

Supplemental Narrative for Existing Permitting Processes Flowchart 09/2014

This document is meant to be used as a supplement to the flowchart of 'Existing Permitting Processes developed by the Shellfish Interagency Permitting Team. Top level numbers 1-8 correspond with numbered boxes on the flowchart. Ancillary information follows the flowchart's arrows radiating from boxes 1-8.

It is recommended that the steps in numbers 1-4 be completed prior to making formal application with local, State, or Federal agencies below to minimize possible delays later in the permitting process.

1. **Health Growing Area Classification:** contact Department of Health (DOH) to determine if growing area is classified:
<http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/GrowingAreas.aspx>
Classifications include:
A = approved
CA = conditionally approved
R = restricted
P = prohibited
U = unclassified; if unclassified you can only request classification if you are a licensed shellfish company or intend to be licensed (DOH Shellfish License)
2. **Department of Natural Resources (DNR) Ownership Determination:** determine if land is privately owned or owned by the state:
 - a. To determine if **State Owned Aquatic Lands (SOAL)**, call DNR's Aquatic Program: 360-902-1100 or via:
http://www.dnr.wa.gov/BusinessPermits/Topics/ShellfishAquaticLeasing/Pages/aqr_aquatic_land_leasing.aspx
 - If SOAL, you will need to obtain a lease from DNR (see step 7 for more details)
 - If not SOAL, and your project is subtidal, you will need to determine if there is Bush Act/Callow Act Reversionary Interest (79.135.010). DNR will assist with determination.
 - b. For **private ownership**, you will need signed documentation from owner
3. **Tribal Interests Determination:** if the land parcel is not part of the Settlement Agreement¹, you must determine if there are Tribal Interests by submitting a 6.3 form to the appropriate tribe.
 - a. To determine if the land parcel is part of the Settlement Agreement contact the Northwest Indian Fisheries Commission (NWIFC) staff shellfish contact. If not

¹ Settlement Agreement: in 2007 Puget Sound commercial shellfish growers and 17 treaty Indian tribes in western Washington reached a landmark agreement that addressed treaty shellfish harvest rights, preserved the health of the shellfish industry and provided greater shellfish harvest opportunities for everyone in the state:

<http://nwifc.org/about-us/shellfish/commercial-shellfish-growers-settlement/>

part of the Settlement Agreement a 6.3 form must be submitted to the appropriate Tribe(s). The NWIFC staff member can help determine the appropriate Tribe(s) to contact:

<http://nwifc.org/about-us/staff-directory/>

<http://nwifc.org/about-us/shellfish/downloads/>

<http://nwifc.org/w/wp-content/uploads/downloads/2012/01/Section-6.3-Form.pdf>

- b. Note that there are multiple times in the permit process that the tribes are notified. For instance, when you go through the DOH process the tribes will be notified and a 6.3 form provided. However **it is the applicant's responsibility to fill out the 6.3 form and submit directly to the Tribes**. It is advisable to start this process early to be sure other permits not held up later.
 - c. 6.3 process outlined in detail in #8 below.
4. **Local Government Application Pre-Submission Conference:** the local government review process can be the most detailed and time consuming part of an aquaculture application. A pre-submission conference will explain the review process and help ensure that the applicant understands what information must be included in the application. For some local governments this meeting is required and for some it is optional.
- a. A fee may be required dependent on type of meeting and County
 - b. The pre-submission conference will give you information about what needs to go into the JARPA

With adequate support, the Shellfish Interagency Permitting Team (SIP) could facilitate these initial steps with all necessary entities to promote early coordination.

