

2005 BIVALVE MANAGEMENT PLAN FOR PUBLIC TIDELANDS IN REGION 1: STRAIT OF JUAN DE FUCA

Introduction

This Bivalve Management Plan for public beaches describes available clam and Pacific oyster resources, harvest shares, population assessment methods, and management activities for these species for the period January 1, 2005 through December 31, 2005 in Region 1. Region 1 includes all public tidelands within the marine waters that are east of a line projected from the most westerly point of Cape Flattery north to the Tatoosh light and west of a line projected north from Point Wilson to Point (Figure 1).

The inter-tidal fisheries subject to this Plan include non-Treaty recreational and commercial fisheries, Treaty commercial fisheries, Treaty subsistence fisheries, and Treaty ceremonial fisheries. The species affected by this Plan include Manila littleneck (*Venerupis philippinarum*), native littleneck (*Protothaca staminea*), butter clams (*Saxidomus giganteus*), and Pacific oysters (*Crassostrea gigas*), native oyster (*Ostrea conchaphila*), softshell clam, (*Mya arenaria*), cockle (*Clinocardium nuttallii*), mussel (*Mytilus spp.*), horse clam (*Tresus spp.*), and geoduck (*Panopea abrupta*). This list may be expanded in the future to reflect new fisheries that evolve.

Tables 1 and 2 summarize available resource information for littleneck clams. Table 3 summarizes this information for Pacific oysters and littleneck clams on artificial beaches. The parties may develop additional management and allocation information for any other inter-tidal bivalves to be added to this Plan by written agreement.

Scope of Plan

This Plan establishes the non-Treaty and Treaty harvest shares for 2005 from the beaches specified herein. Consistent with conservation needs, harvest will occur only on beaches identified within this Plan or by an agreed supplement or amendment to this Plan.

No Waiver or Admission of Usual and Accustomed Areas

No party hereto waives any claims concerning the location, boundaries, scope or use of usual and accustomed grounds and stations. This Plan does not constitute an admission that a particular area used for management is an accurate description of usual and accustomed grounds and stations, their location, boundaries, scope or use.

The terms of this Plan shall never be used as evidence in any tribal, state or federal court of administrative or quasi-judicial proceeding concerning the location, boundaries, scope or use of usual and accustomed grounds and stations of the breadth or limit of usual and accustomed areas.

If a tribe not party to this Plan should have rights to harvest inter-tidal bivalves from any beach addressed herein, then any amount actually taken by that tribe on the beach shall count against the planned tribal share and the state retains all rights to its share.

Application to Federal Court Revised Shellfish Implementation Plan

1. This Plan is intended to be consistent with the Federal District Court's order dated December 20, 1994, and all subsequent implementation orders in United States v. Washington, No.9213, Sub-proceeding 89-3.
2. The parties agree that they remain bound by ¶ 1.6 of the court's Revised Shellfish Implementation Order of April 8, 2002, continuing the application of the Consent Decree on Shellfish Sanitation Issues (May 5, 1994). Additionally, this Plan shall not be construed to be a waiver of any requirements of the Consent Decree, or be construed to be an agreement by the State Department of Health for sanitation matters. The undersigned State agencies do not represent the Department of Health.
3. This Plan shall not apply to property leased from the State and held by a lessee. Such property, including renewals of leases for such property, is controlled by applicable provisions of the court's orders. Except as provided for herein, the State retains the right to lease additional property which could remove the property from planning and harvest. Provided, however, the State will comply with all applicable parts of the court's order relevant to the State leasing or releasing of property.
4. Nothing in this Plan is intended to preclude any party from asserting a right to take harvestable shellfish that another party is unable to harvest or has chosen not to harvest, nor is it intended to preclude any party from asserting that no such right exists with respect to shellfish. The parties agree that this issue is not addressed in this Plan and each party may assert its position without prejudice from any provision of this Plan.

Management Goals and Objectives

The management goal of this Plan is to preserve, protect, and perpetuate inter-tidal bivalve resources; provide for their sustainable harvest; provide for stable annual fisheries; protect the habitat necessary to sustain these harvests; and minimize bycatch mortalities of other species. The parties will manage inter-tidal harvests on a beach-by-beach basis unless otherwise agreed.

Beach Management Categories

Beaches will be assigned to one of three management categories during the planning process for the Region 1 Management Plan depending on the management need for each species on that beach. The three categories are: (1) primary active management, (2) secondary active management, and (3) passive management. Beaches can be changed from one category to another during the planning process or inseason if the affected parties agree.

