCEC for 20 years, and, as a Quaker, decisions were by consensus. Always upbeat and forward looking, Bill contributed and participated in many other organizations promoting the wellbeing of the environment, nature, and of humanity. He lived with his wife, Judy Matchett, at their cherished home on Hood Canal at Nellita. Bill was a UW Professor of English with an emphasis on Shakespeare and poetry and published several books of his own poetry. He and Judy received the Hood Canal Coordinating Council Environmental Achievement Award in 2013 for their passionate work for the environment.

He will be missed by the HCEC Board and by so many with whom he was associated through HCEC and many other organizations. The following is a free-verse tribute to Bill:

*Hood Canal in all her majesty
Bill cared and worked to maintain that beauty and her wellbeing
We appreciate his dedication to that.
We will continue to devote ourselves to that legacy
And pass on that continuity for her future.
We will miss Bill's presence
And his wisdom
He taught us much.*

HOODSPORT SHELLFISH BEACHES UPGRADED (Donna Simmons)

After years of hard work by partners Skokomish Tribe, Mason County Public Health, State Department of Health (DOH) and the Hood Canal Coordinating Council (HCCC), 66 acres of Hoodsport's shoreline was upgraded from Prohibited to Approved by the DOH's Shellfish Program, to allow for commercial and recreational shellfish harvesting. This area has been plagued by bacterial water pollution, primarily from older, failing and inadequate septic systems. Shellfish beds on the Hoodsport waterfront have been closed since 1976 due to high bacterial counts. Collecting and analyzing water samples began in 2014. Shoreline and sanitary surveys were conducted to identify sources of fecal water pollution, then the Mason County Public Health Department worked with property owners to fix those systems. Partnership members plan to continue to monitor water quality and work to control and/or mitigate bacterial pollution in the future. By cleaning up the beaches, we have taken another step toward protecting Hood Canal from pollution caused by human activities.

For more information, contact Donna Simmons by phone at (360) 877-5747 or by e-mail at nana@hctc.com.

DABOB BAY NATURAL AREA PROJECTS: 2021

TRUST LAND TRANSFER AND ADDITIONAL NATURAL AREA BOUNDARY EXPANSION PROPOSED TO PROTECT RARE FORESTS

(Donna Simmons)

In August 2020, the Hood Canal Environmental Council (HCEC) joined a broad coalition of conservation organizations, citizens, and shellfish growers urging the Washington State Department of Natural Resources (DNR) to protect state forest lands within the Dabob Bay Natural Area through the Trust Land Transfer program. The coalition, spearheaded by the Northwest Watershed Institute, supports protection of the state lands within the 2016 expanded portion of the Dabob Bay Natural Area. These state lands include globally imperiled older forest types, wetlands along Lower Thorndyke Creek, and steep forested slopes along the east side of Dabob Bay. DNR's proposed Trust Land Transfer project will protect wildlife habitat, carbon sequestration, biodiversity, clean water and healthy shellfish beds.

The Dabob Bay Natural Area was established in 1984 to protect the coastal saltmarsh spits between Tarboo Bay and Dabob Bay. Since then, the DNR has recognized the priceless diversity of the larger ecosystem by expanding the Natural Area boundaries in 2009 and again in 2016. The DNR can protect state forestlands and work with willing landowners to acquire private lands. In the past decade, the DNR and partners have conserved over 4,000 acres of lands within the 10,000-acre boundary.

The DNR now proposes to permanently protect 820 acres of state forestland within the 2016 approved boundary expansion through the Trust Land Transfer process. In 2019, the state legislature funded this Trust Land Transfer process, which will compensate the state's timber trust and permanently protect and transfer the state forests into Natural Area management.

At the August public hearing in Quilcene and in public comments, DNR's Trust Land Transfer proposal received near unanimous support by more than 160 citizens, shellfish growers, conservation organizations, and local and Tribal governments. The DNR has stated that they will deliver their recommendation to the Board of Natural Resources, which could approve the transfer this year.