5. **JARPA:** fill out a Joint Aquatic Resource Permit Application (JARPA):
http://www.epermitting.wa.gov/site/alias_resourcecenter/jarpa_jarpa_form/9984/jarpa_form.aspx
- a. Please refer to *JARPA Instruction B: For Shellfish Aquaculture* for information about how best to fill out this form (link TBD).
 - b. Use the *Aquaculture JARPA Supplemental Drawing Checklist* to be sure your maps and drawings contain all required information (link TBD).
 - c. Applicant is required to submit an original **signed** JARPA to each permitting entity that accepts JARPA individually to initiate permitting process (see below for more details by entity). Please ensure content is the same for each JARPA submitted to each permitting entity.
6. **Local Government Application Received:** outlined here is the general process for local government permit review. These steps will vary amongst local governments. It is highly recommended to have a pre-submission conference prior to submitting your JARPA to make sure all required information is included in your application and to understand the local process.
- a. Submit JARPA to local government (if local government requires a permit) to initiate their review
 - b. Pay application fee (varies by county)

- c. **County Staff Review For Completeness** (varies by local government): for some local governments, this initial review simply confirms that all necessary paperwork is included in application. In others a thorough review of content is done at this point.
 - i. If application is not complete it is **Returned to Applicant**.
 - ii. When application is complete, the county will send out a notice of application to interested parties.
- d. **Notice of Application, Comment Period:** the notice of application is sent out as a solicitation for comments. This triggers a **14 to 30-Day Comment Period** (local government has the discretion to set the length of the comment period from 14 to 30 days):
 - i. **Notification to Agencies/Tribes/Neighbors** (per code); notice of application is sent to interested parties as a solicitation for comments only.
 - 1. Note that this is NOT a start of application process for state/federal agency permits, it is simply a request for comments to the County; applications must be submitted directly to other agencies (as outlined below) to begin those permitting processes.
 - 2. In general, neighbors receive general project descriptions while agencies receive more detailed information.
 - 3. At this time, the notification of the project is also sent to internal county agencies
 - 4. Some Counties may require signage with information about the project to be posted at the site at this point.
- e. **County Staff Substantive Review, Site Visit:** the County conducts a thorough substantive review of the content of the application which usually includes a site visit. Timelines for review are in code and best attempts made to stay within them but may vary dependent on complexity of project and comments received from interested parties.

Site visit could include all regulating entities.

- i. The County may **Request More Information from Applicant**. A back and forth process may occur during which supplemental information is gathered and the project may be modified.
- ii. Concerns of county and interested parties raised during Comment Period, are addressed during this process.
- iii. Every jurisdiction has requirement for timely response, but timelines may vary and deviations may be allowed.
 - 1. Example: Pierce and Thurston have 30 days allowed for substantive review but if more information is required a request for information is sent to applicant. In Pierce the applicant has 360 days to reply. In Thurston the applicant has 180 days to reply (which can be extended if needed). Once information is provided by the applicant, the County has 14 days to review (which may

result in another request for information, extending the timeline further).

- f. **SEPA Threshold Determination:** project modifications that may be made during substantive review lead to this final determination.
 - i. **DS** = Determination of Significance
 - 1. Will require an Environmental Impact Statement (EIS)
 - ii. **MDNS** = Mitigated Determination of Non-Significance
 - 1. Mitigating Conditions: MDNS means there are specific SEPA mitigation measures (conditions) that do not exist in code applied to the project (and indicated via notes to applicant)
 - 2. Project may also have a list of conditions that bring it into compliance with County Code;
 - iii. **DNS** = Determination of Non-Significance
 - 1. Approval requirements will only be those via County code (code compliant). May include descriptions of how project meets the codes by listing out what will be done (described in notes to applicant)
- g. **SEPA Notification:** applicant/agencies/tribes/neighbors notified of threshold determination.
 - i. **Public Notice to Agencies/Tribes/Neighbors**
 - 1. Neighbors may only be notified if requested (i.e. Pierce), or all neighbors within a certain distance of the project may be notified.
 - 2. Note that the threshold determination can be appealed but will be consolidated with any appeals of permit issuance further along in the process.
- h. **Staff Report and Shoreline Permit Recommendation**
 - i. Staff report lists proposal, applicable policies and regulations, and County interpretation; will include Conditional Use Permit (CUP) and/or Shoreline Substantial Development Permit (SSDP) findings
 - ii. Recommendation
 - 1. Approval, Approval with Conditions, or Denial
 - 2. To what entity the recommendation is made varies by County (i.e. Thurston makes recommendation to Hearing Examiner)
- i. **Local Decision Making Process:** varies by County. This is where appeals can be made (which can substantially affect the timing of final decisions) and additional conditions may be added.
- j. **Shoreline Permit Decision Sent to Ecology:** varies by County and may be appealed
 - i. Approved, Approved with Conditions, or Denied
 - ii. After Hearing Examiner or Shoreline Administrator issues decision, it is sent to Ecology
- k. **Ecology Shoreline Review:**
 - i. Varies by permit type.
 - 1. For SSDPs Ecology simply receives and files the decision, and notifies applicant of filing.
 - 2. For CUPs Ecology has authority to Approve, Approve with Conditions, or Deny

