

Commercial marine Atlantic salmon net-pen aquaculture

Legal authorities and requirements

Overview

- Washington has four commercial marine net-pen sites growing Atlantic salmon in Puget Sound and Strait of Juan de Fuca. There are eight total net pen arrays in Washington State. A net pen array is the structure that holds the net or nets holding the salmon in place.
- To protect Washington waters and native Pacific salmon, local governments and state and federal agencies have a complex set of regulations and policies in place to address potential net-pen risks such as water pollution, fish pathogens and escapes.
- This document provides a high level overview of the primary legal authorities for these facilities.

Washington State Tribes

- In Washington State, tribes have reserved certain rights through treaties and are co-managers of the fisheries. Please direct questions about tribal jurisdiction to individual tribes.

Washington state agencies

Washington Department of Fish and Wildlife (WDFW)

- WDFW regulates commercial Atlantic salmon net-pen facilities through an aquaculture license, ([Washington Administrative Code \(WAC\) 220-370-100](#)), an aquatic farm registration process, ([WAC 220-370-060](#)), and through fish transport permits which can include conditions such as disease screening prior to moving fish ([WAC 220-370-190](#)).
- Farm operators must obtain a WDFW license to operate net pens in Washington marine waters.
- The license requires fish escape prevention, reporting and recapture plans. ([WAC 220-370-110](#), [WAC 220-370-120](#)).
- WDFW rules regarding aquaculture licenses focus on disease prevention, reporting and control, and on escapement prevention and response.
- Anyone seeking to transport fish into or through Washington must get a fish transport permit from WDFW to protect native fish species and ensure live fish are free from reportable fish pathogens or undesirable / invasive species ([WAC 220-370-190](#)).
- The department also requires access to all commercial net-pen facilities for fish health inspections ([WAC 220-370-080](#)).

Washington Department of Natural Resources (DNR)

- DNR is the proprietary land manager for state-owned aquatic lands. All Cooke Aquaculture commercial net pens in Washington are on state-owned aquatic lands.
- DNR does not grant leases until all other permits from local, state and federal agencies are obtained.
- Uses on state-owned aquatic lands require leases from DNR specifying the location, structural development, operational practices, lease terms, environmental monitoring, rent and other requirements. DNR's Aquatic Lands Division manages the leases for the current commercial pens.

- DNR reviews lease proposals for consistency with state laws and rules, including public benefit criteria. DNR may develop lease conditions to minimize potential impacts to public resources.
- Leases are generally granted for 12 years but longer terms can be granted on a case-by-case basis to accommodate specific needs of the lessee. Lessees must obtain all applicable local, state and federal permits before DNR may grant a lease. Leases are no longer than 30 years.

Washington Department of Ecology (Ecology)

- Ecology manages pollutant discharges at commercial Atlantic salmon net-pen facilities that harvest more than 20,000 pounds of fish a year or uses more than 5,000 pounds of food annually.
- All commercial Atlantic salmon facilities currently operate under water quality – or National Pollutant Discharge Elimination System – permits that require fish release and monitoring reports; pollution and spill prevention plans; disease control and sea lice monitoring reports; monthly fish biomass and feeding reports; sediment and dissolved oxygen sampling and analysis; and underwater photographic surveys.
- Commercial net-pen facilities may need water quality certification under section 401 of the federal Clean Water Act.
- Activities and development involving federal activities, licenses and permits in Washington’s 15 counties with marine shorelines also require a written Coastal Zone Management consistency determination.
- Ecology also administers the Shoreline Management Act and reviews and approves local shoreline master programs.

Washington State Department of Agriculture (WSDA)

- The state Department of Agriculture is responsible for fostering the state’s aquaculture industry and providing market assistance.
- WSDA’s state veterinarian supports the WDFW by monitoring and controlling aquaculture diseases. All diagnosis of pathogens in regulated fish must be reported to the state veterinarian.

Local governments

Cities and counties must determine if a new commercial marine Atlantic salmon net-pen facility complies with their:

- Shoreline master program (including related local shoreline development and use permits)
- Comprehensive land use plans
- Environmental regulations
- Zoning and other codes

Shoreline master programs / local shoreline permits

- Shoreline master programs contain permitting requirements for substantial shoreline development such as new commercial marine Atlantic salmon net-pen facilities.
- A commercial net-pen operation may also need a shoreline conditional use permit, issued by local governments and requiring Ecology for approval. Local governments or Ecology may attach special conditions to the permit.

State Environmental Policy Act (SEPA)

- SEPA requires consideration of significant adverse environmental impacts by completing an environmental checklist and review prior to local or state approval of a proposed net-pen facility.
- An environmental impact statement may be required if there are probable significant environmental impacts.
- Cities and counties where a net-pen facility is proposed typically conduct the SEPA review.

Federal agencies

National Marine Fisheries Service (NMFS)

- The National Marine Fisheries Services (NMFS) does not directly oversee commercial Atlantic salmon net-pen permits in Washington.
- NMFS does provide consultation to federal agencies on federal actions under the federal Endangered Species Act (ESA), Marine Mammal Protection Act and Magnuson-Stevens Fishery Conservation Act.
- The consultations may result in recommendations to avoid, minimize, or mitigate for adverse impacts to ESA-listed species, critical habitat, and / or essential fish habitat.

U.S. Army Corps of Engineers (Corps)

- The Corps regulates discharges of dredged or fill material to U.S. waters. The Corps also regulates structures or work in our navigable waters under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.
- The Corps is required to consult with other federal agencies prior to issuing a permit. The agencies must review the project and, if needed, recommend mitigation measures to protect the environment or wildlife.
- Tribal governments can comment on federal permits regarding habitat and treaty-reserved usual and accustomed areas and provide information on potential affects to historic properties.
- In some cases, letters of permission may be used where proposed work would be minor, not have significant individual or cumulative environmental impacts and not encounter appreciable opposition.

U.S. Coast Guard

- The Coast Guard administers the private aids to navigation permit for marking structures / object / hazards and ensuring boating public safety.
- While the Coast Guard leads the navigation aid permitting program, the U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife and local governments are involved in the permitting process.

U.S. Environmental Protection Agency (EPA)

- EPA requires water quality or NPDES permits to regulate point sources that discharge pollutants.
- NPDES permits are required for discharges associated with concentrated aquatic animal production.
- In Washington, Ecology is authorized by EPA to administer the NPDES permit program.

U.S. Fish & Wildlife Service

- The U.S. Fish & Wildlife Service does not directly administer permits for net pens.

- However, under ESA, the Migratory Bird Treaty Act and Fish and Wildlife Coordination Act, the agency reviews federal permit applications.
- These reviews may lead to recommendations for mitigation measures.
- U.S. Fish & Wildlife Service's Aquatic Animal Drug Approval Partnership provides a way for federal, state, tribal and private agencies or organizations to use certain critical drugs necessary to maintain the health and fitness of aquatic species under investigational new animal drugs.

U.S. Food and Drug Administration (FDA)

- The FDA's Center for Veterinary Medicine approves drugs for use in aquaculture and may allow exemptions for investigational new animal drugs.