

Chapter 332-30 WAC

AQUATIC LAND MANAGEMENT

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-30-112	Establishment of new areas for navigation and commerce outside of harbor areas. [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-112, filed 7/3/80.] Repealed by WSR 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-118	Tidelands, shorelands and beds of navigable waters. [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-118, filed 7/3/80.] Repealed by WSR 00-19-001, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.
332-30-121	Aquatic land use classes (excluding harbor areas). [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-121, filed 7/3/80.] Repealed by WSR 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-124	Aquatic land use authorization. [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-124, filed 7/3/80.] Repealed by WSR 84-23-014 (Resolution No. 470), filed 11/9/84. Statutory Authority: 1984 c 221 and RCW 79.90.540.
332-30-130	Public use. [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-130, filed 7/3/80.] Repealed by WSR 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-133	Environmental concerns. [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-133, filed 7/3/80.] Repealed by WSR 85-22-066 (Resolution

No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-134 Aquatic land environmental protection. [Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-134, filed 11/5/85.] Repealed by WSR 00-19-002, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-136 Houseboats. [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-136, filed 7/3/80.] Repealed by WSR 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-142 Piers. [Statutory Authority: RCW 43.30.150. WSR 83-02-055 (Order 389, Resolution No. 403), § 332-30-142, filed 1/4/83; WSR 80-09-005 (Order 343), § 332-30-142, filed 7/3/80.] Repealed by WSR 00-19-003, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-154 Marine aquatic plant removal (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-154, filed 7/3/80.] Repealed by WSR 00-19-004, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-160 Renewable resources (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-160, filed 7/3/80.] Repealed by WSR 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-161 Aquaculture. [Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-161, filed 11/5/85.] Repealed by WSR 00-19-005, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-169 Artificial reefs (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-169, filed 7/3/80.] Repealed by WSR 00-19-006, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

WAC 332-30-100 Introduction. Subsection (2)(e) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). State-owned aquatic lands include approximately 1,300 miles of tidelands, 6,700 acres of constitutionally established harbor areas and all of the submerged land below extreme low tide which amounts to some 2,000 square miles of marine beds of navigable waters and an undetermined amount of fresh water shoreland and bed. These lands are managed as a public trust and provide a rich land base for a variety of recreational, economic and natural process activities. Management concepts, philosophies, and programs for state-owned aquatic lands should be consistent with this responsibility to the public.

These lands are "a finite natural resource of great value and an irreplaceable public heritage" and will be managed to

"provide a balance of public benefits for all citizens of the state." (RCW 79.105.010, 79.105.020, and 79.105.030)

(1) **Management goals.** Management of state-owned aquatic lands will strive to:

- (a) Foster water-dependent uses;
- (b) Ensure environmental protection;
- (c) Encourage direct public use and access;
- (d) Promote production on a continuing basis of renewable resources;
- (e) Allow suitable state aquatic lands to be used for mineral and material production; and
- (f) Generate income from use of aquatic lands in a manner consistent with the above goals.

(2) **Management methods.** To achieve the above, state-owned aquatic lands will be managed particularly to promote uses and protect resources of statewide value.

(a) Planning will be used to prevent conflicts and mitigate adverse effects of proposed activities involving resources and aquatic land uses of statewide value. Mitigation shall be provided for as set forth in WAC 332-30-107(6).

(b) Areas having unique suitability for uses of statewide value or containing resources of statewide value may be managed for these special purposes. Harbor areas and scientific reserves are examples. Unique use requirements or priorities for these areas may supersede the need for mitigation.

(c) Special management programs may be developed for those resources and activities having statewide value. Based on the needs of each case, programs may prescribe special management procedures or standards such as lease auctions, resource inventory, shorter lease terms, use preferences, operating requirements, bonding, or environmental protection standards.

(d) Water-dependent uses shall be given a preferential lease rate in accordance with RCW 79.105.240. Fees for non-water-dependent aquatic land uses will be based on fair market value.

(e) Research and development may be conducted to enhance production of renewable resources.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-100, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.-105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-100, filed 11/5/85. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-100, filed 7/3/80.]

WAC 332-30-103 Purpose and applicability. (1) This chapter applies to all state-owned aquatic lands. Except when specifically exempted, this chapter applies to aquatic lands covered under management agreements with port districts (WAC 332-30-114).

(2) These regulations do not supersede laws and regulations administered by other governmental agencies covering activities falling under their jurisdiction on these same lands.

(3) These regulations contain performance standards as well as operational procedures to be used in lease management, land use planning and development actions by the department and port districts. These regulations shall apply each to the department and to the port districts, when such districts manage aquatic lands as the result of management agreements, and neither entity shall impose management

control over the other under these regulations except as provided for in such management agreements.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-103, filed 11/5/85. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-103, filed 7/3/80.]

WAC 332-30-106 Definitions. All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Anniversary date" means the month and day of the start date of an authorization instrument unless otherwise specified in the instrument.

(4) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(5) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW 79.105.060(1)). Aquatic lands are part of the public lands of the state of Washington (see subsection (51) of this section). Included in aquatic lands are public places subsection (53) of this section, waterways subsection (78) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.

(6) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. See WAC 332-30-121.

(7) "Authorization instrument" means a lease, material purchase, easement, permit, or other document authorizing use of state-owned aquatic lands and/or materials.

(8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.

(9) "Beds of navigable waters" means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.

(10) "Commerce" means the exchange or buying and selling of goods and services. As it applies to aquatic land, commerce usually involves transport and a land/water interface.

(11) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(12) "Department" means the department of natural resources.

(13) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

(14) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(15) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(16) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

(17) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

(18) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan due Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

(19) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied (*Donaldson v. Greenwood*, 40 Wn.2d 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

(20) "First class shorelands" means the shores of a navigable lake or river belonging to the state not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or the inner harbor line where established and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW 79.105.060 (3)). These boundary descriptions represent the general rule; however exceptions do exist. To determine if the shorelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(21) "First class tidelands" means the shores of navigable tidal waters belonging to the state lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW 79.105.-060(4)). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide, or the inner harbor line where established, is the waterward boundary. To determine if the tidelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(22) "Fiscal year" means a period of time commencing on the first day of July and ending on the thirtieth day of June of the succeeding year. A fiscal year is identified by the year

in which it ends, e.g., fiscal year 1985 is the period July 1, 1984 through June 30, 1985.

(23) "Floating house" means any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. "Floating houses" include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection (74) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.

(24) "Governmental entity" means the federal government, the state, county, city, port district, or other municipal corporation or political subdivision thereof.

(25) "Harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW 79.105.060(5)). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.

(26) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

(27) "Harbor line" means either or both:

(a) A line (outer harbor line) located and established in navigable waters as provided for in section 1 of Article XV of the state Constitution beyond which the state shall never sell or lease any rights whatever to private persons (RCW 79.105.060(12)).

(b) A line (inner harbor line) located and established in navigable waters between the line of ordinary high tide and the outer harbor line, constituting the inner boundary of the harbor area (RCW 79.105.060(8)).

(28) "Inflation rate" means, for a given year, the percentage rate of change in the previous calendar year's all commodity producer price index of the Bureau of Labor Statistics of the United States department of commerce (RCW 79.105.-060(7)). The rate published by the bureau during May of each year for the previous calendar year shall be the rate for the previous calendar year.

(29) "Interest rate" shall be twelve percent per annum (RCW 43.17.240).

(30) "Interim uses" means certain uses which may, under special circumstances, be allowed to locate in harbor areas (see WAC 332-30-115(5)).

(31) "Inventory" means both a compilation of existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the *Washington Marine Atlas*.

(32) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

(33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(34) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility (RCW 79.105.060(9)).

(35) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility (RCW 79.105.060(10)).

(36) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

(37) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

(38) "Moorage facility" means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.

(39) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

(40) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

(41) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

(42) "Navigation" means the movement of vessels to and from piers and wharves.

(43) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility (RCW 79.105.060(11)).

(44) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

(45) "Open water moorage and anchorage areas" are areas of state-owned aquatic lands leased for moorage and anchorage that do not abut uplands and do not include a built connection to the uplands. They are generally in the center of a waterbody, to provide moorage in addition to any marinas and docks along the edge of the waterbody. They may contain mooring buoys, floating moorage docks, other moorage facilities not connected to the shoreline, and/or anchorage areas, as determined by the lessee and approved by the department. These areas are leased in accordance with WAC 332-30-139(5) and subject to the restrictions therein.

(46) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the statewide resource base as modified by any relevant economic, social or ecological factor.

(47) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

(48) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

(49) "Port district" means a port district created under Title 53 RCW (RCW 79.105.060(14)).

(50) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.105.030.

(51) "Public lands" means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state (RCW 79.02.010).

(52) "Public interest" means...(reserved).

(53) "Public place" means a part of aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.

(54) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

(55) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

(56) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

(57) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

(58) "Public utility line" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines (RCW 79.105.060(15)).

(59) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the Federal Home Loan Bank Board or any successor agency, minus the average inflation rate for the most recent ten calendar years (RCW 79.105.060(16)).

(60) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

(61) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

(62) "Residential use" means any noncommercial habitation of:

(a) A floating house, as defined in WAC 332-30-106(23); or

(b) A vessel, as defined in WAC 332-30-106(74), when any one of the following applies:

(i) Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of thirty days in any forty-day period or on more than a total of ninety days in any three hundred sixty-five-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;

(ii) The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;

(iii) The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or

(iv) The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.

(63) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tidewater.

(64) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

(65) "Second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city (RCW 79.105.060(17)). These boundary definitions represent the general rule; however, exceptions do exist. To determine if shorelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(66) "Second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city and between the line of ordinary high tide and the line of extreme low tide (RCW 79.105.060(18)). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide is the waterward boundary. To determine if the tidelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(67) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

(68) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources (RCW 79.105.060(20)).

(69) "Statewide value." The term statewide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have statewide implications. Such uses and resources may be either localized or distributed statewide. Aquatic land uses of statewide value provide major statewide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of statewide value are those critical or uniquely suited to aquatic land uses of statewide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of statewide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of statewide value to renewable resource use. Harbor areas are of statewide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of statewide value to recreational and commercial fisheries, wildlife protection, and scientific study.

(70) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or storm water run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(71) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers (RCW 79.105.060(21)).