Appeals processes may occur at the local and state level and can affect timing and outcome of permit process. Please see supplemental flowchart (in preparation) for detailed examples of local and state appeals processes

7. Submit JARPA to DNR District Office as the **Application for Authorization to use SOAL** with \$25 application fee:
http://www.epermitting.wa.gov/site/alias_ResourceCenter/2489/jarpa_contacts.aspx
 - a. If project area is not part of Settlement Agreement (see #3 above) and you have not already done so, notify the appropriate Tribe and submit a 6.3 form. You must have a **written** Tribal Agreement or Management Plan in place for DNR to issue a lease (see #8 below).
 - b. **DNR District Office Public Interest Review:** application received and reviewed for conformance with statutory requirements (“4+1 directives”: encourage, foster, ensure, utilize; (+1) generate revenue; RCW 79.105.030):
<http://www.dnr.wa.gov/BusinessPermits/Topics/ShellfishAquaticLeasing/Pages/Home.aspx>
 - i. If no, or not consistent with goals (i.e. use conflict) project needs to be amended (**Amend Proposal**) or is declined
 - ii. If yes (or after project appropriately amended), the **Lease Application Forwarded to Stewardship Office** by the district for evaluation
 - a. **Stewardship Office Evaluation of Application:** if needed **More Information** may be requested. Work with Stewardship Office to accomplish the next steps:
 - i. **Stewardship Office Site Assessment/Biological Review—Develop Conservation Plan:**
 - i. Site visit

Site visit could occur at same time as County site visit.

- ii. Stewardship specialist makes recommendations and puts together site summary (assessment)
- iii. Stewardship office sends recommendations and site assessment to District
- ii. **District and Lessee Begin Negotiations of Lease and Conservation Plan:** draft lease with recommendations for conservation and decision documents
- iii. **District Forwards Draft Lease Agreement of DNR Management Approval to Offer:** must have compliance with all other permits (if you don't then DNR won't make offer)
- iv. **SEPA Decision:** if no SEPA at County level (i.e. no County permit required) then DNR will be SEPA lead and issue the SEPA threshold determination (similar to 5f. above)
- v. **District Office Issues Final Lease Agreement to Applicant**

8. **Tribal Section 6.3 60-Day Notification:** required if any work will occur that affects wild shellfish if parcel not part of Settlement Agreement (see #3 above)
 - a. Contact appropriate Tribe(s) and submit 6.3 Form. The NWIFC shellfish staff member can help determine the appropriate Tribe(s) to contact:
 - <http://nwifc.org/about-us/staff-directory/>
 - <http://nwifc.org/about-us/shellfish/downloads/>
 - <http://nwifc.org/w/wp-content/uploads/downloads/2012/01/Section-6.3-Form.pdf>
 - b. Once 6.3 Form submitted to Tribe(s) you must wait 60 days before undertaking any activity on the parcel (i.e. harvest or enhancement). It is strongly recommended that you have Tribal Agreement or Harvest Management Plan (or written no interest determination) in place before doing so.
 - c. **Tribal Interest Determination:** Tribe(s) determines if they have interest in area (to determine if they have Tribal Treaty Rights) by surveying area.
 1. If determined that there is a natural bed that the Tribe(s) has interest in, technically the Tribe(s) and applicant have 30 days to negotiate and develop a Harvest Management Plan/Agreement. If disagreement on survey results the 30 days may be extended.
 2. If Tribe(s) determines no interest you will need this determination in writing. Thus, a Tribal Agreement may simply be a written indication from the Tribe(s) that they are not interested in the parcel. If Tribe(s) determines no shellfish beds then no Harvest Management Plan needed.
 - d. **Tribal Harvest Management Plan or Agreement** with Tribe(s).