1. Primary beaches will meet the following criteria:
 - Demand for littleneck clams, Pacific oysters, or another inter-tidal bivalve species approximates TAC, or is expected to approximate TAC.
 - The annual variability in TAC may also be high.
 - Population assessments will be conducted on primary beaches every year except

where the parties agree to an alternate schedule.

- Commercial, ceremonial, and subsistence (C&S), and recreational fisheries may occur on these beaches.

2. Secondary beaches will meet the following criteria:

- Demand for littleneck clams, Pacific oysters, or another inter-tidal bivalve species is less than on primary beaches, and does not approximate TAC, or is not expected to approximate TAC. Availability/vulnerability of these resources to fishing is moderate.
- The annual variability in TAC may also be moderate.
- Population assessments will be conducted on these beaches every other year, or otherwise by agreement.
- Commercial, C&S, and recreational fisheries may occur on these beaches.

3. Passively managed beaches will meet the following criteria:

- Beaches/species in this category are not designated as primary or secondary active management. Available information on recreational and C&S harvest does not indicate the need for resource surveys or a TAC on these beaches at this time.
- C&S and recreational fisheries may occur on these beaches.
- No allocation is specified for either party.
- Population assessments are not required but may be made periodically on selected beaches.
- Where management needs require more intensive management, beaches may be placed in either the primary or secondary active management category.

Population Assessments

Tables 1 through 3 identify the beaches included in this Regional Plan. Table 1 identifies the party that will conduct population assessments on the identified beaches. Population assessments will follow the procedures outlined in either “Procedures to Determine Intertidal Populations of *Protothaca staminea*, *Tapes philippinarum*, and *Crassostrea gigas* in Hood Canal and Puget Sound, Washington”, by William Campbell, WDFW, or, “Procedures for Estimating the Biomass and Annual Harvest Rates for Intertidal Oyster and Clam (Native Littleneck and Manila) Populations”, by David Fyfe, NWIFC, unless other methodologies are developed and agreed to by the parties. The parties agree to investigate alternative methodologies for population assessments during the term of this Plan and implement agreed-to methods where appropriate. If any party to this Plan is not able to complete their scheduled population assessments as identified in Table 1, that party shall try to notify the other Plan parties in a

timely fashion to allow the other parties to conduct the missed assessment(s), if possible.

Estimates of Total Allowable Catch

The parties will establish the annual TACs on a beach-by-beach basis for primary and secondary management beaches. New population assessment and TAC estimation methods will be reviewed and approved by the affected parties in a timely fashion before being placed in use.

1. Natural Stocks TAC

The TAC for native littleneck clams will be up to 25% by weight of clams equal to and greater than 38 mm, and for Manila clams the TAC will be up to 33% by weight of clams equal to and greater than 38 mm, except where agreed otherwise. For each year there is no new population survey on a primary or secondary active management clam beach the previous year's TAC will be reduced by 25%, except as otherwise agreed. If a beach is not surveyed for multiple years there will be multiple TAC reductions of the most recent survey.

For Pacific oysters, the TAC will be based on the following calculation: $h = 0.1399 X$ (percent of total population 65mm and greater)^{-1.0086}. For those secondary active management beaches not assessed for population size every year (and for those primary management beaches whose population assessment may be missed), the TAC will be 75% of the previous year's TAC, except as otherwise agreed. As with clams, if a beach is not surveyed for multiple years there would be multiple TAC reductions of the most recent survey.

2. Enhanced Stocks TAC

The parties will jointly establish each year which beaches will be included as currently enhanced, based on the following factors: 1) The time interval since the most recent enhancement event; 2) The magnitude of enhancement efforts; 3) Any evidence related to the success of enhancement efforts; 4) Expected grow-out time at the specific location. Bivalve stocks that are enhanced will have TACs established at 50% of the total harvestable stock, unless otherwise agreed. For those beds not assessed for population size every year, the TAC will be 75% of the previous year's TAC, unless agreed otherwise. For each year there is no new population survey on a primary or secondary active management beach the previous year's TAC will be reduced by 25%, except as otherwise agreed. If a beach is not surveyed for multiple years there would be multiple TAC reductions of the most recent survey.

Harvest Shares

Unless otherwise agreed, each Treaty and non-Treaty harvest share is calculated as 50% of the TAC for each primary and secondary active management beach (Table). Treaty and non-Treaty allocations are not established for passively managed beaches (Table 2). Passively managed beaches are open year-round to subsistence, ceremonial, and recreational fisheries subject to

specific Tribal and State regulations. Fisheries occurring on beaches containing natural and artificial stocks will be designed and conducted so that the total harvest of natural and artificial stocks does not exceed any party's share on any one beach, unless agreed otherwise.

