

Appendix A. Pertinent RCW's and WAC's

RCW 77.60.070 - *Geoduck Clams, Commercial Harvesting, Unauthorized acts, Gear requirements*

(1) The director may not authorize a person to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW [79.135.210](#). The director may not authorize commercial harvest of geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0. ft.). Vessels conducting harvest operations must remain seaward of a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW [15.85.020](#).

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

RCW 77.65.010 - *Commercial licenses and permits required — Exemption*

1) Except as otherwise provided by this title, a person may not engage in any of the following activities without a license or permit issued by the director:

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;
- (c) Operate a charter boat or commercial fishing vessel engaged in a fishery;
- (d) Engage in processing or wholesaling food fish or shellfish; or
- (e) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW [15.85.020](#) or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW [15.85.060](#), the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

RCW 77.65.410 - *Geoduck Diver License*

Every diver engaged in the commercial harvest of geoduck clams shall obtain a nontransferable geoduck diver license.

RCW 77.70.220 - *Geoduck Fishery License*

(1) A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW [15.85.020](#).

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under *RCW [79.96.080](#) may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the

<p>underlying harvesting agreement.</p> <p>(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.</p> <p>(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 77.60.070. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.</p> <p>(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The director shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the director shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the director shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.</p>
<p>RCW 79.135.210 - <i>Geoduck Harvesting -- Agreements, Regulation</i></p>
<p>(1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of *chapter 79.90 RCW. After confirmation of the sale, the department may enter into an agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.</p> <p>(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured.</p>
<p>RCW 79.135.220 - <i>Geoduck Harvesting -- Designation of Aquatic Lands</i></p>
<p>The department shall designate the areas of state-owned aquatic lands that are available for geoduck harvesting by licensed geoduck harvesters in accordance with *chapter 79.90 RCW.</p>
<p>RCW 79.140.150 - <i>Sale of Rock, Gravel, Silt and Other Valuable Materials</i></p>
<p>The department, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any state-owned tidelands or shorelands and providing for payment to be made by such royalty as</p>

the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon state-owned aquatic lands the department shall inspect and appraise the value of the material in the application.

WAC 220.52.019 - *Geoduck clams – Gear and unlawful acts*

(1) It is unlawful to take, fish for or possess geoduck clams taken for commercial purposes from any of the beds of navigable waters of the state of Washington except as provided in RCW [75.24.100](#) and rules of the director.

(2)(a) Only a manually operated water jet, the nozzle of which shall not exceed 5/8 inch inside diameter may be used to commercially harvest geoduck clams. Use of any other gear requires a permit from the director.

(b) It is unlawful in the commercial harvest of geoducks for through-hull fittings for water discharge hoses connected to the harvest gear to be below the surface of the water. Any through-hull fitting connected to the harvest gear which is above the surface of the water must be visible at all times.

(3) It is unlawful to take or fish for geoduck clams taken for commercial purposes between one-half hour before official sunset or 7:00 p.m. whichever is earlier and 7:00 a.m. No geoduck harvest vessel may be on a geoduck tract or harvest area after 7:30 p.m. or before 6:30 a.m. It is unlawful to take or fish for geoduck clams on Sundays or on state holidays as defined by the office of financial management. It is unlawful to possess geoduck clams taken in violation of this section.

(4) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

(5) It is unlawful to possess only the siphon or neck portion of a geoduck clam aboard a geoduck harvest vessel, except when a geoduck is incidentally damaged during harvest and must be reported under a department of natural resources harvest agreement.

(6) It is unlawful to retain any food fish or shellfish other than geoduck clams during geoduck harvesting operations, except for horse clams (*Tresus capax* and *Tresus nuttallii*) when horse clam harvest is provided for under a department of natural resources harvest agreement.

(7) It is unlawful for more than two divers from any one geoduck harvest vessel to be in the water at any one time.

(8) The following documents must be on board the geoduck harvesting vessel at all times during geoduck operations:

(a) A copy of the department of natural resources geoduck harvesting agreement for the tract or area where harvesting is occurring;

(b) A map of the geoduck tract or harvest area and complete tract or harvest area boundary identification documents or photographs issued by the department of natural resources for the tract or harvest area;

(c) A geoduck diver license for each diver on board the harvest vessel or in the water; and

(d) A geoduck fishery license as described in WAC [220-52-01901](#).

(9) It is unlawful to process geoducks on board any harvest vessel.

(10) It is unlawful to take or fish for geoduck clams for commercial purposes outside the tract or harvest area designated in the department of natural resources geoduck harvesting agreement required by subsection (8)(a) of this section. It is unlawful to possess geoduck clams taken in violation of this subsection.

(11) It is unlawful to harvest geoduck clams in areas deeper than seventy feet below mean lower low water (0.0 ft.).

(12) Holders of geoduck fishery licenses shall comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. Some of those regulations appear at 29 C.F.R. Part 1910, Subpart T.

WAC 220.52.01901 - *Geoduck licenses*

(1) A geoduck fishery license issued by the director is required for the commercial harvest of geoduck clams. Geoduck fishery licenses were previously called "geoduck validations."

(2) Only persons holding current geoduck harvest agreements from the department of natural resources or their agents may apply for geoduck fishery licenses. An application for a geoduck fishery license must be on a form provided by the department, must be complete, and must be accompanied by a copy of the geoduck harvest agreement for which the license is sought.

(3) Each geoduck fishery license authorizes the use of two water jets or other units of geoduck harvest gear. Gear must meet the requirements of WAC [220-52-019\(2\)](#). A geoduck fishery license card

is a "license card" under WAC [220-69-270](#).

(4) The director may suspend or revoke a geoduck license used in violation of commercial diving safety regulations, including 29 C.F.R. Part 1910, Subpart T, adopted under the Occupational Safety and Health Act of 1970. The procedures of chapter [34.05](#) RCW apply to such suspensions or revocations. If there is a substantial probability that a violation of commercial diving safety regulations could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the director may suspend the license immediately until the violation has been corrected. The director shall not revoke a geoduck license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.