

Chapter 79.135 RCW
AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, OTHER AQUACULTURAL USES,
AND MARINE AQUATIC PLANTS

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RCW 79.135.001 Intent—2005 c 155. See RCW 79.105.001.

GENERAL PROVISIONS

RCW 79.135.010 Bush act/Callow act lands. (1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts. [2002 c 123 s 2. Formerly RCW 79.90.570.]

Findings—2002 c 123: "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish

aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 s 1.]

RCW 79.135.020 Sale of reserved or reversionary rights in tidelands. Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24, Laws of 1895, or chapter 25, Laws of 1895, or chapter 165, Laws of 1919, or either the reserved or reversionary right if only one exists, being filed in the department's Olympia office by the owner of the tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to the lands, the department, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.125.200, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department for failure to comply with its provisions, and upon the completion of the payments as provided in the contract to cause a deed to the lands described in the contract to be issued to the holder as in the case of the sale of state lands. [2005 c 155 s 713; 1982 1st ex.s. c 21 s 145. Formerly RCW 79.96.120.]

RCW 79.135.030 Wrongful taking of shellfish from public lands—Civil remedies. (1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, the person is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, the person is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department where the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.135.210.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of rules of the department of fish and wildlife. [2005 c 155 s 714; 1994 c 264 s 73; 1990 c 163 s 9. Formerly RCW 79.96.130.]

RCW 79.135.040 Aquaculture products—Sale by leaseholder.

Aquaculture products produced on leased state-owned aquatic land may be sold by the leaseholder as prescribed by the department without competitive bid or public auction and consistent with statutes governing aquaculture leases on state-owned aquatic land. [2005 c 113 s 1.]

LEASING FOR SHELLFISH CULTIVATION/AQUACULTURE USE

RCW 79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases. (1) If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

(2) After an initial twenty-three acres are leased, the department is prohibited from offering leases that would permit the intertidal commercial aquaculture of geoducks on more than fifteen acres of state-owned aquatic lands a [per] year until December 1, 2014.

(3) Any intertidal leases entered into by the department for geoduck aquaculture must be conditioned in such a way that the department can engage in monitoring of the environmental impacts of the lease's execution, without unreasonably diminishing the economic viability of the lease, and that the lease tracts are eligible to be made part of the studies conducted under RCW 28B.20.475.

(4) The department must notify all abutting landowners and any landowner within three hundred feet of the lands to be leased of the

intent of the department to lease any intertidal lands for the purposes of geoduck aquaculture. [2007 c 216 s 3; 1984 c 221 s 10. Formerly RCW 79.90.495.]

RCW 79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use. (1) The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by Article XV, section 1 of the state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

(2) Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [2005 c 155 s 701; 1993 c 295 s 1; 1982 1st ex.s. c 21 s 134. Formerly RCW 79.96.010.]

RCW 79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit. Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by the reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars. The deposit shall be returned to the applicant in case a lease is not granted. [2005 c 155 s 702; 1982 1st ex.s. c 21 s 135. Formerly RCW 79.96.020.]

RCW 79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating. (1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the department of the director's findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the director deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the director determines that the lands applied for or any part of the lands may be leased, the director shall so notify the department and the director shall cause an examination of the lands to

be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report to the department, the director shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development. [2005 c 155 s 703; 1994 c 264 s 68; 1987 c 374 s 1; 1982 1st ex.s. c 21 s 136. Formerly RCW 79.96.030.]

RCW 79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers. Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct. [2005 c 155 s 704; 1994 c 264 s 69; 1982 1st ex.s. c 21 s 137. Formerly RCW 79.96.040.]

RCW 79.135.150 Renewal lease—Application. The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife. [2005 c 155 s 705; 1994 c 264 s 70; 1993 c 295 s 2; 1982 1st ex.s. c 21 s 138. Formerly RCW 79.96.050.]

RCW 79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish. All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of the lease, the described lands shall cease to be used for

the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall revert to and become the property of the state and that the lands are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of the lands if at any time the lands are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [2005 c 155 s 706; 1982 1st ex.s. c 21 s 139. Formerly RCW 79.96.060.]

RCW 79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands. If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish become unfit and valueless for any such purposes, the lessee or the lessee's assigns, upon certifying the fact under oath to the department, together with the fact that the lessee has abandoned the land, shall be entitled to make application for other lands for such purposes. [2005 c 155 s 707; 1982 1st ex.s. c 21 s 140. Formerly RCW 79.96.070.]

GEODUCK HARVEST/CULTIVATION

RCW 79.135.200 Geoduck harvest/cultivation—Survey of navigable waters by private party—Record of survey. Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys on anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the *Washington coordinate system in compliance with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey. [2002 c 123 s 3. Formerly RCW 79.96.140.]

***Reviser's note:** The "Washington coordinate system" was renamed the "Washington plane coordinate system" by 2020 c 50.

Findings—2002 c 123: See note following RCW 79.135.010.

RCW 79.135.210 Geoduck harvesting—Agreements, regulation—Geoduck diver safety program. (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.

(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.

