

Considering commercial harvesting or cultivating clams, mussels, oysters, or geoducks on private land?

The permits you need depend on your location and activities. The Departments of Health (DOH) and Fish and Wildlife (WDFW) issue multiple permits, while ensuring that treaty Indian tribes maintain their harvest rights. This FAQ outlines the state permits and the requirements for working with treaty tribes.

In addition to DOH and WDFW, other local, state, and federal agencies may issue permits for commercial cultivation and harvest of shellfish.

The term “permit” includes environmental processes, permits, authorizations, certifications, licenses, and approvals.

Step 1 - Determine what permits are required.

What permits from DOH are required to commercially harvest wild shellfish?

▶ Shellfish Operation License

DOH is responsible for issuing licenses to commercial shellfish operations. Since shellfish can have chemicals, bacteria, viruses, or marine biotoxins inside them, DOH continually evaluates commercial shellfish growing areas and certified harvest sites to protect the public.

▶ Harvest Site Certificate

This certificate is required for each harvesting parcel. It must be ready to display whenever you are in possession of shellfish that you intend to sell for human consumption. Again, DOH continually evaluates commercial shellfish growing areas and certified harvest sites to protect the public since



Bagged oysters on the beach. Photo courtesy of Dept. of Health

shellfish can carry chemicals, bacteria, viruses, and marine biotoxins.

What permits from WDFW are required to commercially harvest wild (non-cultivated) shellfish?

▶ Emerging Commercial Fishery (ECF) License

This license authorizes you to commercially harvest wild shellfish. It provides catch reporting requirements and must be renewed annually. You must own the land or have a contract to harvest wild shellfish on it. This license and the Trial Commercial Fishery Permit are both required before you can commercially harvest any shellfish.

▶ Trial Commercial Fishery Permit

In addition to the ECF License, this permit is needed to harvest shellfish commercially. You must apply for this permit for each parcel that you plan to harvest. You also must renew it annually.

What do I need to cultivate shellfish?

▶ Aquatic Farm Registration

An aquatic farm is any facility or piece of land that is used for commercial culture of aquatic products, including shellfish. Each parcel of land is considered a separate farm, so each parcel needs to be registered with WDFW separately.

Shellfish (other than geoduck) are considered wild for the first 12 months after registration; geoducks are considered wild for 36 months. Before harvesting during this period, you must meet both the wild shellfish and aquatic farm requirements.

- ▶ Shellfish Operation License
- ▶ Harvest Site Certificate

What do I need to sell the wild or cultivated shellfish I harvest?

- ▶ Shellfish Receiving Tickets

Report wild shellfish sales to WDFW on these tickets. You must sell to a licensed wholesale fish dealer. The fish dealer then completes and submits the Shellfish Receiving Ticket.

- ▶ Aquaculture Production Report

You must report quarterly sales of farmed or cultivated shellfish to WDFW using their Aquaculture Production Report.



Geoducks in plastic bins. Photo courtesy of Dept. of Health

How long does it take to process my applications?

DOH will usually process your application for a Harvest Site Certificate within 30 days and will notify affected treaty tribes. You may be able to reduce processing time if you can show that:

- ▶ Your property is exempt from tribal harvest because it is covered by the 2007 settlement agreement filed in federal court.

- ▶ You have already begun to work with the affected treaty tribes to address treaty rights on your property.

Submit your applications to DOH first; WDFW will only accept applications once you have received your certification from DOH. WDFW requires that you submit your DOH beach certification number to them before you harvest. WDFW will also forward copies of your ECF License and Aquatic Farm Registrations to affected treaty tribes.

Step 2 - Notify affected treaty Indian tribes.

Do I need to directly notify the tribes of my intent to cultivate shellfish, and will DOH or WDFW help me do that?

If you want to cultivate shellfish, you must notify affected treaty tribes at least 60 days in advance. DOH and WDFW will help you do this.

Your notification to the affected treaty tribes must include:

- ▶ Your name and contact information.
- ▶ The location of the shellfish bed and the species proposed for cultivation.
- ▶ A brief history of the shellfish cultivation and harvests on the property.
- ▶ Your belief on whether or not the property has a natural shellfish bed, based on how many naturally-occurring shellfish are present.
- ▶ The basis for your belief, including any shellfish population estimates.

Washington State and the tribes developed a notice to help you meet this requirement. If you complete and submit the notice to DOH and WDFW with your other applications, they will forward it to the affected treaty tribes for you. You can also mail the form directly to the tribes.

What should I do if a treaty tribe responds to my notice that they would like to survey shellfish and possibly harvest wild shellfish on my land?

If a treaty tribe wants to survey and possibly harvest wild shellfish on your land, work with them to resolve treaty right questions. Do not begin to harvest or cultivate. Unless you already have an agreement with the tribe, you should not harvest or cultivate until the tribe has an opportunity to survey, and, if appropriate, you and the tribe create a harvest sharing agreement.

If you intend to harvest wild shellfish:

- ▶ The tribe is entitled to up to 50% of the harvestable wild shellfish.
- ▶ The tribe must notify you at least one month before surveying shellfish unless you agree otherwise. You or a representative may be present for the survey.
- ▶ You and the tribe must create a harvest plan.

If you intend to cultivate shellfish:

- ▶ If your notification states that there are no natural shellfish beds on your property and the tribe disagrees, they must notify you within 30 days of receiving the notice.
- ▶ The tribe must notify you at least 14 days before a survey unless you agree otherwise. You or a representative may be present for the survey.
- ▶ If the tribe confirms that there are no natural shellfish beds on the property, they cannot harvest



Oysters cultured on the beach. Photo courtesy of Dept. of Health while you have a commercial shellfish operation.

- ▶ If there are natural shellfish beds present, then you and the tribe must enter a harvest plan. Again, the tribe has a right to up to 50% of naturally-occurring shellfish on a continuing basis. However, the tribe cannot harvest any share if there is an increase in production of naturally-occurring shellfish due to cultivation.

Why do I need to notify treaty tribes before I harvest and cultivate shellfish, and why can they survey or harvest shellfish on my land?

In the 1850s, Indian tribes entered treaties with the U.S. government that ceded large portions of land, but reserved the right to take shellfish at their usual and accustomed locations.

Since then, courts have interpreted the treaties so that tribes have a right of up to 50% of naturally-occurring shellfish on public and private tidelands, except on property that has shellfish cultivation and no natural shellfish beds. The tribes are also not entitled to a share of the additional shellfish created from cultivation.

Fact: Section 6.3 of the Revised Shellfish Implementation Plan requires you to notify affected treaty tribes 60 days before you cultivate shellfish.

Tip: In addition to DOH and WDFW, other local, state, and federal agencies may issue permits for commercial cultivating and harvesting.

Contact Information

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Fact: Treaty rights, including information on surveys and harvest on private tidelands, can be found in the:

- ▶ Revised Shellfish Implementation Plan.
- ▶ Consent Decree and Settlement Agreement for Geoduck.
- ▶ Consent Decree and Settlement Agreement for Manila Clams, Native Littleneck Clams, and Pacific Oysters.

To access these documents, go to <http://nwifc.org/about-us/shellfish/downloads/>.

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For people with disabilities, this document is available on request in other formats. To submit a request, please call 1-800-525-0127 (TDD/TTY call 711).