

Aquaculture Leasing Statutory and Regulatory Framework

Revised Code of Washington (RCW)

RCW 79.68.080: Fostering Use of Aquatic Environment Limitation

The Department of Natural Resources shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game and water.

RCW 79.90.495: Rents and Fees for Aquatic Lands Used for Aquaculture Production and Harvesting

If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

RCW 79.96.010: Leasing Beds of Tidal Waters for Shellfish Cultivation or Other Aquaculture Use

The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by section 1, Article XV, of the Washington State Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years. Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department.

RCW 79.96.020: Leasing Lands for Shellfish Cultivation or Other Aquaculture Use Who May Lease Application Deposit

Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the Department of Natural Resources, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by such reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars which deposit shall be returned to the applicant in case a lease is not granted.

RCW 79.96.030: Leasing Lands for Shellfish Cultivation or Other Aquaculture Use Inspection and Report by Director of Fish and Wildlife Rental and Term Commercial Harvest of Subtidal Hardshell Clams by Hydraulic Escalating

(1) The Department of Natural Resources, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the Department of Natural Resources of his or her findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding thereof, to retain the lands described in the application for lease or any part thereof, and in the event the director deems it advisable to retain the lands or any part thereof for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the same shall not be subject to lease. However, if the director determines that the lands applied for or any part thereof may be leased, the director shall so notify the Department of Natural Resources and the director shall cause an examination of the lands to be made to determine the

presence, if any, of natural oysters, clams, or other edible shellfish on said lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In his or her report to the department, the director shall recommend a minimum rental for said lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases, DNR shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

RCW 79.96.050: Leasing Lands for Shellfish Cultivation or Other Aquaculture Use Renewal Lease

The Department of Natural Resources may, upon the filing of an application for a renewal lease, cause the tidelands or beds of navigable waters to be inspected, and if he or she deems it in the best interests of the state to release said lands, he or she shall issue to the applicant a renewal lease for such further period not exceeding thirty years and under such terms and conditions as may be determined by DNR: PROVIDED, that in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife.

RCW 79.96.060: Leasing Lands for Shellfish Cultivation or Other Aquaculture Use Reversion for Use Other than Cultivation of Shellfish

All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of said lease, the lands described therein shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall thereupon revert to and become the property of the state and that the same are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of said lands if at any time the same are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish.

RCW 79.96.070: Leasing Lands for Shellfish Cultivation or Other Aquaculture Use Abandonment Application for Other Lands

If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall become unfit and valueless for any such purposes, the lessee or his assigns, upon certifying such fact under oath to the Department of Natural Resources, together with the fact that he has abandoned such land, shall be entitled to make application for other lands for such purposes.

RCW 79.96.090: Lease of Tidelands Set Aside as Oyster Reserves

The Department of Natural Resources is hereby authorized to lease first or second class tidelands which have heretofore or which may hereafter be set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands.

RCW 79.96.100: Inspection and Report by Director of Fish and Wildlife

The Department of Natural Resources, upon the receipt of an application for the lease of any first or second class tidelands owned by the state which have heretofore or which may hereafter be set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It shall be the duty of the director of fish and wildlife to cause an inspection of the reserve to be made for the purpose of determining whether said reserve or any part thereof should be retained as a state oyster reserve or vacated.

RCW 79.96.110: Vacation of Reserve Lease of Lands

In case the director of fish and wildlife approves the vacation of the whole or any part of said reserve, the Department of Natural Resources may vacate and offer for lease such parts or all of said reserve as it deems to be for the best interest of the state, and all moneys received for the lease of such lands shall be paid to the department of natural resources in accordance with *RCW 79.94.190: PROVIDED, that nothing in RCW 79.96.090 through 79.96.110 shall be construed as authorizing the lease of any tidelands which have heretofore, or which may hereafter, be set aside as state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties: PROVIDED FURTHER, that any portion of Plat 138, Clifton's Oyster Reserve, which has already been vacated, may be leased by the department.

Washington Administrative Code (WAC)

WAC 332 30 106 Definitions

(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.

WAC 332 30 118: Tidelands, Shorelands and Beds of Navigable Waters

(8) Whenever structures are used for aquaculture on the beds of navigable waters, they shall be located in such a way as to minimize the interference with navigation and fishing and strive to reduce adverse visual impacts.

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 DNR 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. Non-compliance may result in lease suspension or cancellation upon notification.
- (6) Harvesters must comply with all applicable federal, state and local rules and regulations. Non-compliance may result in lease suspension or cancellation upon notification.
- (7) If appropriate, the department may secure all necessary permits prior to leasing.