1. **Adjustment Provisions To Prevent Over-harvest of Agreed Harvest Levels:**

The parties agree to design fisheries and utilize appropriate management tools that will prevent over-harvest of agreed harvest levels and protect the shellfish resource. Where any over-harvest of the Treaty or non-Treaty share of a species occurs on a beach, the total amount of that species over-harvest shall be subtracted from the offending party's share for that beach in the following year, or as otherwise agreed. This provision is not intended to prejudice any claims by either party with respect to paragraph 4 under the section: Application to Federal Court Revised Shellfish Implementation Plan.

2. Studies To Determine Effects of Different Harvest Strategies on Adult Recruitment

Any party to this Management Plan may propose to investigate different harvest strategies, such as periodic harvest rotation schedules, on any primary or secondary beach identified herein in an effort to determine the effects of changing harvest rates on the rate of adult recruitment. Any such proposal will be distributed to all parties to this Plan, and a consensus between the parties will be required before such proposals are implemented.

Fishery Monitoring and Catch Accounting

The parties agree to monitor fisheries, maintain harvest records, and report harvest information as described below. Harvest will be reported on an annual basis no later than 15 days after the end of the term of the current year's plan. A preliminary report of catch will be due at least 30 days before the end of the term of the current year's plan.

1. **Tribal Commercial Fishery**

Beach specific records of Tribal commercial harvest by species will be recorded in the following way. For those commercial clam and oyster harvests that are monitored, catches will initially be reported on Tribal monitor forms. Subsequent Tribal Fish Receiving Tickets from these harvests, , may be supplemented to reflect the monitor reports, or the monitor reports may serve as the final catch estimate. For those commercial oyster harvests that are not monitored, catches will be reported directly on Tribal Fish Tickets. In addition, all Tribal commercial clam fisheries will occur with a Tribal fisheries monitor to observe the fishery and record catch as it is removed from the beach.

2. **Tribal Ceremonial and Subsistence Fisheries**

All Tribal ceremonial and subsistence harvest will be accounted for on a beach specific and species-specific basis. Catch accounting methods used by Point No Point Treaty Tribes (Jamestown S'Klallam and Port Gamble S'Klallam), the Tulalip Tribes, and the Suquamish Tribe are described in Appendix 1. If the Lower Elwha Klallam Tribe, the Makah Tribe, or the Swinomish Tribe opens ceremonial or

subsistence fisheries in the Strait of Juan de Fuca during 2005, those Tribes will provide the other parties to this plan with their catch accounting methods prior to any opening.

3. Recreational Fishery

The recreational fishery will be monitored and catch estimates will be based on scientific sampling, analyses, and methods. A description of these procedures is described in Appendix 2.

4. Non-Treaty Commercial Fishery

Beach specific records of non-Treaty commercial harvest, excluding leased beaches, will be recorded on WDFW Fish Receiving Tickets. In addition to fish ticket catch accounting, all non-Treaty commercial clam or oyster fisheries will occur with a State fisheries monitor to observe the fishery and record catch as it is removed from the beach.

Fishery Regulations

The parties to this Plan will promulgate and enforce regulations that provide for orderly fisheries designed not to exceed their respective agreed share for each beach. Such regulations shall include, but not be limited to, the following provisions as they may apply to a particular party's fishery.

1. Regulations that apply to all fisheries:

- a. The dates and hours the fishery will be open.
- b. The beach(s) open for harvest.
- c. The type of fishery to be opened.
- d. The target species.
- e. Minimum size limits (Minimum size limits for Manila, native littleneck, butter, and cockle clams is 38mm (1.5 inches) across the longest dimension of the shell, unless otherwise agreed.)
- f. The gear allowed. (In general, clams may be dug by hand or hand-operated fork, pick, rake, or shovel. Oysters may be picked by hand or with the aid of a hand-held prying tool that minimizes damage to the non-harvested oysters.)
- g. Daily harvest limits, if any.
- h. Clam diggers must refill holes and flatten mounds to original beach level.

2. Regulations that apply to non-Treaty recreational fisheries:

- a. Seasons - Seasons may vary in length for each beach and are designed not to exceed the non-Treaty share where applicable. Season length may be adjusted in-season to ensure that the applicable non-Treaty share is fully utilized but not exceeded.
- b. Oysters must be shucked on the beach and the shells replaced at the same tide

height as taken.

3. Regulations that apply to non-Treaty commercial fisheries:

Regulations that will govern non-Treaty commercial fisheries, in addition to those described in Section 1, are contained in State contracts opening specific beaches. In addition, the State party proposing a commercial opening shall provide notice to all affected parties at least two full working days before the opening for primary management beaches and at least one full working day for secondary beaches.