(72) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

(73) "Town" means a municipal corporation of the fourth class having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization (RCW 35.01.040).

(74) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

(75) "Water-dependent use" means use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks (RCW 79.105.060(24)).

(76) "Waterfront" means a parcel of property with upland characteristics which includes within its boundary, a

physical interface with the existing shoreline of a body of water.

(77) "Water oriented use" means use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and houseboats (RCW 79.105.060(25)).

(78) "Waterway" means an area platted across aquatic lands or created by a waterway district providing for access between the uplands and open water, or between navigable bodies of water.

(79) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-106, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460, WSR 02-21-076 (Order 710), § 332-30-106, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.01.132, 79.01-216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. WSR 91-22-079 (Order 580), § 332-30-106, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-106, filed 11/5/85. Statutory Authority: 1984 c 221 and RCW 79.90.540. WSR 84-23-014 (Resolution No. 470), § 332-30-106, filed 11/9/84. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-106, filed 7/3/80.]

WAC 332-30-107 Aquatic land planning. Subsection (4) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Multiple use.** The aquatic lands of Washington are a limited and finite resource. Management of these lands will allow for multiple use by compatible activities to the greatest extent feasible.

(2) **Planning objectives.** Aquatic land management will strive for the best combination of aquatic uses to achieve the goals in WAC 332-30-100. Planning should allow for a variety of uses and activities, such as navigation; public use; production of food; energy; minerals and chemicals; and improvement of aquatic plant and animal habitat, occurring simultaneously or seasonally on state-owned aquatic lands.

(3) **Shoreline management.** The Shoreline Management Act and shoreline master program planning, together with supplemental planning as described in subsection (5) of this section, will be the primary means for identifying and providing appropriate uses of statewide value.

(4) **Coordination.** Coordination with shoreline management programs will be accomplished by:

(a) Identifying aquatic land areas of particular statewide value for public access, habitat and water-dependent and renewable resource use.

(b) Informing appropriate shoreline planning bodies of the location and particular value of aquatic lands identified in (a) of this subsection.

(c) Participating in shoreline planning and suggesting ways to incorporate and balance statewide values.

(d) Proposing to the appropriate local jurisdiction that shoreline plans be updated when new information concerning statewide values becomes available or when existing plans do not adequately address statewide values.

(5) **Supplemental planning.** The department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) may supplement the shoreline master program planning process with management plans necessary to meet the constitutional and statutory proprietary responsibilities for state-owned aquatic lands. Plans developed and implemented under this subsection will involve aquatic lands, resources, and activities requiring intensive management, special protection, or conflict resolution and will be developed when these needs are not provided for by shoreline master program planning. Aquatic land uses and activities implemented through this supplemental planning process will be consistent with adopted shoreline master programs and the Shoreline Management Act. Planning activities will be closely coordinated with local, state, and federal agencies having jurisdiction and public participation will be encouraged.

(6) **Mitigation.** Shoreline master program planning and additional planning processes described in subsection (5) of this section will be the preferred means for identifying and mitigating adverse impacts on resources and uses of statewide value. In the absence of such planning directed to these values and uses, the department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) will mitigate unacceptable adverse impacts on a case-by-case basis by the following methods in order of preference:

(a) Alternatives will be sought which avoid all adverse impacts.

(b) When avoidance is not practical, alternatives shall be sought which cause insignificant adverse impacts.

(c) Replace, preferably on-site, impacted resources and uses of statewide value. It must be demonstrated that these are capable of being replaced.

(d) Payment for lost value, in lieu of replacement, may be accepted from the aquatic land user in limited cases where an authorized use reduces the economic value of offsite resources, for example, bacterial pollution of nearby shellfish beds.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-107, filed 11/5/85. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-107, filed 7/3/80.]

WAC 332-30-108 Establishment of new harbor areas. (1) The policies and standards in this section apply to establishment of new harbor areas by the harbor line commission under Article XV of the Washington Constitution and to establishment of new harbor areas in Lake Washington by the commissioner of public lands under RCW 79.125.520.

(2) New harbor areas will only be established to serve the following purposes:

(a) Reserving adequate urban space for navigation and commerce facilities; and

(b) Preventing urban development from disrupting navigation.

(3) New harbor areas will only be established when a need is demonstrated by existing development or by plans,

studies, project proposals or other evidence of development potential in, or waterward of, the proposed harbor area.

(4) Unless there is an overriding statewide navigation and commerce need, new harbor areas will only be established when:

- (a) Compatible with local land use and shoreline management plans;
- (b) Supported by the city, county and port district;
- (c) The area is physically and environmentally suitable for navigation and commerce purposes; and
- (d) Necessary support facilities and services are likely to be available.

(5) The shoreline length of a new harbor area established along a city's waterfront will be determined by the need and purposes to be served and by conformance with subsection (4) of this section.

(6) Harbor line placement standards.

(a) Harbor lines will be placed to serve constitutional harbor area purposes as they relate to the individual site in question.

(b) Harbor lines will be placed to provide practical development guidance. Harbor lines will relate to navigation and commerce development which has occurred or can reasonably be expected to occur.

(c) Inner harbor lines will be placed at the boundary of public aquatic land ownership. Inner harbor lines may be placed waterward of the boundary of public ownership to avoid conflicts with other guidelines in this section.

(d) Outer harbor lines will generally be placed near the ends of existing conforming structures located on public aquatic lands. The lines shall provide adequate space for navigation and commerce and prevent development from interfering with navigation.

(e) Unless there is an overriding statewide navigation and commerce need, harbor lines will be placed in accordance with:

- (i) Local, state and federal land use plans and environmental regulations;
- (ii) Maintenance of environmental quality;
- (iii) Existing abutting harbor lines; and
- (iv) Existing aquatic land development.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-108, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.080, 79.92.010, 79.94.240 and 79.94.250. WSR 84-23-008 (Resolution No. 469), § 332-30-108, filed 11/9/84.]

WAC 332-30-109 Harbor area. (1) Harbor areas shall be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(2) Water dependent commerce shall be given preference over other uses of harbor areas.

(3) Every consideration shall be given to meeting the expanding need for navigation and water dependent commerce in existing harbor areas.

(4) Several industries using the same harbor area facility shall be given preference over single industry use.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses, in areas requiring extensive maintenance dredging.

(8/21/15)

(6) Harbor lines may be adjusted, when authorized by the legislature, to provide reasonable opportunity to meet the present and future needs of commerce and navigation.

(7) In harbor areas where no current constitutional use (navigation and commerce) is called for or practical and other uses are in demand, interim uses may be authorized by the board of natural resources if in the public interest.

(8) The department will, where in the public interest, promote the conversion of existing nonconforming uses to conforming uses by assisting if possible, such users in resiting their operations and by withdrawing renewal options on affected state harbor area leases.

(9) The department will promote full development of all existing suitable harbor areas for use by water dependent commerce.

(10) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from harbor areas by the owner of the structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.

(11) Floating houses are not permitted in harbor areas.

(12) Resource management cost account portion of the revenue from leasing of harbor areas shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(13) Harbor areas will be managed to produce revenue for the public unless withdrawn as a public place.

(14) Harbor area lease renewal applications must be returned to the department within sixty days of expiration of prior lease term. If not timely returned, the harbor area involved will be put up for public auction.

(15) The department will encourage local government, state and federal agencies to cooperate in planning for the following statewide harbor management needs:

(a) Reserve adequate and appropriate space within the jurisdiction to serve foreseeable navigation and commerce development needs.

(b) Coordinate plans for aquatic land and upland development so that areas reserved for navigation and commerce will be usable in the future.

(c) Identify areas where interim uses may be allowed.

(d) Identify needed changes in harbor lines.

(e) Minimize the environmental impacts of navigation and commerce development.

(f) Prevent existing and future interim uses in harbor areas from lowering the suitability of harbor areas for navigation and commerce development.

[Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-109, filed 10/17/02, effective 11/17/02. Statutory Authority: Chapter 79.92 RCW. WSR 83-21-004 (Order 404, Resolution No. 433), § 332-30-109, filed 10/6/83. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-109, filed 7/3/80.]

WAC 332-30-114 Management agreements with port districts. By mutual, formal, written agreement the department may authorize a port district to manage some or all of those aquatic lands within the port district meeting the criteria stated in subsection (2) of this section. The port district shall adhere to the aquatic land management laws and policies of the state as specified in chapters 79.105 through 79.140 RCW. Port district management of state aquatic lands

shall be consistent with all department regulations contained in chapter 332-30 WAC. These requirements shall govern the port's management of state aquatic lands. The administrative procedures used to carry out these responsibilities shall be those provided for port districts under Title 53 RCW.

(1) Interpretations. Phrases used in legislation (RCW 79.105.420) providing for management agreements with ports shall have the following interpretation:

(a) "Administrative procedures" means conducting business by the port district and its port commission.

(b) "Aquatic lands abutting or used in conjunction with and contiguous to" means state-owned aquatic lands which share a common or coincident boundary with an upland parcel or in the event the state aquatic land does not attach to an upland parcel (i.e., bedlands, harbor areas, etc.), this term shall include the aquatic land adjacent to and waterward of the port owned or controlled aquatic parcel which has a common or coincident boundary to the upland parcel.

(c) "Diligently pursued" means such steady and earnest effort by the port district and the department which results in the resolution of any deficiencies preventing the issuance of a management agreement to the port.

(d) "Leasehold interest" means the benefits and obligations of both the lessor and lessee resulting from a lease agreement.

(e) "Model management agreement" means a document approved by the board of natural resources to be used for all individual management agreements with port districts.

(f) "Operating management" means the planning, organizing, staffing, coordinating, and controlling for all activities occurring on a property.

(g) "Otherwise managed" means having operating management for a property.

(h) "Revenue attributable" means all rentals, fees, royalties, and/or other payments generated from the use of a parcel; or the most likely amount of money due for the use of a parcel as determined by procedures in chapter 332-30 WAC, whichever is greater.

(2) Criteria for inclusion. State-owned parcels of aquatic lands, including those under lease or which may come under lease to a port, abutting port district uplands may be included in a management agreement if criteria set forth in RCW 79.105.420 are met and if there is documentation of ownership, a lease in good standing, or agreement for operating management, in the name of the port district for the upland parcel.

