

# APPENDIX 1: Overview of state and federal aquaculture requirements



Note: This is an updated version of Appendix 1 of the [SMP Handbook, Chapter 16 Aquaculture](#) published in December 2015. This table is not comprehensive and should be used for general information purposes only.

| PURPOSE   | AGENCY                           | REQUIREMENT  | STATUTE/WAC/RESOURCES  | APPLICABILITY TO AQUACULTURE                   |
|---|----------------------------------|--|--|--|
| <b>STATE</b>  |                                  |  |  |  |
| <p>Safeguard the public from consuming unsafe, adulterated, or misbranded food.</p> <p>Promote the private sector aquaculture industry.</p> | WA Dept. of Agriculture (AGR)    | <p>Processing plant license.</p> <p>Product identification requirements.</p> | <p><a href="#">Chapter 69.07 RCW</a>: Washington Food Processing Act</p> <p><a href="#">WAC 16-603-010</a>: Aquaculture Identification Requirements</p> <p><a href="#">Chapter 15.85 RCW</a>: Aquaculture Marketing</p>  | All commercial aquaculture.                    |
| Control noxious and invasive species.   | AGR – Noxious Weed Control Board | State noxious weed list compliance.  | <p><a href="#">Chapter 17.10 RCW</a>: Noxious Weeds – Control Boards</p> <p><a href="#">Chapter 16-750 WAC</a>: State Noxious Weed List</p> <p><a href="#">Chapter 16-752 WAC</a>: Noxious Weed Seed and Plant Quarantine</p> <p><a href="http://www.nwcb.wa.gov/ab_weedlaws.htm">http://www.nwcb.wa.gov/ab_weedlaws.htm</a></p> <p>Noxious Weed Control Board and Noxious Weed List</p> <p><a href="http://www.nwcb.wa.gov/default.asp">http://www.nwcb.wa.gov/default.asp</a></p> <p>County Boards implement state decisions:</p> <p><a href="http://www.nwcb.wa.gov/nwcb_county.htm">http://www.nwcb.wa.gov/nwcb_county.htm</a></p> | All commercial and non-commercial aquaculture. |

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|---|--------------------------------------|---|--|---|
| Protect native and important non-native species from pathogens, invasive species.                           | WA Dept. of Fish and Wildlife (WDFW) |   | <a href="#">Chapter 220-76 WAC</a> : Aquaculture<br>See specific references, below.  | All aquaculture, with emphasis on marine finfish aquaculture. |
| Authorize an individual to commercially manage and farm cultured aquatic products on privately owned lands. | WDFW                                 | Aquatic farm permit and registration.<br><br>Annual renewal required. | <a href="#">RCW 77.115.040</a> : Registration of aquatic farmers – fee<br><br><a href="#">WAC 220-76-010</a> : Aquatic farm registration required  | All commercial finfish and shellfish.                         |
| Provide for disease control and response.   | WDFW                                 | Disease, WDFW’s authority.  | <a href="#">Chapter 75.58 RCW</a> : Aquaculture disease control<br><br><a href="#">WAC 220-76-030</a> : Aquaculture – Disease – Control  | All food fish, shellfish and aquatic animals.                 |
| Protect native and important non-native fish species from pathogens, invasive species.                      | WDFW                                 | Finfish aquaculture permit (transport permit).                        | <a href="#">WAC 220-76-100</a> : Marine finfish aquaculture – Approval permit for marine finfish aquaculture<br><br>See: Finfish Transport Permit<br><a href="http://wdfw.wa.gov/licensing/fish_transport/transport_app.html">http://wdfw.wa.gov/licensing/fish_transport/transport_app.html</a> | All commercial and non-commercial finfish.                    |

