

Chapter 220-88D WAC

COMMERCIAL SHELLFISH FISHERY ON NONSTATE LANDS

WAC

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WAC 220-88D-010 Emerging commercial fishery—Commercial wild clams, mussels, and oyster shellfish fishery on nonstate tidelands and bedlands. The purpose of this chapter is to license and provide catch reporting requirements for the commercial harvest of wild clams, mussels, and oysters on nonstate lands in an emerging commercial fishery. For purposes of this chapter, "wild" or "wild stocks of" clams, mussels, and oysters means shellfish identified in WAC 220-88D-050. That rule distinguishes between the harvest of wild shellfish stocks subject to this chapter and private sector cultured aquatic products not subject to this chapter. These terms, and all provisions of this chapter pertaining to "wild" or "wild stocks of" clams, mussels, and oysters, or to "private sector cultured aquatic product," are for state resource management, catch reporting, and enforcement purposes only. They are neither intended to be, nor should be characterized as, any determination or evidence of whether "wild" or "wild stocks of" clams, mussels, and oysters (or any portion thereof) are naturally occurring, are subject to treaty sharing, or are part of natural or artificial shellfish beds as those concepts and terms are used and defined in *United States v. Washington*, 157 F.3d 630 (9th Cir. 1998), the Shellfish Implementation Plan of *United States v. Washington*, C70-9213, Subproceeding 89-3 (W.D. Wash, rev. April 8, 2002), and other applicable court orders relating to shellfish.

[Statutory Authority: RCW 77.12.047. 06-04-015 (Order 06-08), § 220-88D-010, filed 1/22/06, effective 2/22/06.]

WAC 220-88D-020 Designation of the commercial wild clams, mussels, and oyster harvest on nonstate lands as an emerging commercial fishery. The director designates the commercial harvest of wild clams, mussels, and oysters from nonstate tidelands and bedlands as an emerging commercial fishery for which use of a vessel is not required.

[Statutory Authority: RCW 77.12.047. 06-04-015 (Order 06-08), § 220-88D-020, filed 1/22/06, effective 2/22/06.]

(1/22/06)

WAC 220-88D-030 Eligibility to participate in the nonstate lands commercial wild clams, mussels, and oyster shellfish fishery. (1) Persons having an ownership interest or contractual right to take shellfish from nonstate owned tidelands or bedlands and who intend to commercially harvest wild stocks of clams, mussels, or oysters are eligible to obtain a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit and to purchase an emerging commercial fishery license. Both the permit and the license are required in order to commercially harvest under this chapter.

(2) The trial fishery permit must be obtained for each site to be harvested. Each harvest site description will be the same as that used for obtaining certification of approval issued by the state department of health. The trial fishery permit must be renewed annually at the same time the site is recertified by the state department of health.

(3) The commercial harvester is covered by a single license for harvesting activity undertaken at any permitted site. The license is effective for one year and must be renewed annually.

(4) "Commercial harvest" of wild clams, mussels, and oysters includes both harvest for sale or barter and harvest of the presumptive commercial quantities defined in RCW 69.30.010.

[Statutory Authority: RCW 77.12.047. 06-04-015 (Order 06-08), § 220-88D-030, filed 1/22/06, effective 2/22/06.]

WAC 220-88D-040 Nonstate lands commercial wild clams, mussels, and oysters—Application requirements—Notification requirements—Incidental take prohibited. (1) A person making application for a wild clam, mussel, and oyster trial fishery permit must provide the following for each site:

(a) Documentation of ownership interest in or contractual right to harvest from the lands from which the wild clams, mussels, or oysters are to be harvested.

(b) A harvest site certificate issued by the state department of health for the lands from which the wild clams, mussels, or oysters are to be harvested.

(2) A copy of the application for a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit will be provided to the affected tribes by the department.

(3) If a person registers nonstate lands as an aquatic farm, a copy of the aquatic farm registration will be provided to the affected tribes by the department.

(4) Prior to conducting harvest activities under a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit, the permit holder must fulfill the following requirements:

(a) Provide a copy of the notice required to be given to affected tribes under the Stipulation and Order Amending

Shellfish Implementation Plan, *United States v. Washington*, Case No. C70-9214, W.D.Wa., if such notice is required.