(3) A model management agreement and any amendments thereto shall be developed by the department and representatives of the port industry. The board of natural resources shall review and approve the model management agreement and any subsequent amendments.

(4) Processing requests. The following application requirements, review procedures, and time frame for responses involved in the issuance of a management agreement to a port district shall apply.

(a) Application requirements. The following items must be submitted to the department by the port district in order for its request to be an application for a management agreement:

(i) A copy of a resolution of the port commission that directs the port district to seek a management agreement;

(ii) An exhibit showing the location of and a description adequate to allow survey for each parcel of state-owned aquatic land to be included in the agreement, plus sufficient information on abutting port parcels to satisfy the requirements of subsection (2) of this section;

(iii) The name, address, and phone number of the person or persons that should be contacted if the department has any questions about the application.

(b) Time frames for responses:

(i) Within thirty days of receipt of an application, the department shall notify the port district if its application is complete or incomplete;

(ii) Within thirty days of receipt of notification by the department of any incompleteness in their application, the port district shall submit the necessary information;

(iii) Within ninety days of receipt of notification by the department that the application is complete, the port district and department shall take all steps necessary to enter into an agreement.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-114, filed 2/16/06, effective 3/19/06. Statutory Authority: 1984 c 221 and RCW 79.90.540, WSR 84-23-014 (Resolution No. 470), § 332-30-114, filed 11/9/84.]

WAC 332-30-115 Harbor area use classes. These classes are based on the degree to which the use conforms to the intent of the constitution that designated harbor areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(1) **Water-dependent commerce.** Water-dependent commerce are all uses that cannot logically exist in any other location but on the water and are aids to navigation and commerce. These are preferred harbor area uses. Leases may be granted up to the maximum period allowed by the Constitution and may be renewed. Typical uses are:

(a) Public or private vessel terminal and transfer facilities which handle general commerce including the cargo handling facilities necessary for water oriented uses.

(b) Public and private terminal facilities for passenger vessels.

(c) Watercraft construction, repair, maintenance, servicing and dismantling.

(d) Marinas and mooring areas.

(e) Tug and barge companies facilities.

(f) Log booming.

(2) **Water-oriented commerce.** Water-oriented commerce are commercial uses which historically have been dependent on waterfront locations, but with existing technology could be located away from the waterfront. Existing water-oriented uses may be asked to yield to water dependent commercial uses when the lease expires. New water-oriented commercial uses will be considered as interim uses. Typical uses are:

(a) Wood products manufacturing.

(b) Watercraft sales.

(c) Fish processing.

(d) Sand and gravel companies.

(e) Petroleum handling and processing plants.

(f) Log storage.

(3) **Public access.** Facilities for public access are lower priority uses which do not make an important contribution to

navigation and commerce for which harbor areas are reserved, but which can be permitted providing that the harbor area involved is not needed, or is not suitable for water-dependent commerce. Leases may be issued for periods up to thirty years with possible renewals. Typical uses are:

- (a) Public fishing piers.
- (b) Public waterfront parks.
- (c) Public use beaches.
- (d) Aquariums available to the public.
- (e) Underwater parks and reefs.
- (f) Public viewing areas and walkways.

(4) **Residential use.** Residential uses do not require harbor area locations and are frequently incompatible with water-dependent commerce. New residential uses will not be permitted to locate in harbor areas, except that vessels used as a residence will be permitted wherever other vessels are permitted if the residential uses are otherwise allowed by WAC 332-30-171 and meet all applicable laws and lease requirements. This restriction on new leases differentiates residential uses from interim uses. Existing residential uses may be asked to yield to other uses when the lease expires. Proposed renewals of residential leases will require the same analysis as specified for interim uses.

(5) **Interim uses.** Interim uses are all uses other than water-dependent commerce, existing water-oriented commerce, public access facilities, and residential uses. Interim uses do not require waterfront locations in order to properly function. Leases may only be issued and reissued for interim uses in exceptional circumstances and when compatible with water dependent commerce existing in or planned for the area. See WAC 332-30-137 Nonwater-dependent uses for evaluation standards.

(6) Areas withdrawn are harbor areas which are so located as to be currently unusable. These areas are temporarily withdrawn pending future demand for constitutional uses. No leases are issued.

[Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-115, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-115, filed 11/5/85. Statutory Authority: Chapter 79.92 RCW. WSR 83-21-004 (Order 404, Resolution No. 433), § 332-30-115, filed 10/6/83. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-115, filed 7/3/80.]

WAC 332-30-116 Harbor line relocation. Harbor areas are established to meet the needs of navigation and commerce. Harbor line relocations must be consistent with this purpose.

(1) Harbor line relocations should:

- (a) Maintain or enhance the type and amount of harbor area needed to meet long-term needs of water dependent commerce; and
- (b) Maintain adequate space for navigation beyond the outer harbor line.

(2) When in agreement with the above guidelines, consideration of harbor line relocations should include:

- (a) Plans and development guidelines of public ports, counties, cities, and other local, state, and federal agencies;
- (b) Economic and environmental impacts;
- (c) Public access to the waterfront;
- (d) Indian treaty rights;

(e) Cumulative impacts of similar relocations on water dependent commerce; and

(f) The precedent setting effect on other harbor areas.

(3) Procedure.

(a) Upon receipt of a completed harbor line relocation proposal form and SEPA checklist (if necessary), department of natural resources staff shall arrange for a public hearing.

(b) Notice of the hearing shall be mailed at least thirty days in advance to the concerned city, county, port district, interest groups, adjacent tide, shore or upland owners and others who indicate interest; and shall be published at least twenty days in advance in a local newspaper of general circulation.

(c) The hearing, conducted by a hearings officer, shall be held in the county in which the relocation is proposed. Department staff shall present the proposal and preliminary recommendations. The hearing shall be recorded.

(d) Comments may be submitted at the hearing or mailed to the department. Written comments must be postmarked no later than fourteen days after the hearing.

(e) Department of natural resources staff will finalize SEPA compliance (if necessary) and prepare a final report of recommendations to the harbor line commission.

(f) No later than sixty days after the date of the public hearing, the harbor line commission shall consider the staff report and public comments, then approve, modify or deny the relocation. A copy of the commission's resolution shall be sent within ten days to the proponent, the city, county, port district and other parties who have requested it.

[Statutory Authority: Chapter 79.92 RCW. WSR 83-21-004 (Order 404, Resolution No. 433), § 332-30-116, filed 10/6/83.]

WAC 332-30-117 Waterways. (1) **Purpose and applicability.** This section describes the requirements for authorizing use and occupation of waterways under the department's authority as proprietor of state-owned aquatic lands. This section applies to waterways established in accordance with RCW 79.120.010 and 79.120.020. This section does not apply to uses of Salmon Bay Waterway, or to the East and West Duwamish Waterways in Seattle authorized under RCW 79.120.040.

(2) **Priority use.** Providing public navigation routes between water and land for conveniences of navigation and commerce is the priority waterway use.

(3) **Permit requirement.** In order to assure availability of waterways for present and future conveniences of navigation and commerce, moorage (other than transient moorage for fewer than 30 days), and other waterway uses shall require prior authorization from the department. Permits may be issued for terms not exceeding one year if there will be no significant interference with the priority waterway use or short-term moorage. Permits may be issued for terms not exceeding five years for uses listed in subsection (4) of this section in instances in which existing development, land use, ownership, or other factors are such that the current and projected demand for priority waterway uses is reduced or absent.

(4) **Permit priority.** In cases of competing demands for waterways, the following order of priority will apply:

- (a) Facilities which provide public access to adjacent properties for loading and unloading of watercraft;

(b) Water-dependent commerce, as defined in WAC 332-30-115(1), related to use of the adjacent properties;

(c) Other water-dependent uses;

(d) Facilities for nonnavigational public access;

(e) Other activities consistent with the requirements in WAC 332-30-131(4) for public use facilities.

(5) **Waterway permits.** All necessary federal, state, and local permits shall be acquired by those proposing to use waterways. Copies of permits must be furnished to the department prior to authorizing the use of waterways.

(6) **Obstructions.** Permanent obstruction of waterways, including filling is prohibited. Structures associated with authorized uses in waterways shall be capable of ready removal. Where feasible, anchors and floats shall be preferred over pilings.

(7) **Permit process.** Applications for waterway permits will be processed as follows:

(a) Local government review of permit applications will be requested.

(b) Public comment will be gathered through the shoreline permit process, if applicable. If no shoreline permit is required, public comment will be gathered through the methods described in WAC 332-41-510(3).

(c) Applications will be reviewed for consistency with the policy contained in this chapter.

(d) Evaluation will consider existing, planned, and foreseeable needs and demands for higher priority uses in the waterway and in the associated water body.

(8) The department will require waterway permittees to provide security in accordance with WAC 332-30-122(5) to insure the provisions of waterway permits are fulfilled.

(9) **Cancellation.** Permission to use waterways is subject to cancellation in order to satisfy the needs of higher priority waterway uses. Transient moorage may be required to move at any time. Waterway permits are cancellable upon ninety days' notice when the sites are needed for higher priority uses.

(10) **Monitoring.** Local governments will be encouraged to monitor waterway use and to report any uses not in compliance with this regulation.

(11) **Planning.** Planning for waterway use will be encouraged. The shoreline planning process should provide for the long range needs of preferred waterway uses and other statewide values. Planning should also consider the availability of other public property, such as platted street ends, to serve anticipated needs.

(12) **Existing uses.** Existing waterway uses, structures, and obstructions will be reviewed for compliance with this section. Uses not in compliance shall be removed within one year from the date notification of noncompliance is mailed unless the public interest requires earlier removal. Unless early removal is required, removal may be postponed if the department receives a request for vacation of the waterway from the city or port district in accordance with RCW 79.120.060. If the request for waterway vacation is denied, the structure must be removed within six months of mailing of notice of denial or within one year of the original date of notification of noncompliance, whichever is later.

(13) **Fees.** Waterway permit fees will be determined on the same basis as required for similar types of uses on other state-owned aquatic lands.

(14) **Filled areas.** Certain waterways contain unauthorized fill material. The filled areas have generally assumed the characteristics of the abutting upland. Nonwater-dependent uses may be allowed on existing fills when there will be no interference with priority or other permitted waterway uses and when permitted under applicable local, state, and federal regulations.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-117, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-117, filed 11/5/85.]