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| Provide for escape control and response.  | WDFW   | Finfish aquaculture escape prevention, reporting and recapture. | <p><a href="#">WAC 220-76-110</a>: Marine finfish aquaculture – Escape prevention plan required</p> <p><a href="#">WAC 220-76-120</a>: Marine finfish aquaculture – Escape reporting and recapture plan required</p>   | All marine finfish aquaculture permittees.     |
| Provide WDFW authority to inspect facilities at least annually.                                   | WDFW   | Inspect facilities.   | <a href="#">WAC 220-76-130</a> : Aquaculture facility inspection authority – Marine finfish aquaculture.   | All commercial and non-commercial finfish.     |
| Promote the health, productivity and well-being of aquaculture products and wild stock fisheries. | WDFW   | Disease controls, import and transfer of species.               | <p>See: Shellfish permit <a href="#">WAC 220-72-076</a> and <a href="http://wdfw.wa.gov/licensing/shellfish_import_transfer/">http://wdfw.wa.gov/licensing/shellfish_import_transfer/</a></p> <p>Fish permit <a href="http://wdfw.wa.gov/licensing/fish_transport/transport_app.html">http://wdfw.wa.gov/licensing/fish_transport/transport_app.html</a></p> | All commercial and non-commercial aquaculture. |

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|---|-------------------------------|---|--|--|
| Allow collection of fish, shellfish, or wildlife or their nests and/or eggs for the purpose of research or display.   | WDFW                          | Scientific collection permits.              | <p><a href="#">RCW 77-32-240</a>: Scientific permit – Procedures – Penalties – Fees</p> <p><a href="#">WAC 220-20-045</a>: Scientific collection permits</p>   | Research and experimental projects (not for the general public). |
| Ensure new commercial geoduck aquaculture is consistent with state water quality standards and resource protection requirements. May require mitigation, monitoring, operation and maintenance. | WA Dept. of Ecology (Ecology) | Individual 401 Water Quality Certification. | <p>Federal Water Pollution Control Act<br/>Clean Water Act Certification, Section 401<br/><a href="http://water.epa.gov/lawsregs/guidance/wetlands/sec401.cfm">http://water.epa.gov/lawsregs/guidance/wetlands/sec401.cfm</a></p> <p>Certification acquired through JARPA<br/><a href="http://www.epermitting.wa.gov/site/alias_resourcecenter/9978/default.aspx">http://www.epermitting.wa.gov/site/alias_resourcecenter/9978/default.aspx</a></p> <p>Also see:<br/>Governor’s Office of Regulatory Innovation and Assistance (ORIA) – Section 401 Water Quality Certification<br/><a href="http://apps.oria.wa.gov/permithandbook/permitdetail.asp?id=43">http://apps.oria.wa.gov/permithandbook/permitdetail.asp?id=43</a></p> <p>WA Dept. of Ecology <a href="http://www.ecy.wa.gov/programs/sea/fed-permit/">http://www.ecy.wa.gov/programs/sea/fed-permit/</a></p> | New commercial geoduck farms.                                    |

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|--|---------|--|--|--|
| Provide state oversight of pollution discharge into state waters; sets limits to ensure protection of the receiving water. | Ecology | Individual - National Pollutant Discharge Elimination System (NPDES) Permit. | U.S. EPA – NPDES Permit Program Basics<br><a href="http://water.epa.gov/polwaste/npdes/Clean-Water-Act.cfm">http://water.epa.gov/polwaste/npdes/Clean-Water-Act.cfm</a><br><br>Also see:<br>Permit and Reporting Information System (PARIS) for current net pen permits<br><a href="http://www.ecy.wa.gov/programs/wq/permits/paris/paris.html">http://www.ecy.wa.gov/programs/wq/permits/paris/paris.html</a> | Finfish facilities with over 20,000 lbs.         |
| Provide state oversight of pollution discharge into state waters; set limits to ensure protection of the receiving water.  | Ecology | General - National Pollutant Discharge Elimination System (NPDES) Permit.    | U.S. EPA – NPDES Permit Program Basics<br><a href="http://water.epa.gov/polwaste/npdes/basics/index.cfm">http://water.epa.gov/polwaste/npdes/basics/index.cfm</a><br><br>Also see:<br>Ecology’s “Focus on NPDES Permits – NPDES Permits 101”<br><a href="https://fortress.wa.gov/ecy/publications/publications/0510008.pdf">https://fortress.wa.gov/ecy/publications/publications/0510008.pdf</a>              | Aquatic herbicide application on shellfish beds. |