(3) Beginning January 1, 2015, geoduck divers licensed under RCW 77.65.410 must annually complete the geoduck diver safety program established in RCW 43.30.560 in order to be maintained on a department of natural resources' harvest agreement plan of operation. [2013 c 204 s 6. Prior: 2005 c 155 s 708; 2005 c 113 s 3; 2003 c 39 s 43; 1990 c 163 s 4; 1982 1st ex.s. c 21 s 141. Formerly RCW 79.96.080.]

***Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

RCW 79.135.220 Geoduck harvesting—Designation of aquatic lands.

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. [2005 c 155 s 709; 1990 c 163 s 5; 1983 1st ex.s. c 46 s 129; 1979 ex.s. c 141 s 5. Formerly RCW 79.96.085, 75.28.286.]

***Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

Commercial harvesting of geoducks: RCW 77.60.070, 77.65.410.

RCW 79.135.230 Intensive management plan for geoducks.

The department may enter into agreements with the department of fish and wildlife for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery. [2005 c 155 s 718; 1994 c 264 s 74; 1984 c 221 s 26. Formerly RCW 79.96.906.]

Effective date—1984 c 221: See RCW 79.105.902.

OYSTER RESERVES

RCW 79.135.300 Lease of tidelands set aside as oyster reserves.

The department is authorized to lease first or second-class tidelands which have been or that are set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands. [2005 c 155 s 710; 1982 1st ex.s. c 21 s 142. Formerly RCW 79.96.090.]

RCW 79.135.310 Inspection by director of fish and wildlife.

The department, upon the receipt of an application for the lease of any first or second-class state-owned tidelands that are set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It is the duty of the director of fish and wildlife to inspect the reserve for the purpose of determining whether the reserve or any part of the reserve should be retained as a state oyster reserve or vacated. [2005 c 155 s 711; 1994 c 264 s 71; 1982 1st ex.s. c 21 s 143. Formerly RCW 79.96.100.]

RCW 79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands. (1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands. [2005 c 155 s 712; 2001 c 273 s 4; 2000 c 11 s 30; 1994 c 264 s 72; 1982 1st ex.s. c 21 s 144. Formerly RCW 79.96.110.]

MARINE AQUATIC PLANTS

RCW 79.135.400 Seaweed—Marine aquatic plants defined. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 s 2. Formerly RCW 79.96.200, 79.01.800.]

Findings—1993 c 283: "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide

essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 s 1.]

RCW 79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction. (1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [2005 c 155 s 715; 2003 c 334 s 442; 1996 c 46 s 1; 1994 c 286 s 1; 1993 c 283 s 3. Formerly RCW 79.96.210, 79.01.805.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1994 c 286: "This act shall take effect July 1, 1994." [1994 c 286 s 6.]

Findings—1993 c 283: See note following RCW 79.135.400.

RCW 79.135.420 Seaweed—Harvest and possession violations—Penalties and damages. (1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.135.410.

(2) A violation of this section is a misdemeanor, and a violation taking place on state-owned aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on privately owned tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for

injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2005 c 155 s 716. Prior: 2003 c 334 s 443; 2003 c 53 s 380; 1994 c 286 s 2; 1993 c 283 s 4. Formerly RCW 79.96.220, 79.01.810.]

Intent—2003 c 334: See note following RCW 79.02.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1994 c 286: See note following RCW 79.135.410.

Findings—1993 c 283: See note following RCW 79.135.400.

RCW 79.135.430 Seaweed—Enforcement. The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.135.410 and 79.135.420. [2005 c 155 s 717; 2003 c 334 s 444; 1994 c 286 s 3; 1993 c 283 s 5. Formerly RCW 79.96.230, 79.01.815.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1994 c 286: See note following RCW 79.135.410.

Findings—1993 c 283: See note following RCW 79.135.400.

RCW 79.135.440 Native kelp forest and eelgrass meadow health and conservation plan—Reports. (1) The department shall, consistent with this section, and subject to available funding, work with partners to establish a native kelp forest and eelgrass meadow health and conservation plan that endeavors to, by the year 2040, conserve and restore at least 10,000 acres of native kelp forests and eelgrass meadows. The plan should proactively and systematically address:

(a) The potential loss of native kelp forest and eelgrass meadow habitat throughout Puget Sound and along the Washington state coastline;

(b) Potential current and future stressors related to the decline of native kelp forests and eelgrass meadows; and

(c) Awareness, action, and engagement tools being used by public and private entities in the Puget Sound region to raise awareness of the importance of conserving and restoring native kelp forests and eelgrass meadows and reducing stressors related to their decline.

(2) The department shall develop the plan to assess and prioritize areas for coordinated conservation and restoration actions. The plan must consist of the following elements: Assessment and prioritization; identifying coordinated actions and success measures; monitoring; and reporting.