WAC 332-30-119 Sale of second class shorelands. (1) Under RCW 79.125.450 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of one hundred feet or ten percent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,

$$FMV = (V2/V1) \times (S1)$$

FMV = Current fair market value of shorelands

S1 = Value of shorelands at time of last equivalent sale

V1 = Value of abutting upland at time of last equivalent shoreland sale

V2 = Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-119, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 43.30.150 and 79.01.474. WSR 80-08-071 (Order 342), § 332-30-119, filed 7/1/80.]

WAC 332-30-122 Aquatic land use authorization. All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) General requirements.

(a) In addition to other requirements of law, aquatic land activities that interfere with the use by the general public of an area will require authorization from the department by way of agreement, lease, permit, or other instrument.

(i) Suitable instruments shall be required for all structures on aquatic lands except for those federal structures serving the needs of navigation.

(ii) The beds of navigable waters may be leased to the owner or lessee of the abutting tideland or shoreland. This preference lease right is limited to the area between the landward boundary of the beds and the -3 fathom contour, or 200 feet waterward, whichever is closer to shore. However, the distance from shore may be less in locations where it is necessary to protect the navigational rights of the public.

(iii) When proposing to lease aquatic lands to someone other than the abutting property owner, that owner shall be notified of the intention to lease the area. When not adverse to the public's ownership, the abutting owner's water access needs may be reasonably accommodated.

(b) Determination of the area encumbered by an authorization for use shall be made by the department based on the impact to public use and subsequent management of any remaining unencumbered public land.

(i) Operations involving fixed structures will include the area physically encumbered plus the open water area needed to operate the facility.

(ii) Areas for individual mooring buoys will be a circle with a radius equal to the expected swing of the vessel or object moored. Only the area encumbered at any given point in time shall be used to calculate any rentals due.

(iii) Areas for utility line easements will normally be ten feet wider than the overall width of the structure(s) placed in the right of way.

(c) All necessary federal, state and local permits shall be acquired by those proposing to use aquatic lands. Copies of

permits must be furnished to the department prior to authorizing the use of aquatic lands. When evidence of interest in aquatic land is necessary for application for a permit, an authorization instrument may be issued prior to permit approval but conditioned on receiving the permit.

(2) **Application review.** In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(a) Environment.

(i) Authorization instruments shall be written to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted in accordance with sound environmental practices.

(ii) Uses which cause adverse environmental impacts may be authorized on aquatic lands only upon compliance with applicable environmental laws and regulations and appropriate steps as may be directed are taken to mitigate substantial or irreversible damage to the environment.

(iii) Nonwater-dependent uses which have significant adverse environmental impacts shall not be authorized.

(b) Public use and access.

(i) Wherever practical, authorization instruments for use of aquatic lands shall be written to provide for public access to the water.

(ii) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or other operator without a fee being charged.

(iii) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

(c) Authorization to use aquatic lands shall not be granted to any person or organization which discriminates on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

(d) Authorization instruments for the installation of underwater pipelines, outfalls and cables may be granted when proper provisions are included to insure against substantial or irreversible damage to the environment and there is no practical upland alternative.

(3) Rents and fees.

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the property. Methods for each class of use are described in specific WAC sections.

(c) Advance payments for two or more years may be collected in those situations where annual payments are less than document preparation and administration costs.

(d) Rentals for leases will normally be billed annually, in advance. If requested by a lessee in good standing, billings will be made:

(i) Quarterly on a prorated basis when annual rental exceeds four thousand dollars; or

(ii) Monthly on a prorated basis when annual rental exceeds twelve thousand dollars.

(e) A one percent per month charge shall be made on any amounts which are past due, unless those amounts are appealed. Users of aquatic properties shall not be considered in good standing when they have amounts more than thirty days past due.

(4) Structures and improvements on aquatic lands.

(a) Authorization for placing structures and improvements on public aquatic lands shall be based on the intended use, other uses in the immediate area, and the effect on navigational rights of public and private aquatic land owners. Structures and improvements shall:

(i) Conform to the laws and regulations of any public authority;

(ii) Be kept in good condition and repair by the authorized user of the aquatic lands;

(iii) Not be, nor become, a hazard to navigation;

(iv) Be removed by the authorized user as stipulated in the authorization instrument.

(b) In addition to aquatic land rentals and fees, rent shall be charged for use of those structures and improvements:

(i) Owned by the department, under contract to the department for management; or that become state property under RCW 79.125.300;

(ii) As may be agreed upon as part of the authorization document;

(iii) Installed on an authorized area without written concurrence of the department; or

(iv) Not covered by an application for use of aquatic lands, or a lawsuit challenging such requirements, within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(c) Only land rental and fees shall be charged for public aquatic lands occupied by those structures and improvements that are:

(i) Authorized in writing by the department;

(ii) Installed prior to June 1, 1971 (effective date of the Shoreline Management Act) on an area authorized for use from the department; or

(iii) Covered by an application for use of aquatic lands within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(5) Insurance, bonds, and other security.

(a) The department may require authorized users of aquatic lands to carry insurance, bonding, or provide other forms of security as may be appropriate for the use or uses occurring on public property, in order to ensure its sustained utility and future value.

(b) Proof of coverage shall be acceptable to the department if provided by any of the following:

(i) Insurance and/or bonding companies licensed by the state;

(ii) Recognized insurance or bonding agent for the authorized user;

(iii) Savings account assignment from authorized user to department; or

(iv) Cash deposit.

(c) The amount of security required of each user shall be determined by the department and adjusted periodically as needed.

(i) Any portion of the required security relating to payment of rent or fees shall be limited to an amount not exceeding two year's rental or fees.

(ii) Required security related to other terms of the agreement shall be based on the estimated cost to the department of enforcing compliance with those terms.

(iii) Cash deposits shall not be required in an amount exceeding one-twelfth of the annual rental or fees. If this amount is less than the total required security, the remainder shall be provided through other forms listed in (b) of this subsection.

(d) Security must be provided on a continual basis for the life of the agreement. Security arrangements for less than the life of the agreement shall be accepted as long as those arrangements are kept in force through a series of renewals or extensions.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-122, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2, WSR 91-22-079 (Order 580), § 332-30-122, filed 11/5/91, effective 12/6/91. Statutory Authority: 1984 c 221 and RCW 79.90.540, WSR 84-23-014 (Resolution No. 470), § 332-30-122, filed 11/9/84.]

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: $UV \times LA \times .30 \times r = AR$. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) Overall considerations.

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases for water-dependent uses, except as otherwise provided by statute;

(ii) Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

(iii) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category

previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) Physical criteria of upland tax parcels.

(a) The upland tax parcel used shall be used in conjunction with the leased area and have some portion with upland characteristics. The upland tax parcel shall be waterfront, except that if the waterfront parcel's assessed value is inconsistent with the purposes of the lease as described in subsection (3) of this section, and there is a landward parcel also used in conjunction with the leased area that meets all the criteria in this subsection (2) and is consistent with the purposes of the lease as described in subsection (3) of this section, then such landward parcel shall be used. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section. For the purposes of this section, "upland characteristics" means fill or other improvements or alterations that allow for development of the property as if it were uplands and that have been valued by the county assessor as uplands.

(b) For leases without a physical connection with upland property (for example, open water moorage and anchorage areas, or mitigation or conservation sites not abutting the shoreline), the upland tax parcel used shall:

(i) If the lease is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the lease is of the same use class within the water-dependent category (as listed in subsection (4) of this section) as at least one other lease within the county that is associated with a local upland facility, be an appropriate parcel at the nearest such facility; or

(iii) If there is no such local upland facility, be an alternate parcel selected under the criteria of subsection (4) of this section.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax par-

cels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) **Consistent assessment.** In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease. On this basis, the following situations are examples, but are not an exclusive list, of what the department will consider inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification or other adjustment by the county assessor not reflecting fair market value as developable upland property. Examples include classifications under: State-regulated utilities (chapter 84.12 RCW), Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the fair market value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the valuation on the assessor's records shall be used, however, any changes in valuation resulting from such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used in conjunction with a water-dependent use. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used in conjunction with water-dependent use if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot; and

(g) The assessed value reflects the presence of contamination on the uplands, when the contamination on the uplands does not impair the use of the leasehold. This inconsistency may be corrected by substituting the full value for the upland parcel as if there were no contamination, if such value is part of the assessment records.

(4) **Selection of the nearest comparable upland tax parcel.** When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use. For the purposes of this section, some examples of use classes include:

(A) Marinas and recreational moorage, including recreational boat launches and local upland facilities for open water moorage;

(B) Industrial and commercial shipping terminals and moorage;

(C) Conservation and natural resource protection areas;

(D) Mitigation sites; and

(E) For water-oriented floating homes, the same use class means any floating home;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) **Aquatic land lease area.** The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be negotiated taking into account the proportion of the improvements each use occupies.

(6) Real rate of return.

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stair-stepping.

(8) Stairstepping rental changes.

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three

percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between each year's inflation adjusted formula rent and the previous rent.

Example

Previous rent = \$100.00 Formula rent = \$403.00 Inflation = 5%/yr.

Yr.	Formula Rent	Previous Rent	Difference	33%	Stairstep Rent
1	\$403.00	\$100.00	\$303.00	\$100.00	\$200.00
2	423.15	100.00	323.15	106.64	306.64
3	444.31	100.00	344.31	113.62	420.26
4	466.52	-	-	-	466.52

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example

Previous rent = \$403.00 Formula rent = \$100.00 Inflation = 5%/yr.

Yr.	Previous Rent	Formula Rent	Difference	33%	Stairstep Rent
1	\$403.00	\$100.00	\$303.00	\$100.00	\$303.00
2	403.00	105.00	298.00	98.34	204.66
3	403.00	110.25	292.75	96.61	108.05
4	-	115.76	-	-	115.76

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stairstep period.

[Statutory Authority: RCW 79.105.360, 79.105.320. WSR 06-18-082, § 332-30-123, filed 9/5/06, effective 10/6/06. Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-123, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.540. WSR 05-23-033, § 332-30-123, filed 11/8/05, effective 12/9/05. Statutory Authority: 1984 c 221 and RCW 79.90.540. WSR 84-23-014 (Resolution No. 470), § 332-30-123, filed 11/9/84.]