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|---|---------|--|--|---|
| Provide state oversight of pollution discharge into state waters; set limits to ensure protection of the receiving water.         | Ecology | State Waste Discharge General Permit.    | <a href="#">Chapter 173-216 WAC</a> : State Waste Discharge Permit Program<br><br>Also see:<br>Governor’s Office of Regulatory Innovation and Assistance (ORIA)<br><a href="http://apps.oria.wa.gov/permithandbook/permitdetail.asp?id=136">http://apps.oria.wa.gov/permithandbook/permitdetail.asp?id=136</a> | Aquatic herbicide application on shellfish beds.  |
| Provide opportunity for the public, local governments, tribes, and state agencies to review federal actions affecting WA’s coast. | Ecology | Coastal Zone Management Act Consistency. | Federal consistency:<br><a href="http://www.ecy.wa.gov/programs/sea/czm/fed-consist.html">http://www.ecy.wa.gov/programs/sea/czm/fed-consist.html</a>  | Finfish and shellfish in the 15 coastal counties. |

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|--|-------------------------------------|---|---|--|
| Provide minimum performance standards for growing, harvesting, processing, packing, storage, transporting and selling shellfish for human consumption. | WA Dept. of Health (Health)         | Operator's License, Harvest Site Certificate, Export Certificate. | <p><a href="#">Chapter 69.30 RCW</a>: Sanitary Control of Shellfish<br/> <a href="#">Chapter 246-282 WAC</a>: Sanitary Control of Shellfish</p> <p>National Shellfish Sanitation Program (NSSP): Guide for the Control of Molluscan Shellfish, 2013 Revision<br/> <a href="http://www.fda.gov/downloads/Food/GuidanceRegulation/FederalStateFoodPrograms/UCM415522.pdf">http://www.fda.gov/downloads/Food/GuidanceRegulation/FederalStateFoodPrograms/UCM415522.pdf</a></p> <p>Also see:<br/> <a href="http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/CommercialShellfish">http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/CommercialShellfish</a></p> | Commercial shellfish.  |
| Provide a balance of public benefits for all citizens of the state when administering its responsibilities for state owned aquatic lands.              | WA Dept. of Natural Resources (DNR) | Aquatic Use Permit and Aquatic Lands Lease.                       | <p><a href="#">Chapter 79.105 RCW</a>: Aquatic Lands – General</p> <p>Aquatic use authorization acquired through JARPA:<br/> <a href="http://apps.oria.wa.gov/permithandbook/permitdetail/31">http://apps.oria.wa.gov/permithandbook/permitdetail/31</a></p> <p>Also see:<br/>           Aquatic Leasing and Land Transactions<br/> <a href="http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions">http://www.dnr.wa.gov/programs-and-services/aquatics/leasing-and-land-transactions</a></p>   | Any work on state-owned aquatic lands including finfish net pens and shellfish; harvest of wild geoduck fishery. |

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|---|---------------------------------------|---|---|---|
| <b>FEDERAL</b>                                  |                                       |   |   |   |
| Preserve navigation of U.S. waters.             | U.S. Army Corps of Engineers (Corps)  | Section 10 Rivers and Harbors Act permit. | Rivers and Harbors Appropriation Act of 1899, Section 10: Construction of structures or to excavate, fill, or alter/modify course, location, condition of any navigable water of the U.S. <a href="http://www.sam.usace.army.mil/Missions/Regulatory/RegulatoryFAQ/RiversandHarborsAppropriationActof1899.aspx">http://www.sam.usace.army.mil/Missions/Regulatory/RegulatoryFAQ/RiversandHarborsAppropriationActof1899.aspx</a> | Any structures or work in U.S. navigable waters, such as net pens, shellfish floats/barges. |
| Regulate discharge of dredged or fill material. | Corps                                 | Section 404 Clean Water Act permit.       | Clean Water Act, 33 U.S.C 1251, Section 404 <a href="https://www.epa.gov/cwa-404/clean-water-act-section-404">https://www.epa.gov/cwa-404/clean-water-act-section-404</a>   | Any discharge into U.S. navigable waters.   |
| Protect and recover species.                    | NOAA Fisheries                        | ESA Section 7 consultation.               | Endangered Species Act, Section 7 <a href="http://www.nmfs.noaa.gov/pr/laws/esa/text.htm#section7">http://www.nmfs.noaa.gov/pr/laws/esa/text.htm#section7</a><br><br>Also see: NOAA Fisheries – Consulting with Federal Agencies (ESA Section 7) <a href="http://www.nmfs.noaa.gov/pr/consultation/">http://www.nmfs.noaa.gov/pr/consultation/</a>  | Aquaculture that requires a permit from the Corps and that triggers ESA §7 consultation.    |
| Protect and recover endangered species.         | U.S. Fish and Wildlife Service (USFW) | ESA Section 7 consultation.               | See NOAA Fisheries, above   | Aquaculture that requires a permit from the Corps.  |

