



Point No Point Treaty Council

Port Gamble S'Klallam • Jamestown S'Klallam

2022-2023

Point No Point Treaty Council

**In-Common Commercial Clam and Oyster Regulation for Public Tidelands
Regulation #S22-001**

February 9, 2022

The following regulation is promulgated by the Point No Point Treaty Council and shall govern commercial fisheries for clams and oysters conducted off-reservation and on public tidelands by the Port Gamble S'Klallam and the Jamestown S'Klallam Tribes (PNPTC Member Tribes). This regulation is intended to conform to agreements reached between the Point No Point Treaty Tribes and the State of Washington, as contained in the Annual 2022-2023 Bivalve Management Plans for Public Tidelands in Region 1 (Strait of Juan de Fuca), Region 2 (San Juan Islands), Region 3 (North Puget Sound), Region 4 (Central Puget Sound), Region 5 (Admiralty Inlet), and Region 8 (Hood Canal). In the event the Management Plans for one or more Regions is not completed in a timely manner, emergency regulations will be filed under Paragraph 4.6 of *United States v. Washington*, 898 F. supp. 1453 (W.D. Wash. 1995), as amended by the Stipulation and Order Amending Shellfish Implementation Plan, dated April 8, 2002, (hereafter "Implementation Order") to control the harvest.

The term of this regulation is from February 1, 2022 through January 31, 2023. Annual subsistence fisheries shall be governed by separate regulation. On-reservation and ceremonial fisheries, as well as fisheries on private tidelands, shall be conducted under the provisions of individual Tribal Fisheries Ordinances and Regulations. All areas not specifically opened by these regulations shall remain closed to commercial harvest of clams and oysters. Only gear and methods specifically authorized by these regulations may be legally used.

1. SPECIES

- A. Clams: Manila, native littleneck, butter, varnish, horse, cockle, inter-tidal geoduck, soft-shell, macoma, piddock.
- B. Oysters: Pacific.

2. **AREAS**

For the Jamestown S’Klallam and Port Gamble S’Klallam Tribes: Shellfish Catch Reporting Areas 20A (south and west of a line between Toe Point on Patos Island and Point Migley on Lummi Island), 20B, 21A (south and west of Lummi Island and a line running between Carter Point on Lummi Island and the northern tip of Vendovi Island), 22A, 22B (north and west of a line between Clark Point on Guemes Island and the southern tip of Vendovi Island, west of Guemes Island and south and west of a line running due south from Kelly’s Point on Guemes Island), 23A, 23B, 23C, 23D, 25A, 25B, 25C, 25D, 25E, 26A (all S’Klallam U&A within that portion of area 26A south and west of the southern tip of Possession Point on Whidbey Island), 27A, 27B (north of an east-west line from Ayock Point), 29.

3. **MANAGEMENT PERIOD**

February 1, 2022 through January 31, 2023.

4. **LEGAL GEAR AND METHODS**

Only hand-operated implements including forks, rakes, shovels, picks and prying tools will be allowed. Motorized vehicles, with the exception of boats, may not be operated on tidelands to harvest or transport shellfish, or to convey harvesters to or from a harvest.

5. **FISHERY OPENINGS**

Commercial and ceremonial clam or oyster harvests shall be managed by beach specific openings and closures using emergency regulations. Tribal clam diggers and oyster pickers are responsible for knowing the current applicable regulations. Information on specific openings and closures shall be available at the respective Tribal Fisheries Offices, the Point No Point Treaty Council Central Office and online at <http://pnptc.org/harvest-regulations/current-shellfish-regulations/>.

6. **OTHER RESTRICTIONS**

A. **Shellfish Biotxin Closures**: All public tidelands are subject to emergency closure for clam and oyster harvest due to risk of illness caused by elevated levels of naturally occurring biotoxins (DSP/PSP/ASP). Before harvesting any oyster and clam species from any beach, harvesters shall determine whether any new closures or openings are in effect due to changes in biotoxin concentrations by contacting the Tribal Fisheries Offices or the Point No Point Treaty Council Central Office.