9. Submit the Department of Health (DOH) **Shellfish Operators License Application and/or Harvest Site Application** to obtain Operators License and Harvest Site Certification. These licenses and certifications are required to harvest or sell a commercial quantity of shellfish. Applications and additional information may be found at:
 - <http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/CommercialShellfish/ApplyforaLicense.aspx>
 - a. **Shellfish Operators License:** required for any commercial shellfish activity. There are three types of licenses:
 1. Harvester License—can harvest and sell to another licensed dealer in state only
 2. Shell Stock Shipper—can harvest, sell to restaurants, retail, inter/intra state and international
 3. Shucker/Packer—can shuck shellfish and can sell to same as #2
 - b. **Harvest Site Application:** DOH Harvest Site Certification is required for each site/parcel that is farmed (must have Operators License to apply)
 - i. Once received, DOH sends notification to Tribes and posts on website for Tribes (thus, if you haven't already notified Tribes in steps above, the Tribes will contact grower individually here); DOH sends applicant 6.3 form and lets applicant know to send to tribes (if you have already done this at step #3 or #8 above, you do not have to do it again).

- ii. As a courtesy to Tribes and to allow time for the step #8 process, DOH waits 30 days from receipt of application to issue the **Harvester Site Certificate**. The Certificate will list all sites/parcels on which a company is licensed to harvest.
10. Washington Department of Fish and Wildlife (**WDFW**): there are four different permits issued by WDFW that you may need:
- a. **Aquatic Farm Registration (AFR)**: required for commercially growing and selling shellfish
 - i. Before grower obtains AFR they must have DOH Harvest Site Certificate.
 - ii. WDFW will supply Tribe(s) copies of AFR (causes no delay on issuance of AFR).
 - b. **Emerging Commercial Fishery License (ECF)**: required for harvesting wild shellfish (i.e. clearing standing stock)
 - i. WDFW will notify the Tribe(s) of the application for ECF License.
 - ii. Before obtaining the ECF grower must have DOH Harvest Site Certificate.
 - c. **Shellfish Import Permit**: required for importing live shellfish into WA state waters
 - d. **Shellfish Transfer Permit**: required for transport of shellfish within WA state waters
11. Submit JARPA to Corps and Ecology (**Corps/Ecology Application Received**). Corps determines if project qualifies (meets terms & conditions) for Nationwide Permit or if an Individual Permit is required.
- a. **Nationwide Permit (NWP)**
 - i. **Completeness Determination**: Corps determines if application complete (refer to Pre-Construction Notification requirements for NWP48). If yes, move on. If no, Corps requests for more information with 30 days for the applicant to respond or application cancelled.
 - ii. **Tribal 10-Day Notification/Agency Notification**:
 - 1. Agency notification (DOE, DNR, EPA, NOAA, USFWS) for new or expansion projects.
 - 2. **Tribal Notification Regarding Natural/Cultural Resources²**:
 - a. Tribal Natural Resource Dept: has 10 days to provide comments and if not received Corps moves on. Tribe can request additional 15 day extension. Tribes may provide comments on project related to habitat and treaty entrusted Usual and Accustomed (U&A) areas³. Any comments must be addressed by the Corps prior to issuing a permit.