(b) Clearly and visibly mark with stakes and/or buoys the property boundaries of the nonstate lands to be harvested, using standard marking methods.

(c) Failure to comply with the requirements of this subsection invalidates the emerging commercial fishery license issued for the harvest of wild clams, mussels, and oysters.

(5) A nonstate lands commercial wild clam, mussel, and oyster trial fishery permit allows harvest only of clams, mussels, and oysters, and it is unlawful to harvest any other shellfish or any fin fish.

(6) It is unlawful to commercially harvest wild clams, mussels, or oysters without a valid emerging commercial fishery license and a nonstate lands commercial wild clam, mussel, and oyster trial fishery permit valid for the lands from which harvest is occurring.

[Statutory Authority: RCW 77.12.047. 06-04-015 (Order 06-08), § 220-88D-040, filed 1/22/06, effective 2/22/06.]

WAC 220-88D-050 Identification of wild stocks of clams, mussels, or oysters—Reporting requirements for the commercial harvest of wild clams, mussels, or oysters from nonstate aquatic lands—Conversion to private sector cultured aquatic products. (1) Based upon RCW 15.85.020(3), the following shellfish are distinguished from private sector cultured aquatic products and are identified as wild stocks that are regulated under this chapter:

(a) All clams, mussels, or oysters that were not propagated, farmed, or cultivated under the active supervision and management of a private sector aquatic farmer; and

(b) All clams, mussels, or oysters that were set naturally prior to the time an aquatic farm was established and placed under the active supervision and management of a private sector aquatic farmer.

(2) Examples of harvested wild stocks of shellfish include, but are not limited to, the following:

(a) Any harvest of clams, mussels, or oysters from a site that is not registered as an aquatic farm unless there is some ability to demonstrate that the shellfish was propagated, farmed, or cultivated under the active supervision of an aquatic farmer;

(b) Any harvest of clams, mussels, or oysters that were naturally set prior to the time an aquatic farm was established at the site and placed under the active supervision and management of an aquatic farmer; and

(c) Shellfish that is harvested from a newly registered aquatic farm during a period when the shellfish is presumed to come from a wild stock as specified in subsection (5) of this section.

(3) The sale of wild stocks of clams, mussels, and oysters must be reported through the use of shellfish receiving tickets. The failure to report the sale of shellfish with a fish receiving ticket when it is required is unlawful activity and constitutes a violation of WAC 220-69-215 and RCW 77.15.-630. Any person selling wild stocks of clams, mussels, and oysters must sell the harvest to a licensed Washington wholesale fish dealer, who is then required to complete the fish ticket. Alternatively, if the person harvesting the clams, mussels, or oysters sells this shellfish at retail or arranges for the harvested shellfish to be transported out-of-state, they must

be a licensed wholesale dealer and must complete a fish receiving ticket for each day's sales or for each shipment.

(4) Wild stock sales may not be reported on aquatic farm quarterly production reports. Only private sector cultured aquatic products may be reported on quarterly production reports.

(5) The following shellfish are presumed to be wild shellfish that are subject to these regulations:

(a) All mussels, oysters, and clams other than geoducks that are commercially harvested from the nonstate lands within the first twelve months after a complete application for the aquatic farm registration is filed; and

(b) All geoducks commercially harvested from the nonstate lands within the first thirty-six months after a complete application for the aquatic farm registration is filed.

The presumption that shellfish harvested from a newly registered aquatic farm during these time periods are from wild stocks may be overcome by a showing that the harvested shellfish were actually propagated, farmed, or cultivated under the active supervision of an aquatic farmer. After twelve or thirty-six months, respectively, all shellfish produced from a registered aquatic farm will be presumed to be private sector cultured aquatic products, and must be reported on quarterly aquatic farm reports. If a person does not commercially harvest mussels, oysters, or clams other than geoducks for the first twelve months after the aquatic farm registration, or does not commercially harvest geoducks for the first thirty-six months after registration, there is no requirement to obtain an emerging commercial fishery license or trial fishery permit.

[Statutory Authority: RCW 77.12.047. 06-04-015 (Order 06-08), § 220-88D-050, filed 1/22/06, effective 2/22/06.]