- B. *Vibrio parahaemolyticus* (V.p.) Restrictions: In order to control the proliferation of *V.p.* during the months of May, June, July, August, and September, those engaged in harvesting oysters for commercial purposes will be required to adhere to additional provisions contained in emergency regulations governing commercial oyster harvests during these months. Harvesters must also comply with all restrictions implemented by their respective Tribal fisheries offices, which may include but not be limited to current DOH training and active harvest contracts/agreements.
- C. Japanese Oyster Drill Restricted Areas: Certain areas within Puget Sound are infested with the Japanese oyster drill. Harvest from drill-infested beaches must be strictly controlled to prevent the spread of this organism to drill-free areas. Provisions regarding the handling and transfer of clams and oysters from drill-infested beaches will be described in emergency regulations as appropriate. The following areas have been designated as drill-infested areas and will require specific drill restrictions:
- 1) Dungeness Bay, Region 1, Strait of Juan de Fuca;
 - 2) Quilcene Bay, Region 8, Hood Canal;
 - 3) Tarboo Bay, Region 8, Hood Canal;
 - 4) Point Whitney, Region 8, Hood Canal;
 - 5) Duckabush River Mouth, Region 8, Hood Canal;
 - 6) Dosewallips Delta, Region 8, Hood Canal;
 - 7) Seal Rock Federal Camp, Region 8, Hood Canal;
 - 8) Hamma Hamma Flats and Jorsted Creek, Region 8, Hood Canal;
 - 9) Bywater Bay, Region 8, Hood Canal (WAC pending);
 - 10) East Dabob, Region 8, Hood Canal (Precautionary Restricted Area);
 - 11) Guillemot Cove, Region 8, Hood Canal (Precautionary Restricted Area).
- D. Beach Monitor Requirements:
- 1) All tribal commercial clam and oyster fisheries in 2022-2023 require a harvest monitor to be present on the beach to observe the fishery and record total catch and buyer information. Additional monitoring requirements may be implemented during the months of May, June, July, August and September in order to satisfy *V.p.* requirements. Any additional requirements will be listed in emergency regulations.
 - 2) All public beaches will be closed to subsistence fishing 4 hours before the scheduled opening of a commercial clam or oyster fishery on the same beach. In addition, for Port Gamble harvesters only, all public beaches will be closed to subsistence fishing 4

hours after the closure of a commercial clam or oyster fishery on the same beach.

- 3) Monitors are required to remain at a harvest site for a minimum of one hour after the scheduled opening of a fishery to determine whether any harvesters will show up. If no harvesters show up by the end of this period, the monitor may leave the harvest site, and the beach will be closed to harvest.
- 4) Harvesters must check in with the monitor prior to engaging in any harvest activity.
- 5) Any harvest that takes place without the presence of a harvest monitor as provided for in this section will be a violation of this regulation.
- 6) Harvesters must report their harvest amount and intended buyer to the beach monitor before leaving the beach. The harvest amount reported for oysters must be an actual count of oysters and not an estimate. For clam harvests, harvesters have one of three options to have their catch recorded, as follows: 1) they can have their harvest measured in a large bucket manned by one of the monitors; 2) they can have their harvest weighed on a scale manned by one of the monitors; or 3) they can provide an accurate estimate of the harvest to the monitor. Additional details for these reporting requirements will be available at the respective tribal fisheries office. Leaving the beach without reporting to the monitor will be a violation of this regulation.
- 7) Harvesters must obtain a harvest slip from the monitor to provide to the buyer at the time of sale. Harvesters must fill in the reported quantity of shellfish and sign the slip before turning over to the buyer.
- 8) Harvesters who sell to a buyer other than the buyer disclosed to the monitor must notify their respective tribal fisheries office of the actual buyer within 12 hours of the time of sale.

E. Clam Harvest Restrictions:

- 1) **Minimum Size Limit** - No clams smaller than 1-1/2 inches in length (38 mm) shall be harvested in commercial fisheries, or except as specified by emergency regulations or prior agreement between the PNPTC Tribes and the State of Washington.

- 2) Backfilling - All holes made during clam digging must be backfilled prior to digging at another location.
- 3) Beach-specific harvest restrictions as identified in emergency regulations.
- 4) No harvest shall occur after a fishery closes (either by the monitor or by regulation). Harvesting includes digging, sorting or placing clams previously dug into buckets or bags.
- 5) Commercial take-home amounts intended for personal consumption shall not exceed the subsistence limits specified in PNPTC regulation #S22-002, unless specifically modified by emergency regulation.