² Note that this notification is not the same as #8 (Tribal Section 6.3 60-Day Notification).

³ Fifteen western Washington tribes each have a “usual and accustomed” harvest area (U&A) that reflects the historical region in which finfish, shellfish, and other natural resources were collected. All tidelands in Puget Sound are within the usual and accustomed harvest areas of one or more tribe. The fifteen tribes with U&A are: Jamestown S’Klallam, Lower Elwha Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S’Klallam, Puyallup, Skokomish, Squaxin Island, Suquamish, Swinomish, Tulalip, and Upper Skagit.

- b. Tribal Cultural Resource Dept: provides information on potential to affect (or no potential to affect) historic properties. If potential to affect (determined by Corps) then consultation occurs (see 11.a.iii.3. below).
- iii. **Memo for Record** (this is the rationale for the decision); all of the items below (1-3) must be completed before the Memo for Record is finalized. Time associated with completion varies depending on level of effects.
 - 1. **NMFS ESA/MSA** consultations (ESA section 7 and MSA for Essential Fish Habitat) must be completed. Consultations are initiated by Corps. Individual consultations may not be necessary if project meets conditions of programmatic consultation or Corps determines “no effect”.
 - 2. **USFWS ESA** section 7 consultation must be completed. Consultation is initiated by Corps. Individual consultation may not be necessary if project meets conditions of programmatic consultation or Corps determines “no effect”.
 - 3. **NHPA 106 Consultation DAHP and Tribal:** Corps reviews project for 106 compliance, which includes consultation with State Historic Preservation Officer (SHPO) and tribe(s) when there is a potential to effect historic properties. Tribal consultation on natural and/or cultural resources must occur if comments received during 11.a.ii.2.b. above.
- iv. **Corps Verification Letter**⁴: when the Memo for Record is completed then verification of NWP coverage issued by Corps to the applicant and copy sent to Ecology or EPA dependent on project location⁵ for verification that project meets their conditions of NWP.
- v. **Ecology 401/CZM Review:**
 - 1. If Ecology **concurs** that the project meets the state 401 conditions for the NWP, then Ecology **Letter of Verification (LOV)** is issued to applicant.
 - 2. If the project does not meet the state 401 conditions for the NWP, then an **individual 401** Certification review process will be triggered.
 - a. Ecology issues **Public Notice** for 21 days.
 - b. **Ecology Review/401 Certification/CZM Consistency**
 - i. SEPA determination from lead agency will be necessary unless 401 is the only state/local permit required⁶.
 - ii. CZM Consistency Determination: Ecology will review the Applicant’s CZM Consistency Statement to determine if the project is consistent with the 6

⁴ Note that the Corps Verification Letter is different than the Letter of Verification (LOV) issued by Ecology.

⁵ If the project is on state or federal land the copy is sent to Ecology. If on tribal land the copy is sent to EPA. Some tribes have their own 401 WQ standards so if project on their land the copy would be sent directly to respective tribe.

⁶ 401 SEPA Categorical Exemption : WAC 197-11-800(9) Water Quality Certifications.

Enforceable Policies of the Coastal Zone Management Program⁷.

1. If consistent, then a ‘Consistency Determination’ is issued. Issued separate from 401 but review occurs concurrently.
 2. If not consistent, Ecology will issue a Letter of Objection. After determination there is a 30 day appeal process.
- iii. Project reviewed to determine there is reasonable assurance that state water quality standards will be met.
1. If yes, then Ecology issues a **401 Order** (401 Certification) to applicant that may have conditions. This decision has a 30 day appeal period.
 2. If no, then project denied. Applicant may modify project and reapply.
- vi. **EPA or Tribal 401 Certification:** only occurs when project on tribal land.

b. Individual Permit (IP)