WAC 332-30-125 Aquatic land use rental rates for nonwater-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) The value of state-owned aquatic lands withdrawn from general public use for private nonwater-dependent use shall be recognized by charging lessees the full fair market rental. No rent shall be charged for improvements, including fills, on aquatic lands unless owned by the state. The fair market rental is based on: (a) Comparable non-DNR market rents, whether based on land value exclusive of improvements, a percent of gross revenues, or other appropriate basis, or if not available (b) the full market value (same as true and fair value) multiplied by the use rate percentage as determined under subsection (2) of this section and published in the Washington State Register.

(2) Use rate percentage.

(a) The percentage rate will be based on nondepartmental market rental rates of return for comparable properties leased on comparable terms in the locality, or when such do not exist;

(b) The percentage rate of return shall be based on the average rate charged by lending institutions in the area for long term (or term equivalent to the length of the lease) mortgages for comparable uses of real property.

(3) Appraisals: The determination of fair market value shall be based on the indications of value resulting from the application of as many of the following techniques as are appropriate for the use to be authorized:

(a) Shore contribution; utilizing differences in value between waterfront properties and comparable nonwaterfront properties. Generally best for related land-water uses which are independent of each other or not needed for the upland use to exist.

(b) Comparable upland use (substitution); utilizing capacity, development, operation, and maintenance ratios between a use on upland and similar use on aquatic land with such ratios being applied to upland value to provide indication of aquatic land value for such use. Generally best for aquatic land uses which are totally independent of adjacent upland yet may also occur on upland totally independent of direct contact with water.

(c) Extension; utilizing adjacent upland value necessary for total use as the value of aquatic lands needed for use on a unit for unit basis. Generally best for aquatic land uses which are integrated with and inseparable from adjacent upland use.

(d) Market data; utilizing verified transactions between knowledgeable buyers and sellers of comparable properties. Generally best for tidelands or shorelands where sufficient data exists between knowledgeable buyers and sellers.

(e) Income; utilizing residual net income of a commercial venture as the indication of investment return to the aquatic land. This can be expressed either as a land rent per

acre or as a percent of gross revenues. Generally best for income producing uses where it can be shown that an owner or manager of the operation is motivated to produce a profit while recognizing the need to obtain returns on all factors of production.

(4) Negotiation of rental amounts may occur when necessary to address the uniqueness of a particular site or use.

(5) Rental shall always be more than the amount that would be charged if the aquatic land parcel was used for water-dependent purposes.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. WSR 84-23-014 (Resolution No. 470), § 332-30-125, filed 11/9/84. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-125, filed 7/3/80.]

WAC 332-30-126 Sand and gravel extraction fees.

This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Public auction or negotiation.** The royalty for sand, gravel, stone or other aggregate removed from state-owned aquatic lands shall be determined through public auction or negotiation.

(2) **Royalty rate.** A negotiated royalty shall reflect the current fair market value of the material in place.

The "income approach" appraisal technique will normally be used to determine fair market value. Factors considered include, but are not limited to:

(a) The wholesale value of similar material, based on a survey of aggregate producers in the region or market area;

(b) Site specific cost factors including, but not limited to:

(i) Homogeneity of material;

(ii) Access;

(iii) Regulatory permits;

(iv) Production costs.

(3) **Adjustments to initial royalty rate.**

(a) Inflation. Annual inflation adjustments to the initial royalty rate shall be based on changes in the Producer Price Index (PPI) for the commodities of sand, gravel, and stone, as published by the United States Department of Commerce, Bureau of Labor Statistics. Annual PPI adjustments to the initial royalty rate shall begin one year after the effective date of establishment of each contract's royalty rate pursuant to subsection (1) of this section.

(b) Flood control. Initial negotiated royalty rates may be adjusted downward, depending on the degree to which removal of the material will enhance flood control.

(i) Any adjustment shall be based on hydrologic benefit identified in an approved comprehensive flood control management plan adopted by a general purpose local government and any state or federal agency with jurisdiction.

(ii) The department, prior to approving any proposed royalty rate adjustment for flood control benefits, may review the flood control plan to determine whether the material removal actually reduces the potential for flooding.

(4) **Payments.** Royalty payments may be paid monthly or quarterly based on the volume of material sold, transferred from control of the contract holder, or otherwise utilized for purposes of the contract.

(5) **Stockpiling.** Stockpiling of removed material may be permitted.

(a) Material will be stockpiled separately from other material owned or controlled by the contract holder.

(b) Bonding or other satisfactory security will be required to cover the value of stockpiled material.

(6) **Appeals.** The state's determination of royalty rates set under subsections (2) and (3) of this section, are appealable through WAC 332-30-128.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-126, filed 11/5/85.]

WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.105.200 and 79.125.200). (1) Aquatic lands determined to be state-owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-127, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-127, filed 7/3/80.]

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the les-

see/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.105.340; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.105.340, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

- (i) Lease or application number;
- (ii) Map showing location of lease or proposed lease;
- (iii) Legal description of lease area including area of lease;
- (iv) The permitted or intended use on the leasehold; and
- (v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW 79.105.240 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

- (i) The county parcel number;
- (ii) Its assessed value;
- (iii) Its area in square feet or acres;
- (iv) A map showing the location of the parcel; and
- (v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided

that, the RDO may extend the review period for one sixty-day period.

(7) RDAO review.

(a) The lessee/applicant may submit a petition within thirty days to the rental dispute appeals officer (RDAO) for review of that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within sixty days of the filing of the petition. The RDAO may extend the review period for one sixty-day period. This decision shall be the RDAO's final decision. This decision shall be the RDAO's final decision.

(8) Board review.

(a) The lessee/applicant may submit a petition within thirty days to the board of natural resources (board) for review of the RDAO decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within thirty days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within ninety days of the filing of the written statements by the lessee/applicant and the department.

[Statutory Authority: RCW 79.105.360, 79.105.320, WSR 06-18-082, § 332-30-128, filed 9/5/06, effective 10/6/06. Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-128, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.520, WSR 06-01-075 (Resolution No. 1186), § 332-30-128, filed 12/20/05, effective 1/20/06. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW, WSR 85-22-066 (Resolution No. 500), § 332-30-128, filed 11/5/85.]

WAC 332-30-131 Public use and access. This section shall not apply to private recreational docks. Subsections (2) and (3) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). Public use and access are aquatic land uses of statewide value. Public access and recreational use of state-owned aquatic land will be actively promoted and protected.

(1) **Access encouraged.** Other agencies will be encouraged to provide, in their planning, for adequate public use and access and for protection of public use and access resources.

(2) **Access grants.** Aquatic Land Enhancement Account funds will be distributed to state and local agencies to encourage provision of public access to state-owned aquatic lands.

(3) **Access advertised.** State-owned aquatic lands particularly suitable for public use and access will be advertised through appropriate publications.

(4) **No-fee access agreements.** No-fee agreements may be made with other parties for provision of public use and

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access to state-owned aquatic lands provided the other party meets the following conditions:

(a) The land must be available daily to the public on a first-come, first-served basis and may not be leased to private parties on any more than a day-use basis.

(b) Availability of free public use must be prominently advertised by appropriate means as required. For example, signs may be required on the premises and/or on a nearby public road if the facility is not visible from the road.

(c) When the use is dependent on the abutting uplands, the managing entity must own, lease or control the abutting uplands.

(d) User fees shall not be charged unless specifically authorized by the department and shall not exceed the direct operating cost of the facility.

(e) Necessary nonwater-dependent accessory uses will be allowed in the no-fee agreement area only under exceptional circumstances when they contribute directly to the public's use and enjoyment of the aquatic lands and comply with WAC 332-30-137. Such nonwater-dependent uses shall be required to pay a fair-market rent for use of aquatic lands.

(f) Auditable records must be maintained and made available to the state.

(5) Rent reduction for access. Leased developments on state-owned aquatic lands which also provide a degree of public use and access may be eligible for a rent reduction. Rental reduction shall apply only to the actual area within the lease that meets public access and use requirements of subsection (4) of this section.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW, WSR 85-22-066 (Resolution No. 500), § 332-30-131, filed 11/5/85.]

WAC 332-30-137 Nonwater-dependent uses. Policy.

Nonwater-dependent use of state-owned aquatic lands is a low priority use providing minimal public benefits. Nonwater-dependent uses shall not be permitted to expand or be established in new areas except in exceptional circumstances and when compatible with water-dependent uses existing in or planned for the area. Analysis under this section will be used to determine the terms and conditions of allowable nonwater-dependent use leases. The department will give public notice of sites proposed for nonwater-dependent use leases.

(1) **Exceptional circumstances.** The following are exceptional circumstances when nonwater-dependent uses may be allowed:

(a) Nonwater-dependent accessory uses to water-dependent uses such as delivery and service parking, lunch rooms, and plant offices.

(b) Mixed water-dependent and nonwater-dependent development. The water-dependent component shall be a major project element. The nonwater-dependent use shall significantly enhance water-dependent uses and/or resources of statewide value.

(c) Nonwater-dependent uses in structures constructed, or on sites filled, prior to June 30, 1985.

(d) Expansion or realignment of essential public nonwater-dependent facilities such as airports, highways and sewage treatment plants where upland topography, economics, or other factors preclude alternative locations.

(e) When acceptable sites and circumstances are identified in adopted local shoreline management master programs which provide for the present and future needs of all uses and resources of statewide value, identify specific areas or situations in which nonwater-dependent uses will be allowed, and justify the exceptional nature of those areas or situations.

(2) **Compatibility with water-dependent uses.** Nonwater-dependent uses will only be allowed when they are compatible with water-dependent uses existing in or planned for the area. Evaluation of compatibility will consider the following:

(a) Current and future demands for the site by water-dependent uses.

(b) The effect on the usefulness of adjacent areas for water-dependent uses.

(c) The probability of attracting additional water-dependent or nonwater-dependent uses.

(d) Subsidies offered to water-dependent uses.

(3) **Evaluation.** Proposed nonwater-dependent uses will be evaluated individually. Applicants must demonstrate the proposed nonwater-dependent uses are consistent with subsections (1) and (2) of this section and any other applicable provisions of this chapter.