F. Oyster Harvest Restrictions:

- 1) Only single oysters equal to or greater than 2-1/2 inches in length (63 mm) shall be harvested in commercial fisheries.
- 2) Stockpiling oysters on a beach prior to a fishery opening is prohibited. Stockpiling includes grouping or bunching oysters in any manner in order to enhance harvest opportunity once the beach is opened.
- 3) No harvest shall occur after a fishery closes (either by the monitor or by regulation). Harvesting includes picking, sorting or placing oysters previously harvested into buckets or bags.
- 4) Beach-specific harvest restrictions as identified in emergency regulations.
- 5) Commercial take-home amounts intended for personal consumption shall not exceed the subsistence limits specified in PNPTC regulation #S22-002, unless specifically modified by emergency regulation.

G. Labeling: A label must be affixed to each bag or container of commercially harvested clams or oysters prior to the product being sold or transported from the beach, whichever occurs first. The label must be affixed in a manner that allows the label to be clearly read without opening the bag or container. Labels will be available at the Tribal Fisheries Offices. The labels will be issued only to Tribal members with a valid treaty fishing identification card and current annual fishing permit (sticker) attached to the card. Each label shall include the following information:

- 1) Tribe
- 2) Tribe Certification Number
 - a. Port Gamble – WA589HA
 - b. Jamestown – WA588SS
- 3) Harvester Name and/or ID Number
- 4) Harvest Date
- 5) DOH Growing Area Designation
- 6) Beach Number (BIDN)
- 7) Shellfish Type
- 8) Quantity Harvested
- 9) Tag Sequence Number

Required information on the labels shall be entered legibly using an indelible marker.

- H. **Littering:** Beaches must be left in the same condition they were found in prior to the fishery opening. Any littering or willful destruction of public or private property by harvesters while on any beach will be a violation of this regulation.
- I. **Product Sales and Recall:** All commercial clam and oyster sales must be made to tribally-approved buyers who have filled out a Buyer’s Agreement with either the Port Gamble or Jamestown Tribes. This will be particularly important in the event of an emergency recall of shellfish. Tribal members can obtain a list of approved buyers from their Fisheries Office. Any sale to a non-approved buyer will be a violation of this regulation.
- J. **Shellfish Sanitation Requirements:** Tribal harvesters are required to comply with provisions of the “Settlement Agreement, Regulation of Treaty Shellfishing for Health Purposes”, between the Treaty Tribes and the Washington State Department of Health. As part of that compliance, tribal harvesters shall provide any information to harvest monitors deemed necessary to comply with provisions of the National Shellfish Sanitation Program Manual.
- K. **Wastage:** It will be a violation of this Regulation for any harvester to allow any shellfish gathered for commercial purposes to become unfit for human consumption due to improper handling or neglect. If Tribal members are unable to sell product to an approved buyer, they may forfeit live product to enforcement within twenty-four (24) hours of the close of the fishery with no penalty, unless modified by emergency regulation.

- L. Upland Access: Harvesters are not allowed to cross private property uplands in order to access tidelands for commercial purposes without the consent of the property owner(s).
- M. Jamestown S'Klallam Tribal Harvester Restrictions: Each properly licensed Jamestown S'Klallam Tribal harvester may be assisted by no more than one assistant, provided that the assistant is either the harvester's spouse, or a relative. The spouse or the relative assistant must possess the appropriate identification card issued by Jamestown Tribe.

7. COMMERCIAL CATCH REPORTING

All commercial catches shall be reported on Treaty Indian Fish Receiving Tickets as specified in Tribal Fisheries Ordinances. The beach location and beach identification number (BIDN) from applicable emergency regulations opening the beach must be recorded on the fish tickets at the time of sale. If a harvester sells product for a minor on their fish ticket, the harvest for each harvester must be listed as a separate line on the fish ticket with the harvester's name listed next to the harvest.

8. POST-HARVEST ACTIVITIES

All commercially harvested clams and oysters, once removed from the beach, shall be sold within a specified time period after harvest, as indicated on the emergency regulation. Objects other than legal sized clams and oysters, such as loose rocks, empty shells, and dead product, must not be present in bags or containers of product at the time of sale. No product can be held, hung or soaked at a different location prior to being sold.

9. EMERGENCY REGULATIONS

The above regulations may be amended at any time by emergency regulations. Prior to harvest, each harvester shall check with the tribal fishery office or the Point No Point Treaty Council Central Office for emergency regulation changes.

10. AUTHORITY

The Point No Point Treaty Council, under the authority delegated by the member tribes, promulgates the above in-common regulations.

Austin Paul, Subtidal Shellfish Program Manager,
Point No Point Treaty Council