In addition to DNR's Trust Land Transfer proposal, HCEC joined with 13 conservation organizations and shellfish businesses in November of last year urging the DNR to make an additional expansion of the Dabob Bay Natural Area boundary to include globally imperiled forest plant associations that were recently discovered on the Toandos peninsula. The DNR has put four timber sales on hold until 2023 while discussions continue.

HCEC will continue to follow the decision-making process and report back to our members. For more information call Peter Bahls by phone at 360-385-6786 or e-mail peter@nwwatershed.org

Shoreline Master Program Update for Kitsap, Mason and Jefferson Counties (Bernadette Olson)

A Shoreline Master Program (SMP) is required by the Shoreline Management Act of 1971 for all “Shorelines of the State,” including streams with mean annual flow over 20 cubic feet per second, lakes 20 acres or larger, and all marine shorelines. The shoreline jurisdiction extends 200 feet landward of the water’s edge and includes associated wetlands, floodways, and up to 200 feet of floodplain contiguous to the floodway.

Each county has its own SMP and must update it every eight years to be consistent with new state laws and ordinances. Hood Canal is designated a “Shoreline of Statewide Significance” and all three counties that border Hood Canal (Kitsap, Mason and Jefferson) are updating their respective SMP’s. Each county provides a downloadable PDF of the current and proposed SMP. These can be easily accessed by anyone on the internet or by calling the applicable county.

All three counties are changing the language of “grandfathered” to “legal non-conforming” to describe developments that do not meet the current SMP requirements. “No net loss of ecological function” is a principle that each county follows.

Kitsap County adopted Ordinance 598-2021 on 6/28/21 for its updated SMP, which was approved by the Washington State Department of Ecology (Ecology) and became effective on 10/6/2021. Major changes are:

- Increased timeline to rebuild a development after accidental destruction from 6 months to 1 year.
- View blockage regulations are clarified.
- Vegetation conservation buffers reduction by mitigation are clarified.
- A section on “Tram” has been added.
- Standards and Regulations for beach stairs, viewing platforms and decks, and multi-use trails are clarified.

For Mason County the updated SMP was approved on 10/12/21 and is now under review by Ecology. Major changes are:

1. Raising increase in maximum height of existing bulkheads from 1 ft. to 2 ft. due to sea level rise and to protect water quality against possible failing septic systems, or septic systems that cannot be moved landward.
2. Added standards and regulations for piers and floats as requested by Washington Department of Fish and Wildlife.

Mason County favors aquaculture as “preferred use” to include geoduck aquaculture. Public comments requested more permitting restrictions and public input, especially when existing aquaculture is converted to geoduck aquaculture. So far, Mason County is sticking to its existing language where a conditional use permit is required for new geoduck aquaculture but not for a conversion from other aquaculture use.

Jefferson County’s SMP update is delayed because a matrix of comments and responses was not submitted to Ecology for review (both Kitsap and Mason County each had a matrix which summarized comments and responses to them).

Some main Jefferson County updates are:

- Nonconforming septic repairs and storm water improvements within the buffer zone will not require a shoreline variance (to encourage behind schedule repairs).
- Public comments on the SMP are now under review by the Jefferson County Planning Commission.
- Eight pages of ocean management have been added to address the Marine Spatial Plan as per Ecology’s request.
- A list of SMP bodies of water as per Ecology’s request.

PUGET SOUND KELP CONSERVATION AND RECOVERY PLAN

(Donna Simmons)

In response to concerns about significant declines of kelp throughout Puget Sound, a coalition of tribes, managing natural resource entities and other stakeholders prepared a Puget Sound Kelp Conservation and Recovery Plan (the kelp plan) in the spring of 2020. The kelp plan is intended to protect and restore bull kelp and other kelp species throughout Puget Sound, including Hood Canal. Language in the kelp plan provides a framework for coordinated research and management actions to protect and restore kelp from a number of local stressors. These include degraded water quality from pollution, nutrient loading and increased turbidity, sediment deposition, introduction of invasive species, and alteration to food web dynamics from commercial and recreational fishing. Warming ocean waters and other impacts from climate change have exacerbated the negative effects of these stressors.