(4) **Re-leases.** Re-leases of nonwater-dependent uses will be evaluated as new uses. If continuance of the nonwater-dependent use substantially conflicts with uses or resources of statewide value or with shoreline master program planning or supplemental planning developed under WAC 332-30-107(5), or if the site is needed by a use of statewide value, the re-lease will not be approved.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-137, filed 11/5/85.]

WAC 332-30-139 Marinas and moorages. (1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(i) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(ii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for use by transient, recreational boaters will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for marina development, properly distributed to meet projected public need for the period 1980 to 2010.

(5) The department may lease open water moorage and anchorage areas only to local governments that have authorized the establishment of open water moorage and anchorage areas in their local Shoreline Master Programs within five years of the effective date of this rule. With the department's approval, the local government lessee may install mooring buoys or other floating moorage devices, designate anchorage locations, sublease moorage and anchorage in the area, collect rent and fees for such moorage and anchorage, and otherwise manage the area as a moorage facility. All open water moorage and anchorage areas must meet the following requirements:

(a) Open water moorage and anchorage areas must meet all relevant requirements normally applicable to a marina lease, which may include the placement, design, limitation on the number of vessels or floating houses, and operation of the area and any improvements within the area, payment of rent to the department, consideration of navigational and environmental impacts, and all other applicable permits and other requirements of law.

(b) Open water moorage and anchorage areas may not be in a harbor area nor in any location or configuration that would interfere with water-borne commerce and navigation.

(c) The leasing of state-owned aquatic lands for open water moorage and anchorage areas is subject to all preferences accorded upland, tideland, or shoreland owners in RCW 79.125.400, 79.125.460, 79.125.410, 79.130.010, and WAC 332-30-122.

(d) Any vessel used for residential use or floating house in an open water moorage and anchorage area must comply with WAC 332-30-171.

(e) Except for nongrandfathered floating house moorage as defined in WAC 332-30-171 (7)(a)(ii), nonwater-dependent uses and commercial uses are prohibited in open water moorage and anchorage areas. Uses prohibited by this subsection (e) are allowed when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

The department will not lease an open water moorage and anchorage area to an entity other than a local government agency. This restriction shall not affect use authorizations to

public or private entities for mooring buoys, aquaculture net pens, or other floating structures otherwise allowed by law.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-139, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460, WSR 02-21-076 (Order 710), § 332-30-139, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 43.30.150, WSR 80-09-005 (Order 343), § 332-30-139, filed 7/3/80.]

WAC 332-30-144 Private recreational docks. (1)

Applicability. This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multi-family residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands.

Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels. However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460, WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

WAC 332-30-145 Booming, rafting and storage of logs. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) Unless specifically exempted in writing, all log dumps located on aquatic lands, or operated in direct association with booming grounds on aquatic land, must provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.

(2) Provision must be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. Lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.

(3) Unless permitted in writing, aquatic land leased for booming and rafting shall not be used for holding flat rafts except:

(a) Loads of logs averaging over 24" diameter.

(b) Raft assembly, disassembly and log sort areas.

(4) Unless permitted in writing, grounding of logs or rafts is not allowed on tidelands leased for booming and rafting. However, tidelands which were leased for booming and rafting prior to January 1, 1980, are exempt from this provision.

(5) No log raft shall remain on aquatic land for more than one year, unless specifically authorized in writing.

(6) For leases granted to serve the general needs of an area such as an island, the leased area shall be made available to others for booming and rafting and at a reasonable charge.

(7) Areas within a lease boundary meeting the definition of log booming are water-dependent uses. The rent for these areas will be calculated according to WAC 332-30-123.

(8) Areas leased for log storage shall have the rent calculated by applying a statewide base unit rent per acre. Temporary holding of logs alongside a vessel for the purpose of loading onto the vessel is neither booming nor storage.

(9) The base unit rent, application to existing leases, and subsequent annual rents will be determined as provided for water-dependent uses under WAC 332-30-123 except for the following modifications:

(a) A formula rental calculation will be made for each such area leased as of July 1, 1984, as though the formula applied on July 1, 1984.

(b) The assessment for an upland parcel shall not be used when the following situations exist:

(i) The parcel is not assessed.

(ii) The size of the parcel in acres or square feet is not known.

(c) When necessary to select an alternative upland parcel, the nearest assessed waterfront parcel shall be used if not excluded by the criteria under (b) of this subsection.

(d) Because of the large size and shape of many log storage areas, there may be more than one upland parcel that could be used in the formula. The department shall treat such multiple parcel situations by using:

(i) The per unit value of each upland parcel applied to its portion of the lease area. If it is not possible or feasible to delineate all portions of the lease area by extending the boundaries of the upland parcel, then;

(ii) The total of the assessed value of all the upland parcels divided by the total acres of all the upland parcels shall be the per unit value applied in the formula.

(e) The total formula rents divided by the total acres under lease for log storage equals the annual base unit rent for fiscal years 1985-1989. That figure is \$171.00 per acre.

(f) For purposes of calculating stairstepping of rentals allowed under WAC 332-30-123, the base unit rent multiplied by the number of acres shall be the formula rent. In cases of mixed uses, the log storage formula rent shall be added to the formula rent determinations for the other uses under leases before applying the criteria for stairstepping.

(g) Inflation adjustments to the base rent shall begin on July 1, 1990.

(10) On July 1, 1989, and each four years thereafter, the department shall establish a new base unit rent.

(a) The new base rent will be the previous base rent multiplied by the result of dividing the average water-dependent lease rate per acre for the prior fiscal year by the average water-dependent lease rate per acre for the fiscal year in which the base unit rent was last established. For example, the formula for the base unit rent for fiscal year 1990 would be:

$$\text{FY90 BUR} = \text{FY85 BUR} \times \frac{(\text{FY89 AWLR})}{(\text{FY85 AWLR})}$$

(b) When necessary to calculate the average water-dependent lease rate per acre for a fiscal year, it shall be done on or near July 1. The total formula rent plus inflation adjustments divided by the total acres of water-dependent uses affected by the formula during the prior fiscal year shall be the prior fiscal year's average.

(11) If portions of a log storage lease area are open and accessible to the general public, no rent shall be charged for such areas provided that:

(a) The area meets the public use requirements under WAC 332-30-130(9);

(b) Such areas are in a public use status for a continuous period of three months or longer during each year;

(c) The lease includes language addressing public use availability or is amended to include such language;

(d) The department approves the lessee's operations plan for public use, including safety precautions;

(e) Changes in the amount of area and/or length of time for public use availability shall only be made at the time of rental adjustment to the lease; and

(f) Annual rental for such areas will be prorated by month and charged for each month or part of a month not available to the general public.

[Statutory Authority: 1984 c 221 and RCW 79.90.540, WSR 84-23-014 (Resolution No. 470), § 332-30-145, filed 11/9/84. Statutory Authority: RCW 43.30.150, WSR 80-09-005 (Order 343), § 332-30-145, filed 7/3/80.]

WAC 332-30-148 Swim rafts and mooring buoys. (1)

Swim rafts or mooring buoys will not be authorized where such structures will interfere with heavily traveled routes for watercraft, commercial fishing areas or on designated public use - wilderness beaches.

(2) Swim rafts or mooring buoys may be authorized on aquatic lands shoreward of the -3 fathom contour or within 200 feet of extreme low water or line of navigability whichever is appropriate. The placement of rafts and buoys beyond the -3 fathom contour or 200 feet will be evaluated on a case by case basis.

(3) No more than one structure may be installed for each ownership beyond extreme low water or line of navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis.

(4) Swim rafts or buoys must float at least 12" above the water and be a light or bright color.

(5) Mooring buoys may be authorized beyond the limits described above on land designated by the department for anchorages.

(6) Vessels for residences, as defined in WAC 332-30-106(62) and floating houses, as defined in WAC 332-30-106(23) shall not moor at swim rafts, mooring buoys, or other moorage facilities not connected to the shoreline, except within an open water moorage and anchorage area leased to a local government agency as provided in WAC 332-30-139 (5). Such moorage may occur when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

[Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-148, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-148, filed 7/3/80.]

WAC 332-30-151 Reserves (RCW 79.68.060). (1)

Types of reserves: Educational, environmental, scientific - see definitions (WAC 332-30-106).

(2) Aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(3) The department or other governmental entity or institution may nominate specific areas for consideration for reserve status.

(4) Such nominations will be reviewed and accepted or rejected by the commissioner of public lands based upon the following criteria:

(a) The site will accomplish the purpose as stated for each reserve type.

(b) The site will not conflict with other current or projected uses of the area. If it does, then a determination must be made by the commissioner of public lands as to which use best serves the public benefit.

(c) Management of the reserve can be effectively accomplished by either the department's management program or by assignment to another governmental agency or institution.

(5) The department's reserves management program consists of prevention of conflicting land use activities in or near the reserve through lease actions. In those cases where phys-

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ical protection of the area may be necessary the management of the area may be assigned to another agency.

(6) When DNR retains the management of reserve areas the extent of the management will consist of a critical review of lease applications in the reserve area to insure proposed activities or structures will not conflict with the basis for reserve designation. This review will consist of at least the following:

(a) An environmental assessment.

(b) Request of agencies or institutions previously identified as having a special interest in the area for their concerns with regard to the project.

(7) Proposed leases for structures or activities immediately adjacent to any reserve area will be subjected to the same critical review as for leases within the area if the structures and/or activities have the potential of:

(a) Degrading water quality,

(b) Altering local currents,

(c) Damaging marine life, or

(d) Increasing vessel traffic.

(8) All management costs are to be borne by the administering agency. Generally, no lease fee is required.

[Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-151, filed 7/3/80.]

WAC 332-30-157 Commercial clam harvesting. (1)

Commercial clam beds on aquatic lands shall be managed to produce an optimum yield.

(2) The boundaries of clam tracts offered for lease shall be established and identified to avoid detrimental impacts upon significant beds of aquatic vegetation or areas of critical biological significance as well as prevent unauthorized harvesting.

(3) The methods of harvest may only be those as established by law and certified by the department of fisheries.

(4) Surveillance methods will be employed to insure that trespass as well as off-tract harvesting is prevented.

(5) Harvesters must comply with all lease provisions. Noncompliance may result in lease suspension or cancellation upon notification.

(6) Harvesters must comply with all applicable federal, state and local rules and regulations. Noncompliance may result in lease suspension or cancellation upon notification.

