

# The Current Regulatory Landscape for *Zostera japonica* in Washington State

Listed below are some of the state and federal statutes and regulations that address eelgrass, and notes on how they address *Zostera japonica* and who administers the law. This list is designed to illustrate the complex statutory and regulatory landscape in Washington only, and is not comprehensive.

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## STATE

WACs are Washington Administrative Codes or agency rules.

RCWs are Revised Codes of Washington or state laws.

### WA Dept. of Natural Resources

DNR manages state-owned aquatic lands in conformance with constitutional and statutory requirements. DNR is mandated to provide a balance of public benefits for all citizens of the state including encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; and generating revenue when consistent with other benefits (RCW 79.105.030 and WAC 332-30).

In exercising leasing authority, DNR is directed to consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to leasing, and withhold or protect from leasing lands which it finds to have significant natural values (RCW 79.105.210(3)). The WA Legislature recognized that marine aquatic plants have inherent value and provide essential habitat (RCW 79.135.400). Personal harvest limits and commercial harvesting prohibitions of aquatic plants are defined on state-owned and private aquatic lands (RCW 79.135.41) and both land managers may seek penalties for violations of harvest restrictions including restitution and/or repair of damages (RCW 79.135.420).

The DNR, as with all state agencies, are explicitly directed in law to control the spread of noxious weeds through integrated pest management practices (RCW 17.10.145).

### WA Dept. of Fish and Wildlife

**WDFW Priority Habitats 'Puget Sound Nearshore' (WDFW 2010).** *Z. japonica* beds are not defined as priority habitat.

### **Hydraulic Code Rules: WAC 220-110-250 Saltwater habitats of special concern**

The HPA rule is being revised, and the draft does not include *Z. japonica* in the definition of "seagrass". Seagrass will replace "eelgrass" which is defined as *Zostera* spp. [all species from the genus *Zostera*] as a saltwater habitat of special concern. "Seagrass" means *Zostera marina*, *Ruppia maritima* and *Phyllospadix* species.

## WA State Dept. of Ecology

### **Shoreline Planning and Permitting (Ch. 90.58 RCW and Ch. 173-26, Part III WAC)**

Ecology's Shorelands and Environmental Assistance Program administers the Shoreline Management Act (Ch. 90.58 RCW) in partnership with local governments. Local Shoreline Master Programs must protect shoreline ecological functions, provide for the public's enjoyment of public shores and waters, and plan for and foster all reasonable and appropriate uses. The programs must be approved by Ecology as being consistent with the Shoreline Management Act and its regulations. Currently, these regulations identify eelgrass as a critical habitat and do not differentiate between native and non-native species.

Aquaculture use standards (WAC 173-26-241(3)(b)(i)(C)) specifically state that "Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass...."

### **Water Quality Permitting**

Ecology's Water Quality and SEA (Shorelands and Environmental Assistance) Programs administer the Water Pollution Control Act (Ch. 90.48 RCW). Under this authority, Ecology must balance competing beneficial uses, including aquatic life use, shellfish harvesting, recreation, wildlife habitat and harvesting, commerce and navigation, boating, and aesthetics. Per RCW 90.48.445, the program must not issue permits that burden noxious weed control efforts.

Due to the listing of *Zostera japonica* as a noxious weed, and because of the economic impact that it is having on manila clam growing operations in Willapa Bay, Ecology's Water Quality Program is developing a NPDES permit that will allow for the control of japonica on commercial clam beds using a low toxicity herbicide. Additional opportunities for public comment on the permit are estimated to occur in fall 2013.

## WA State Dept. of Agriculture

### **Washington State Noxious Weed Control Board (WAC 16-750. RCW 17.10)**

The state weed board is responsible for developing the state annual noxious weed list. Their decisions define eradication or control actions for public and private landowners. In January 2012, the Board listed *Z. japonica* as a Class C noxious weed on commercially managed shellfish beds only, prompting Ecology to begin work on a permit for the use of imazamox. In January 2013, the Board removed the modified language and listed *Z. japonica* as a Class C noxious weed statewide. The Board has been petitioned by Thurston County Weed Board and the Coalition to Protect Puget Sound Habitat to reconsider their decision for the 2014 noxious weed listing and will take up the issue at their public hearing and board meeting in November 2013. The Class C listing does not require landowners to control *Z. japonica*. No county weed board has required control of *Z. japonica* at the local level.

## **Office of Recreation and Conservation**

### **Washington Invasive Species Council (RCW 79A.25.300 (307))**

The Invasive Species Council is responsible for writing and overseeing implementation of the state's invasive species management plan. Council members represent state and federal agency, local government, tribal and environmental interests.

## **WA State Dept. of Commerce**

### **Growth Management Act and Fish and Wildlife Habitat Conservation Areas**

The GMA requires cities and counties across the state to designate and protect fish and wildlife habitat conservation areas in their critical areas ordinances. Fish and wildlife habitat conservation is the management of land for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. The designation of fish and wildlife habitat conservation areas should include "kelp and eelgrass beds" along with:

- Areas with which endangered, threatened, and sensitive species have a primary association.
- Habitats and species of local importance.
- Commercial and recreational shellfish areas.
- Mudflats and marshes.
- Herring, smelt and other forage fish spawning areas.
- Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat.
- Waters of the state.
- Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
- State natural area preserves and natural resource conservation areas.
- Areas critical for habitat connectivity. See <http://apps.leg.wa.gov/WAC/default.aspx?cite=365-190-130>

## **Puget Sound Partnership (Chapters 90.71 and 77.85.090 RCW)**

### **Puget Sound Action Agenda**

The Partnership is non-regulatory. Its mission is to protect and restore Puget Sound by 2020. It is also the salmon recovery organization for Puget Sound. In 2012, the Partnership and partners prepared an Action Agenda that charts the course to recovery of Puget Sound. The law also directs the Partnership to hold implementers accountable for delivering results.

One of the Action Agenda's priorities is to stop destroying habitat, protect that's left and restore critical habitat that we have lost. To stay on track, the Partnership adopted 18 recovery targets to measure progress towards a healthy Puget Sound.

One target is to achieve, by 2020, a 20% increase in the area of native eelgrass relative to the 2000-2008 baseline period. Key strategies are to permanently protect priority nearshore physical and ecological processes and habitat; develop and implement a coordinated strategy for eelgrass recovery; and effectively prevent, plan for and respond to oil spills. As an interim measure, WDNR will develop the coordinated strategy by September 2014 to accomplish the eelgrass recovery target.

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**FEDERAL**

**NOAA/NMFS and US ACE**

NOAA/NMFS do not have an official written policy regarding *Z. japonica*. However, the Pacific Coast Groundfish Fishery Management Plan does contain language about the species in its definition of Seagrass Habitat Area of Particular Concern. Based on Executive Order 13112 that formed the National Invasive Species Council, NMFS does not promote the spread of invasive plants.

The Army Corps of Engineers complies with this in their administration of CWA Section 404 and Rivers and Harbors Act of 1899 Section 10 authorizations.