- i. **Completeness Determination** (application review): Determine if application complete (33 CFR, 325.1(d)). If yes move on. If no, Corps requests for more information with 30 days to respond or application cancelled.
- ii. Corps and Ecology send out **Joint Public Notice** with 30 days for public comment.
 1. **Tribal Notification Regarding Natural/Cultural**⁸.
 2. Issuance of the Joint Public Notices starts Ecology’s statutory one year review (401 Trigger):
 - a. **Ecology Review:** this outcome informs Corps Memo for Record (see #3 below)
 - i. **401 Certification:** Project is reviewed to determine there is reasonable assurance that state water quality standards will be met.
 1. If yes, then **401 Order** issued to applicant. SEPA determination must be completed for Ecology to issue the 401 certification.
 2. If no, then project denied. Applicant may modify project and reapply.
 3. Ecology decision becomes part of Corps permit.
 - ii. **CZM Consistency Determination:** Ecology will review the Applicant’s CZM Consistency Statement

⁷ The 6 Enforceable Policies of the Washington State Coastal Zone Management Program are: (1) the Shoreline Management Act; (2) the Clean Water Act; (3) the Clean Air Act; (4) the State Environmental Policy Act; (5) the Energy Facility Site Evaluation Council Law; and (6) the Ocean Resources Management Act.

⁸ Note that this notification is not the same as #8 (Tribal Section 6.3 60-Day Notification).

to determine if the project is consistent with the 6 Enforceable Policies of the Coastal Zone Management Program.

1. If consistent, then a 'Consistency Determination' is issued. Issued separate from 401 but review occurs concurrently.
 2. If not consistent, Ecology will issue a Letter of Objection. After determination there is a 30 day appeal process.
3. **EPA or Tribal 401 Certification:** only occurs when project on tribal land.
- iii. **Corps Prepares Memo for Record:** All things below (1-7) must be completed first:
1. **Corps Process:** additional information may be required to complete alternatives analysis, public interest review, address any treaty rights issues, and/or address any public/agency comments received. Determination will be made whether mitigation is required. If so, mitigation plan must be submitted and approved.
 2. **NHPA 106 Consultation DAHP and Tribal:** Corps reviews project for 106 compliance, which includes consultation with State Historic Preservation Officer (SHPO) and tribe(s) when there is a potential to effect historic properties. Corps will take into consideration comments received and coordinate with Tribes appropriately (see 11.b.ii.1. above).
 3. **NMFS ESA/MSA** consultations (ESA section 7 and MSA for Essential Fish Habitat) must be completed. Consultations are initiated by Corps.
 4. **USFWS ESA** section 7 consultation must be completed. Consultation is initiated by Corps.
 5. **NEPA** compliance for major federal actions per Appendix B to Part 325-NEPA Implementation Procedures for the Regulatory Program
 6. **Public Interest** Determination must discuss whether the project is (or is not) contrary to the public interest per 33 CFR 320.4(a)(1).
 7. **CWA 404(b)(1) Guidelines** compliance (40 CFR part 230) for evaluating discharges of dredged or fill material into waters of the U.S. Evaluation of compliance with the 404(b)(1) Guidelines is not required for Section 10 activities only.

Acronyms & Abbreviations

AFR – Aquatic Farm Registration
Corps – Army Corps of Engineers
CUP – Conditional Use Permit
CZM – Coastal Zone Management
DAHP – Department of Archaeology and Historic Preservation
DNR – Washington Department of Natural Resources
DOE – Washington Department of Ecology
DOH – Washington Department of Health
ECF – Emerging Commercial Fishery License
EIS – Environmental Impact Statement
EPA – Environmental Protection Agency
HE – Hearing Examiner
JARPA – Joint Aquatic Resource Permit Application
LOV – Ecology Letter of Verification
NHPA – National Historic Preservation Act
NWIFC – Northwest Indian Fisheries Commission
PCN – Preconstruction Notification
SOAL – State Owned Aquatic Lands
SSDP – Shoreline Substantial Development Permit
U&A – usual and accustomed area
WDFW – Washington Department of Fish and Wildlife