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|------------------------------|-------------------------|---|---|---|
| Protect maritime navigation. | U.S. Coast Guard (USCG) | Authorization - Compliance with marking of structures; Private Aids to Navigation (PATON) Permit. | <p>Title 33 Navigation and Navigable Waters (33 CFR)<br/>                     Part 64: Marking of Structures, Sunken Vessels and Other Obstructions (see Subpart C – Structures)<br/> <a href="http://www.uscg.mil/d8/waterways/docs/2008OCT14_PATON_33CFRPart64.pdf">http://www.uscg.mil/d8/waterways/docs/2008OCT14_PATON_33CFRPart64.pdf</a></p> <p>Part 66: Private Aids to Navigation, subparts 66.01-5<br/> <a href="http://www.uscgaan.com/cd/paton1/NS-PN02%2033%20CFR-Code%20of%20Federal%20Regulations%20-%20Private%20Aids%20to%20Navigation%20(2-1-2011).pdf">http://www.uscgaan.com/cd/paton1/NS-PN02%2033%20CFR-Code%20of%20Federal%20Regulations%20-%20Private%20Aids%20to%20Navigation%20(2-1-2011).pdf</a></p> | All commercial and non-commercial structures. |

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|---|---|--|---|---|
| <b>TRIBAL</b>   |   |  |   |   |
| Protect Tribal rights to deep water shellfish and on certain private tidelands. | Individual Tribes and Northwest Indian Fisheries Commission (NWIFC) | Tribal harvest agreement.                                    | <p>Rafeedie Decision: U.S. v. Washington, 873 F. Supp. 1422 W.D. WA 1994 <a href="http://law.justia.com/cases/federal/district-courts/FSupp/873/1422/1466184/">http://law.justia.com/cases/federal/district-courts/FSupp/873/1422/1466184/</a></p> <p>NWIFC: Commercial Shellfish Growers Settlement <a href="http://nwifc.org/about-us/shellfish/commercial-shellfish-growers-settlement/">http://nwifc.org/about-us/shellfish/commercial-shellfish-growers-settlement/</a></p> <p>Commercial Shellfish Growers Settlement: United States v. State of Washington, Nos. 96- 35014, 35082, 35142, 35196, 35200, 35223, U.S. Ninth Circuit Court, 2007 <a href="http://caselaw.findlaw.com/us-9th-circuit/1222101.html">http://caselaw.findlaw.com/us-9th-circuit/1222101.html</a></p> <p>Also see: Tribal Sharing of Shellfish <a href="http://www.dnr.wa.gov/programs-and-services/aquatics/shellfish/aquaculture">http://www.dnr.wa.gov/programs-and-services/aquatics/shellfish/aquaculture</a></p> | Any work affecting wild shellfish.      |
| Protect tribal cultural and natural resources.                                  |   | Corps notification regarding natural and cultural resources. | <p>Natural: Tribes may comment on proposals regarding habitat and treaty-entrusted Usual and Accustomed (U&amp;A) areas. Any comments must be addressed by the Corps prior to issuing a permit.</p> <p>Cultural: Tribes may provide information on potential affect to historic properties.</p>   | Corp permits for shellfish and finfish. |