4. Regulations that apply to Treaty fisheries:

The Tribes will specify on a beach-by-beach basis regulations that will govern Treaty commercial, ceremonial, and subsistence fisheries, in addition to those described in Section 1. In addition, Tribes proposing a commercial opening shall provide notice to all affected parties at least two full working days before the opening for primary management beaches and at least one full working day for secondary beaches.

Oyster and Shellfish Transfer Permits

Beaches which have infectious diseases or significant shellfish predators will carry the following restrictions: 1) Each tribal commercial fishery on these beaches will specify by regulation the agreed-to conditions under which inter-tidal bivalves may be transferred to another area. The described transfer conditions will be designed to prevent the introduction and spread of disease and predators. 2) Non-Treaty commercial harvesters will be required by state regulation to have oyster transfer permits or a system to regulate transfers. The permit or regulation will include provisions that specify transfer routes and conditions that prevent the spread of disease and predators. Transfers will not occur between beaches with infectious diseases or predators and beaches void of these problems. 3) Current beaches within Region 1 that have documented infectious diseases or significant shellfish predators, along with the associated WAC reference, are as follows:

1. Dungeness Bay (WAC 220-72-08800A) Denman Island Disease Prohibited Area
2. Cape Flattery to Foulweather Bluff (WAC 220-72-09000A) Denman Island Disease surveillance area

Enforcement

The parties agree to support and conduct effective enforcement activities required to maintain orderly fisheries and ensure compliance with the provisions of this Plan and the Consent Decree. The Tribes and the State further agree that they will take meaningful and substantial enforcement actions if Treaty or non-Treaty harvesters violate their respective regulations.

The parties agree that any party to this plan may personally observe any or all harvest operations of another party, with prior notification.

Property Boundary Issues

The parties will attempt to resolve property boundary issues on public beaches by utilizing the following process (these two steps may or may not occur in one planning year):

1. The agency that owns the tideland will provide available agency information describing the boundaries of the beach to the affected parties to this Plan. The agency will support or work with other parties to contact the private tideland owner(s) as applicable, and assist the other parties in resolving outstanding boundary issues.
2. If no resolution occurs in Step 1, an on-site meeting will be scheduled with staff from the agency, the private tideland owner(s), and Tribal management staff to designate agreed-to interim boundaries that will allow shellfish harvesting to occur.

Special Management Beaches

1. Sequim Bay State Park - The presence of boats necessitates a seasonal shellfish closure, as per the National Shellfish Sanitation Program requirements, from September 1 through September 15. Additional seasonal shellfish closures are necessary due to the land application of treated effluent from the Sequim Bay State Park sewage lagoon. This land application closure will be in accordance with provisions of the Conditionally Approved Management Plan developed by the Department of Health, Washington State Parks and Recreation, and the Point No Point Treaty Council.

Changes to the Plan

All affected parties may make changes to this Plan only upon written agreement. Where there are exclusive Usual and Accustomed (U & A) fishing places within Region 1 and where a change to this Plan occurs only within that exclusive U & A, the affected Tribal party shall be the Tribe having the adjudicated exclusive U & A.

Authorized Signatures for the 2005 Strait of Juan de Fuca Intertidal Bivalve Plan

This Plan is made by the following parties, and the undersigned persons have authority to enter this Plan under ¶ 4.5 of the federal court's order.

