

# 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 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.  Annual renewal required.	<a href="#">RCW 77.115.040</a> : Registration of aquatic farmers – fee  <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  <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  See: Finfish Transport Permit <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 Clean Water Act Certification, Section 401 <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 <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: Governor’s Office of Regulatory Innovation and Assistance (ORIA) – Section 401 Water Quality Certification <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 <a href="http://water.epa.gov/polwaste/npdes/Clean-Water-Act.cfm">http://water.epa.gov/polwaste/npdes/Clean-Water-Act.cfm</a>  Also see: Permit and Reporting Information System (PARIS) for current net pen permits <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 <a href="http://water.epa.gov/polwaste/npdes/basics/index.cfm">http://water.epa.gov/polwaste/npdes/basics/index.cfm</a>  Also see: Ecology’s “Focus on NPDES Permits – NPDES Permits 101” <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  Also see: Governor’s Office of Regulatory Innovation and Assistance (ORIA) <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: <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  <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  <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:  <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:  <a href="http://apps.oria.wa.gov/permithandbook/permitdetail/31">http://apps.oria.wa.gov/permithandbook/permitdetail/31</a></p> <p>Also see:                      Aquatic Leasing and Land Transactions  <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>  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.	Title 33 Navigation and Navigable Waters (33 CFR) Part 64: Marking of Structures, Sunken Vessels and Other Obstructions (see Subpart C – Structures) <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>  Part 66: Private Aids to Navigation, subparts 66.01-5 <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>	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.