(7) If appropriate, the department may secure all necessary permits prior to leasing.

[Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-157, filed 7/3/80.]

WAC 332-30-163 River management. (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

(2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.

(3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.

(4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.

(5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a department's fisheries and game hydraulics permit (RCW 75.55.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-163, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 43.30.150, WSR 80-09-005 (Order 343), § 332-30-163, filed 7/3/80.]

WAC 332-30-166 Open water disposal sites. (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the inter-agency open water disposal site evaluation committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only issue authorization for use of the site after:

(a) The environmental protection agency and department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) Fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects where there is no local sponsor are exempt from this fee schedule.

FEES

(a) Puget Sound and Strait of Juan De Fuca: All disposal sites \$0.45 per cubic yard (c.y.), \$2,000 minimum

(b) Grays Harbor/Willapa Bay: All disposal sites \$0.10 per cubic yard (c.y.), minimum fee \$300.00

(c) Damage fee - \$5.00/cubic yard

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the inter-agency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

- (a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.
- (b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.
- (c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.
- (d) When possible, use disposal sites that have substrate similar to the material being dumped.
- (e) Select areas close to dredge sources to insure use of the sites.
- (f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.
- (g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.
- (h) Current velocity, particle size, bottom slope and method of disposal must be considered.
- (i) Projects transporting dredged material by pipeline will require individual review.
- (j) Placement of temporary site marking buoys may be required.
- (k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.
- (l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.
- (m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

[Statutory Authority: RCW 43.30.150, 79.90.550, 79.90.555 and 79.90.560. WSR 94-23-006 (Order 628), § 332-30-166, filed 11/3/94, effective 12/4/94. Statutory Authority: RCW 79.90.560. WSR 90-02-085, § 332-30-166, filed 1/3/90, effective 2/3/90; WSR 88-13-082 (Order 537, Resolution No. 585), § 332-30-166, filed 6/17/88. Statutory Authority: RCW 79.90.100 and 43.30.150. WSR 85-15-050 (Order 451, Resolution No. 492), § 332-30-166, filed 7/16/85. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-166, filed 7/3/80.]

WAC 332-30-170 Tideland and shoreland exchange.

The department will use this rule when it considers exchanging tidelands or shorelands with private individuals or public entities pursuant to RCW 79.105.400. The department may

exchange these aquatic lands if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.105.030. Those benefits are: Encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; utilizing renewable resources; and generating revenue in a manner consistent with these benefits. The department may not exchange state-owned harbor areas or waterways.

(1) **Eligibility criteria.** The department may consider exchanging ownership of tidelands or shorelands with private and other public landowners if the proposed exchange meets the eligibility criteria set forth in (a) and (b) of this subsection.

(a) The economic values of the parcels must be equal or the exchange must result in a net economic gain to the state. The economic value must be determined by a qualified independent appraiser and/or economist and accomplished through a methodology accepted by the department.

(b) The tidelands or shorelands to be conveyed into state ownership must abut navigable water.

(2) **Evaluation criteria.** Subject to available funding, the department will evaluate eligible proposed exchanges according to the following criteria. The department will give priority and preference to proposed exchanges which, in the department's judgment, are in the public interest by providing the greatest public benefits, the least negative impacts, and the most appropriate resolution of other considerations, as set forth in (a), (b) and (c) of this subsection.

(a) The tidelands or shorelands to be conveyed into state ownership must have one or more of the following characteristics:

(i) Be or abut a critical and/or an essential habitat identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(ii) Be or abut a critical area identified by jurisdictions under chapter 36.70A RCW;

(iii) Be an area beneficial to sediment transport and/or nearshore habitat function identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(iv) Be actively used or abut a parcel used in the commercial production of food or fibre or other renewable resource production (for example, commercial grade beds of shellfish and aquaculture facilities);

(v) Abut a state or national wildlife refuge;

(vi) Abut an upland parcel with public upland ownership, easements, or some other formalized agreement that would allow direct public use of and access to the water;

(vii) Be actively used or abut parcel(s) actively used for water-dependent uses or allow for water dependent use;

(viii) Contain a historic or archaeological property listed on or eligible to be listed on the National Register of Historic Places; or

(ix) Generate or have the potential to generate higher revenues than the parcel being transferred out-of-state ownership in a manner consistent with the benefits listed in RCW 79.105.030.

(b) The proposed exchange must have beneficial or no negative impacts on:

- (i) Navigation;
 - (ii) The diversity and health of the local environment including the production and utilization of renewable resources;
 - (iii) The quantity and quality of public access to the waterfront;
 - (iv) Treaty rights of federally recognized tribes. The department will solicit comments on a proposed exchange from affected tribes; and
 - (v) Hazardous waste and contaminated sediments liability issues.
- (c) The following issues must also be considered:
- (i) Consistency with plans and development guidelines of public ports, counties, cities and other local, state, and federal agencies;
 - (ii) The relative manageability of the tidelands or shorelands to be exchanged including, but not limited to, the effect of the exchange on management costs, liability and upland access, and the relative proximity of the tidelands or shorelands to be exchanged to other state-owned shorelands or tidelands; and
 - (iii) The cumulative impacts of similar exchanges on water dependent uses, nonrenewable and renewable natural resources, and total aquatic lands acreage managed by the department.

(3) Recommendation to the board of natural resources. The department will provide its recommendations to the board of natural resources in writing, addressing whether the exchange meets the criteria in this rule and the positive and negative impacts of the exchange on public benefits and resources. The department will provide copies of its recommendations to the proponent of the exchange. In general, an exchange should only be recommended by the department and approved by the board of natural resources when, in the department's and the board's judgment, the public benefits associated with the exchange outweigh the negative impacts or other diminution in public benefits.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-170, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.457. WSR 99-07-034 (Order 640), § 332-30-170, filed 3/11/99, effective 4/11/99.]

WAC 332-30-171 Residential uses on state-owned aquatic lands. (1) **Application.** This section applies to residential uses, as defined in WAC 332-30-106(62), and floating houses, moorage facilities, and vessels, as defined in WAC 332-30-106 (23), (38) and (74), as they relate to residential uses, on state-owned aquatic lands. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). This section does not apply to: Activities or structures on aquatic lands not owned by the state; vessels used solely for recreational or transient purposes; floating houses or vessels used as hotels, motels or boatels; or vessels owned and operated by the United States military.

(2) **Limits on the number of residential uses.** Residential uses on state-owned aquatic lands shall only occur in accordance with all federal, state, and local laws. The following apply only to leases entered into following the effective date of this rule unless otherwise provided in subsection (3) of this section.

(a) The total number of slips which may be allocated for residential uses in any marina, pier, open water moorage and anchorage area, or other moorage facility shall be limited to ten percent of the total number of slips within a marina, unless otherwise established as provided in (b) or (c) of this subsection. For the purposes of determining the exact number of residential slips, the department shall round to nearest whole number.

(b) Upon the effective date of this rule, the ten percent limit can be changed by local government, through amendments to the local shoreline master program and/or issuance of a shoreline substantial development conditional use permit, if all of the following conditions are met:

- (i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use are expressly addressed and required; and
- (ii) Specific locations for residential use slips do not adversely impact habitat or interfere with water-dependent uses.

(c) If a local shoreline master program or local ordinance has established a different percentage limit prior to the date this rule takes effect, the limit established in that shoreline master program or local ordinance shall be the recognized percentage limit. After the effective date of this rule, changes to the percentage limit shall only be recognized by DNR as the percentage limit if the changes are made through amendments to the Shoreline Master Program or adoption of a shoreline substantial development conditional use permit.

(d) Application of the percentage limit to moorage facilities that occupy both state-owned aquatic and privately owned aquatic lands.

(i) If the city or county jurisdiction has not established a percentage limit, then the total number of vessels used as a residence and floating houses in any moorage facility shall be limited to ten percent of the total number of slips or spaces usable for moorage or anchorage in that facility. In this case, when a moorage facility occupies both state-owned and non-state-owned aquatic lands, the percent limit will be calculated using only the total number of slips that are located on state-owned aquatic lands and will be applied only to the portion of the facility located on state-owned aquatic lands.

(ii) If a county or city has established a percent limit, and a moorage facility occupies both state-owned and nonstate-owned aquatic lands, the department may authorize any or all of the floating houses or vessels with residential uses within the entire facility to be located in the portion of the facility on state-owned aquatic lands.

(e) If a moorage facility has so few moorage slips or spaces that the percent limit allows for less than one residential use slip, then one residential use slip may be authorized, if not otherwise prohibited by the city or county jurisdiction.

(3) Excess residential use slips.

(a) This subsection shall apply to all lessees occupying state-owned aquatic lands under written leases with the department as of the effective date of this rule. Within one hundred eighty days of the effective date of this rule, each existing moorage facility lessee shall document the existing percentage of residential use slips within their facility and report this information to the department. This reported percentage shall be referred to as the "reported existing percentage" for the moorage facility lessee.

(i) If the reported existing percentage of residential use slips is greater than the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the reported existing percentage will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes subject to attrition described in subsection (3)(b) of this section. At the time the new lease is entered into, those residential uses in excess of the reported existing percentage will be required to vacate the moorage facility.

(ii) If the reported existing percentage of residential use slips is less than or equal to the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(iii) If a moorage facility lessee fails to report the existing percentage of residential slips within their facility within one hundred eighty days of the effective date of this rule, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(b) The purpose of this subsection is to describe the process of attrition used to reach compliance with the percentage limit or locally established percentage limit. For all leases entered into following the effective date of this rule, if there are more residential use slips in a moorage facility than allowed by the percent limit, then no new or additional residential use slips, including replacements for grandfathered floating houses under subsection (7)(a) of this section, shall be authorized in that facility. In such cases, any residential uses that leave the facility for a period of time greater than thirty days may not return to the facility until the total number of residential use slips is below the percent limit. For purposes of counting the thirty days described in this subsection (3)(b), the department shall not include time needed for repairs to the vessels or floating houses, nor any time when a vessel is away from the moorage facility but the owner or operator of the vessel continuously maintains a written moorage agreement for that facility.

(c) Marina owners, operators, and/or managers may decrease the ten percent limit on a site-specific basis.