Strategic goals listed in the kelp plan are:

- Understand and reduce kelp stressors;
- Deepen understanding of the value of kelp to Puget Sound ecosystems and integrate into management;
- Describe kelp distribution and trends;
- Designate kelp protected areas;
- Restore kelp forests;
- Promote awareness, engagement, and action from user groups, Tribes, the public and decision-makers.

The kelp plan stresses the need for a coordinated effort to reverse the downward trend in kelp species.

One of the primary obstacles to success may be that the kelp distribution and drivers of declines in Puget Sound are still not well understood. HCEC remains concerned about the lack of research and mapping in Hood Canal. Without historical baseline information and knowledge about where kelp forests were located in the past, it is difficult to know how much they have declined or been lost.

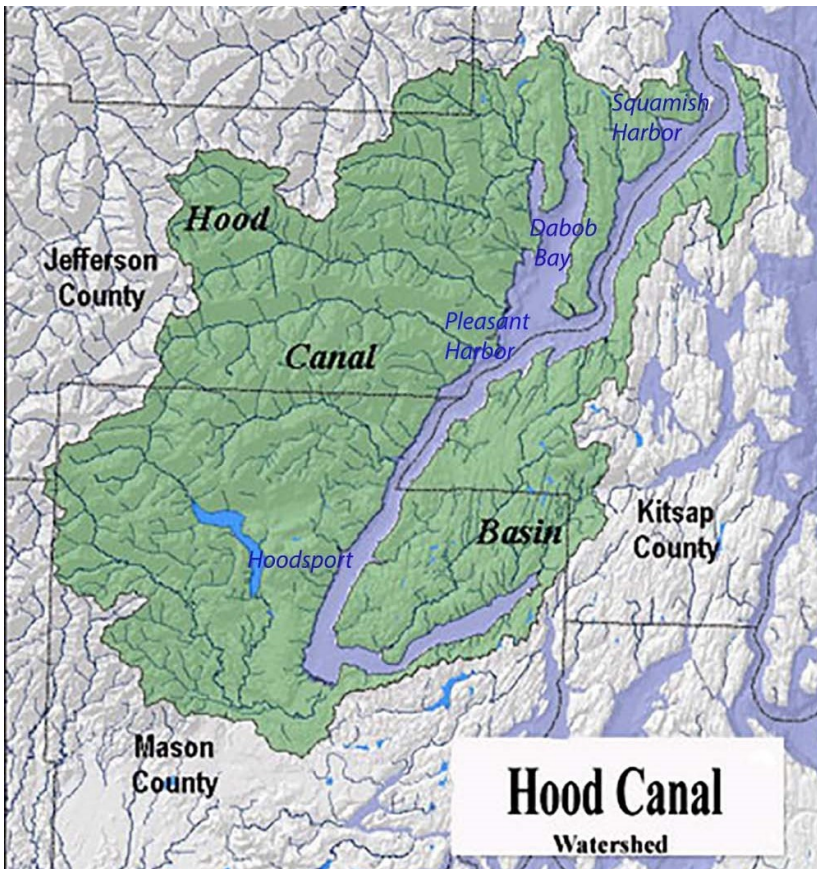
Healthy kelp beds are important to the overall health of Puget Sound. Among other benefits, they provide critical refuge, feeding, and nursery grounds for forage fish, rockfish and salmon, as well as fueling food webs that support healthy bird and marine mammal populations. The development of the kelp plan document is an important step in the right direction. HCEC will follow the work of the coalition as the partnership implements the kelp plan’s recommendations.

Copies of the Puget Sound Kelp Conservation and Recovery Plan can be obtained from the Washington State Department of Natural Resources, and here: <https://nwstraits.org/our-work/kelp/>

Hood Canal Environmental Council

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