FOR THE WASHINGTON DEPARTMENT OF
FISH AND WILDLIFE

_____ (name)
_____ (title)
_____ (date)

FOR THE DEPARTMENT OF NATURAL
RESOURCES

_____ (name)
_____ (title)
_____ (date)

FOR THE TULALIP TRIBES

_____ (name)
_____ (title)
_____ (date)

FOR THE JAMESTOWN SKLALLAM
TRIBE

_____ (name)
_____ (title)
_____ (date)

FOR THE PORT GAMBLE SKLALLAM
TRIBE

_____ (name)
_____ (title)
_____ (date)

FOR THE LOWER ELWHA SKLALLAM
TRIBE

_____ (name)
_____ (title)
_____ (date)

FOR THE SUQUAMISH TRIBE

_____ (name)
_____ (title)
_____ (date)

FOR THE MAKAH TRIBE

_____ (name)
_____ (title)
_____ (date)

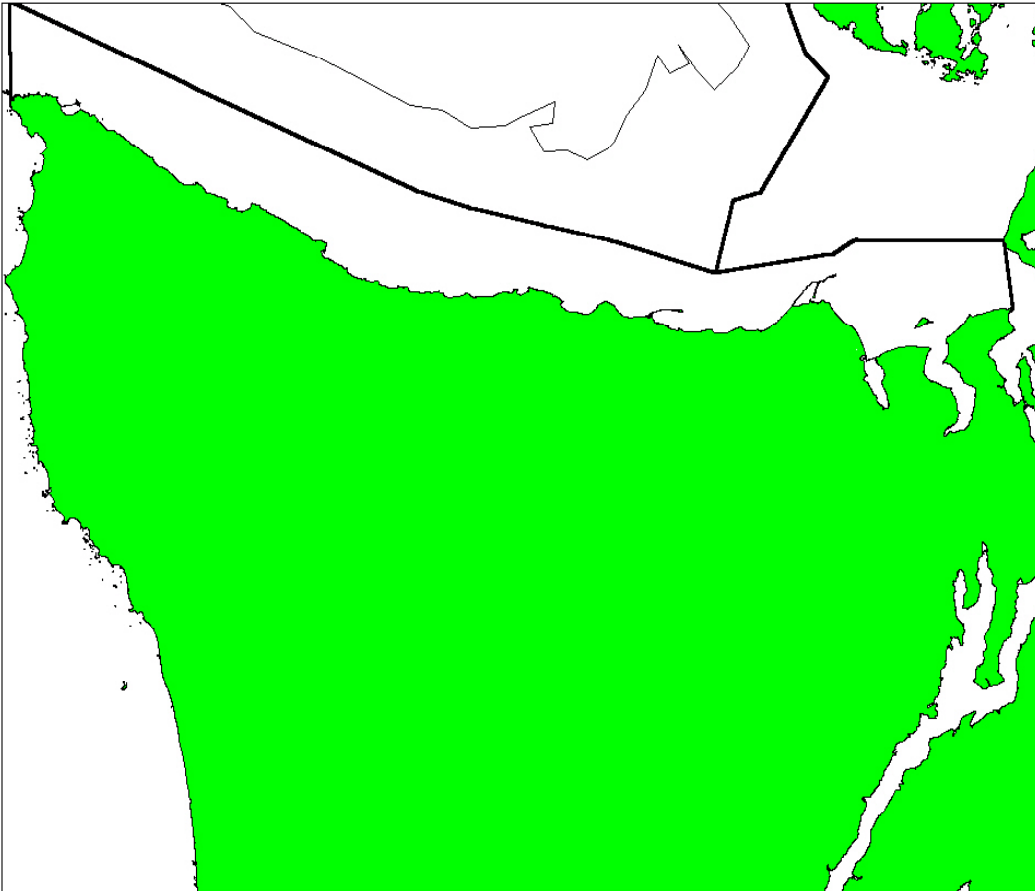
FOR THE SWINOMISH TRIBAL COMMUNITY

_____ (name)
_____ (title)
_____ (date)

FOR THE LUMMI TRIBE

_____ (name)
_____ (title)
_____ (date)

Figure 1
(Region Map)



Appendix 1

INTERTIDAL CEREMONIAL AND SUBSISTENCE HARVEST CATCH ACCOUNTING METHOD IN BIVALVE REGION 1 FOR THE POINT NO POINT TREATY TRIBES, THE TULALIP TRIBES, AND THE SUQUAMISH TRIBE

Point No Point Treaty Tribes - Tribal ceremonial harvest by species will be accounted for from catch records of each specific opening. Subsistence harvesters are required by regulation to have a valid subsistence harvest reporting card in their possession during each subsistence harvest, and to record subsistence catch by species on the card prior to leaving the beach.

Tulalip Tribes - Tribal ceremonial fisheries will be accounted for from permit information of each specific opening. Subsistence fisheries will occur based on a permit system with an associated catch reporting requirement. Harvesters are required by regulation to have a valid subsistence permit in their possession during each subsistence harvest. The subsistence permit will have the date of harvest and the maximum daily harvest amount listed on each permit. A limited number of permits are issued to any one individual per year so not to exceed a total harvest per person per year. The maximum daily harvest quantity listed on the permit is the amount of shellfish recorded as the actual subsistence harvest. In addition, beach creel surveys of tribal harvests may be conducted as a comparison between the actual harvest and the harvest estimate.

Suquamish Tribe - The Suquamish Fisheries Department will issue ceremonial harvest permits for each ceremonial harvest which will specify the harvesters, species, location and amount to be harvested. Subsistence harvests will be opened by regulations specifying the harvest location and time period. Harvesters will report catch to the fisheries office within twenty-four hours of the harvest.