(4) **Waste disposal.** The following apply to all leases entered into following the effective date of this rule:

(a) Sewage. All treated and untreated sewage shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(b) Oil and toxic substances. All oil, grease, corrosive liquids, and other toxic substances shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(c) Solid waste. All solid waste shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(d) Gray water. All gray water shall be disposed of in accordance with federal, state, and local laws. Moorage facilities shall develop and implement best management practices to avoid, to the maximum extent possible, all discharges into waters above state-owned aquatic land, of wastewater from showers, baths, sinks, laundry, decks, and other miscellaneous sources, otherwise known as "gray water." For those unavoidable discharges, the best management practices shall minimize discharges, to the maximum extent possible, of gray water from showers, baths, sinks, laundry, decks, and other miscellaneous sources.

(5) **Responsibilities of lessees with residential uses.** The following apply to leases entered into following the effective date of this rule:

(a) Each department lessee must establish and implement measures satisfactory to the department for ensuring upland waste disposal, and the avoidance or minimization of any discharge of waste, as described in (c) of this subsection, onto or in the waters above state-owned aquatic lands from vessels used for residential use and floating houses. This shall include a contingency plan in case of failure or unavailability of the waste disposal methods identified by the lessee and approved by the department.

(b) Each department lessee must annually, or as otherwise provided in the lease, provide the department with evidence that all vessels used for residential use and floating houses in their facility comply with this rule and the terms of the department lease.

(c) Each department lessee shall fully describe the waste disposal measures. These measures may include, but are not limited to:

- (i) Connection to an upland sewage system;
- (ii) Periodic sewage pump-out service, either at a pump-out station or with transportable pump-out equipment, including prepayment for such services and proof of participation by residential occupants;
- (iii) Installation of appropriate waste receptacles;
- (iv) Back-up and clean-up facilities and procedures as needed in case of failure or temporary unavailability of waste disposal systems;

(v) Educational efforts, such as posting of notices, distribution of information, and training for residents on waste disposal methods and requirements;

(vi) Monitoring of activities within the facility to prevent or identify and remedy improper waste disposal;

(vii) Contractual requirements in moorage subleases requiring proper waste disposal by residents; and/or

(viii) Other best management practices and/or best available technologies that are established by any local, state, or federal agency, including the department, or by any appropriate nongovernmental organization, that are satisfactory to the department to ensure upland disposal of waste and avoid or minimize any discharge of waste onto or in the waters above state-owned aquatic lands.

(d) Consistent with all federal, state, and local laws and regulations, all leases issued by the department after the effective date of this rule for moorage facilities with residential uses within them shall require and specify:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use;

(ii) Specific locations for residential use slips that do not adversely impact habitat or interfere with water-dependent uses.

(6) **Vessels.** Moorage of a vessel, as defined in WAC 332-30-106(74), is a water-dependent use.

(7) **Floating houses.** Moorage of a floating house, as defined in WAC 332-30-106(23), is a water-oriented use.

(a) **Classifying floating house moorage under RCW 79.105.060(25).** In classifying floating house moorage under RCW 79.105.060(25), the department will apply the following rules:

(i) If a floating house moorage site had a floating house moored there under a department lease on October 1, 1984, or if a floating house was moored there for at least three years before October 1, 1984, then the department will classify that site as a water-dependent use for the purposes of determining rent. Such sites may be referred to as "grandfathered" sites.

(ii) If a floating house moorage site did not have a floating house moored there under a department lease on October 1, 1984, nor for at least three years before October 1, 1984, then the department shall classify that site as a nonwater-dependent use. Such sites may be referred to as "nongrandfathered" sites.

(iii) The classification of a grandfathered or nongrandfathered floating house moorage site applies to the specific aquatic land being utilized for moorage of the floating house, not to the floating house itself.

(iv) The department shall classify each individual floating house moorage slip within a moorage facility as a separate site. This may result in a marina containing both grandfathered and nongrandfathered floating house moorage sites.

(v) If a floating house vacates a grandfathered moorage site and either returns within thirty days or is replaced with another floating house within thirty days, then the moorage site will remain grandfathered.

(vi) If a floating house vacates a grandfathered moorage site and does not return within thirty days, future moorage of that floating house in the same or a different site shall be nongrandfathered, unless the floating house qualifies as a replacement floating house under (a)(v) of this subsection.

(vii) After October 1, 1984, if a grandfathered site ceased or ceases being used for floating house moorage for more than thirty consecutive days, then the site shall no longer be grandfathered.

(viii) When counting the thirty days described in (a)(v) through (vii) of this subsection, the department will exclude any reasonable time needed for repair of the floating house.

(ix) If a lessee redesignates a grandfathered floating house moorage slip within the lease area, consistent with the lease requirements, and notifies the department in advance of where the slip is to be relocated, then the slip will remain grandfathered. However, if a nongrandfathered site has a floating house relocated to it after the effective date of this rule, the site shall not be designated as grandfathered as provided in this subsection, (7)(a)(ix).

(x) If a floating house was moored at a grandfathered site on October 1, 1984, but was relocated to a site authorized by the department so that on the effective date of this rule the floating house is moored at a nongrandfathered site, then the department may classify this new location as a grandfathered site if the floating house meets all of the following criteria:

(A) The floating house was on state-owned aquatic land leased on October 1, 1984, or was on state-owned aquatic lands for three years prior to October 1, 1984;

(B) The floating house was continuously on state-owned aquatic lands from October 1, 1984, until the effective date of this rule, except for any reasonable time needed for repair of the house; and

(C) The department receives, within one year after the effective date of this rule, a request to have the current moorage site classified as a grandfathered site.

(b) **Managing grandfathered floating house moorage.** Floating houses moored in grandfathered sites that meet all applicable laws and rules, and are consistent with all lease requirements, may remain. The department shall charge the water-dependent rental rate for such moorage.

(c) **Managing nongrandfathered floating house moorage.**

(i) The department may authorize floating house moorage at a nongrandfathered site only if the department determines that the following conditions are met:

(A) All conditions as set forth in this section;

(B) The specific sites and circumstances for floating house moorage have been identified in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and

(C) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.

(ii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection, but the site is authorized by a department lease and the floating house and moorage meet all conditions as set forth in this section and is consistent with all lease requirements, then the floating house may remain until the termination of the lease or one year after the effective date of this rule, whichever is later. Thereafter, unless at that time the floating house meets the conditions in (c)(i) of this subsection, the floating house must vacate the nongrandfathered site.

(iii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection and is not authorized by a department lease, then the

floating house must vacate the site within one year from the effective date of this rule, unless at that time it meets the conditions in (c)(i) of this subsection and the department chooses to grant a lease.

(iv) For nongrandfathered floating house moorage sites, the department shall charge the nonwater-dependent rental rate. If a leased area contains both nongrandfathered floating house moorage along with grandfathered floating house moorage or other water-dependent uses, then the nonwater-dependent rental rate shall be applied to a proportionate share of any common areas used in conjunction with the nongrandfathered floating house moorage, including, but not limited to, docks, breakwaters, and open water areas for ingress and egress to the facility.

(8) **Open water moorage.** For the purposes of this section, open water moorage and anchorage areas are defined in WAC 332-30-106(45).

(a) Vessels used for residential use and floating houses shall be moored, anchored, or otherwise secured only at a marina, pier, or similar fixed moorage facility that is connected to the shoreline, or in open water moorage and anchorage areas described under WAC 332-30-139(5) and subject to the restrictions therein. Vessels used for residential use and floating houses shall not be moored, anchored or otherwise secured in open waters above state-owned aquatic lands away from a fixed moorage facility that is connected to the shoreline, nor be moored, anchored, or otherwise secured to any natural feature in the water or on the shoreline, except within an open water moorage and anchorage area. A vessel used for residential use or floating house may moor in areas prohibited by this subsection (8)(a) when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(b) Any vessel used for residential use or floating house that is moored on state-owned aquatic lands on the effective date of this rule, and complies with all other applicable laws and all lease requirements, but does not comply with (a) of this subsection, may remain until one year after the effective date of this rule or until the termination date of the existing department lease, whichever is later. Thereafter, unless at that time it meets the conditions in (a) of this subsection, the vessel used for residential use or floating house must vacate the site. The department shall not authorize or reauthorize any moorage for vessels used for residential use or floating houses that do not comply with (a) of this subsection.

[Statutory Authority: RCW 79.105.360, WSR 06-06-005 (Order 724), § 332-30-171, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460, WSR 02-21-076 (Order 710), § 332-30-171, filed 10/17/02, effective 11/17/02.]

WAC 332-30-172 Geoduck diver safety program. (1)

General.

(a) Beginning January 1, 2015, divers shall annually demonstrate compliance with the geoduck diver safety program established in this section prior to being identified on a department geoduck harvest agreement plan of operations.

(b) Applicants may submit applicable documents and certifications beginning October 1st of each year to verify compliance for the subsequent calendar year. The department will not consider incomplete and/or illegible materials. The department shall review materials in the order they are

received and notify divers of their compliance status within thirty-days of receipt of all required documentation.

(c) Applicants may submit applicable materials to the department by certified mail or electronically by e-mail or fax. The department will not accept materials submitted in person.

(d) The department will maintain an electronic database documenting annual compliance with the program. Compliance verification shall expire at the end of a calendar year.

(e) If a plan of operations spans portions of two calendar years, the department shall only verify diver compliance for the calendar year the diver is initially identified on the plan of operations.

(2) Training qualifications. Divers shall provide evidence of the following qualifications:

(a) Cardiopulmonary resuscitation (CPR) and first-aid certification;

(b) Emergency oxygen administration certification;

(c) Washington state boater education card; and

(d) Annual self-attestation confirming applicant possesses a combination of training and experience necessary to conduct harvest diving in a safe and healthful manner. The department shall develop and make available a template for applicant signature. Divers shall maintain, at a minimum, competency in the following subject areas:

(i) Diving physiology and physics;

(ii) Diving operations and emergency procedures;

(iii) Tools, equipment, and techniques relevant to geoduck harvesting;

(iv) U.S. Coast Guard vessel safety requirements; and

(v) Any additional subject matter areas as identified in "Qualifications of Dive Team" within federal Occupational Safety and Health Standards for Commercial Diving Operations (C.F.R. 1910.410(a)).

[Statutory Authority: RCW 43.30.560, WSR 15-18-012, § 332-30-172, filed 8/21/15, effective 9/21/15.]