(a) The department shall, together with partners, develop a framework to identify and prioritize native kelp forest and eelgrass meadow areas in greatest need of conservation or restoration. The framework must:

(i) Incorporate conservation of native kelp forests and eelgrass meadows. Utilize and build on existing research to map and prioritize areas of native kelp forests and eelgrass meadows throughout Puget Sound and along the coast that are at highest risk of permanent loss, or contribute significant environmental, economic, and cultural benefits to tribal nations and local communities, including salmon recovery and water quality, and where opportunities for partnership and collaboration can accelerate progress towards the goal, and develop criteria by which an acre of kelp forests and eelgrass meadows can be considered to be conserved or restored;

(ii) Identify research necessary to analyze and assess potential ecological, environmental, and community benefits of aquaculture of native seaweed species;

(iii) Map and prioritize native kelp forest and eelgrass meadow areas throughout Puget Sound and along the coast where they were historically present, identifying priority locations for restoration, and where opportunities for partnership and collaboration exist that will accelerate progress towards the goal. This should include identification of sites where restoration may be possible and would most benefit nearshore ecosystem function, including where restoration could also support healthy kelp forests and eelgrass meadows, salmon recovery, water quality, and other ecosystem benefits, such as mitigating the negative effects of ocean acidification;

(iv) Identify potential stressors impacting the health and vitality of native kelp forests and eelgrass meadows in prioritized areas in order to specifically address them in conservation and restoration efforts.

(b) In developing coordinated actions and success measures, the department shall:

(i) Conduct an assessment and inventory of existing tools relevant to conserving and restoring native kelp forests and eelgrass meadows and reducing stressors related to their decline;

(ii) Identify new or amended tools that would support the goals of the plan created under this section; and

(iii) Identify success measures to track progress toward the conservation and restoration goal.

(3) In developing the plan, the department shall:

(a) Involve impacted communities using the community engagement plan developed under RCW 70A.02.050;

(b) Consult with federally recognized tribal nations, including consultation on the cultural and ecological importance of native kelp forests and eelgrass meadows now threatened by urbanization or other disturbances;

(c) Engage and collaborate with state and federal agencies, such as the national oceanic and atmospheric administration, the Northwest straits commission, the department of ecology, the department of fish and wildlife, the Puget Sound partnership, the recreation and conservation office, and the marine resources advisory council;

(d) Engage with representatives from other stakeholder groups that may have vested and direct interest in the outcomes of the plan including, but not limited to, shellfish growers, the boating industry, and recreational user communities.

(4) (a) By December 1, 2022, the department must submit a report in compliance with RCW 43.01.036 to the office of financial management and the appropriate committees of the legislature, to include community engagement plans and schedule for plan development. The native kelp forest and eelgrass meadow health and conservation plan

must be finalized and submitted to the office of financial management and the appropriate committees of the legislature by December 1, 2023, including a map and justification of identified priority areas based on collaboratively developed criteria, and a list of potential tools and actions for conservation or restoration of these priority areas. A monitoring plan based on the identified success measures will also be submitted.

(b) Subsequently, each biennium, the department shall continue to monitor the distributions and trends of native kelp forests and eelgrass meadows to inform adaptive management of the plan and coordinated partner actions. The department shall submit a report to the legislature that describes the native kelp forest and eelgrass meadow conservation priority areas, and monitoring approaches and findings, including success measures established in the plan. Beginning December 1, 2024, and by December 1st of each even-numbered year thereafter, the department shall provide the appropriate committees of the legislature and the office of financial management with:

(i) An updated map of distributions and trends, and summary of success measures and findings, including relevant information from the prioritization process;

(ii) An updated list summarizing potential stressors, prioritized areas, and corresponding coordinated actions and success measures. The summary must include any barriers to plan implementation and legislative or administrative recommendations to address those barriers;

(iii) An update on the number of acres of native kelp forests and eelgrass meadows conserved by region, including restoration or loss in priority areas;

(iv) An update on consultation with federally recognized tribal nations; and

(v) An update on the department's community engagement plan or plans developed under RCW 70A.02.050. [2022 c 230 s 2.]

Findings—Intent—2022 c 230: "(1) The legislature finds that coastal ecosystems and marine vegetation provide an array of valuable ecosystem goods and services to deep water and nearshore environments in Puget Sound and along the coastline. In particular, kelp forests and eelgrass meadows act as three-dimensional foundations for diverse and productive nearshore ecosystems, supporting food webs and providing important habitat for a wide array of marine life, including orcas and threatened and endangered salmon and salmonid species. These marine forests and meadows play an important role in climate mitigation and adaptation by sequestering carbon and relieving impacts from ocean acidification. Marine vegetation can sequester up to 20 times more carbon than terrestrial forests, and therefore represent a critical tool in the fight against climate change.

(2) Washington state is home to 22 species of kelp and is a global hotspot for kelp diversity. However, these kelp forests are under threat and have declined in recent decades. A 2018 study conducted by the Samish Indian Nation on the bull kelp beds in the San Juan Islands found a 305-acre loss of kelp beds from 2006 to 2016, a 36 percent decline in one decade. A statewide study published in 2021 by the department of natural resources found that compared to the earliest baseline in 1878, the amount of bull kelp in 2017 had

decreased by 63 percent in south Puget Sound, with individual areas showing up to 96 percent loss.

(3) The legislature also finds that kelp and eelgrass have important cultural value to northwest tribal nations and have provided diverse marine resources that have sustained and inspired indigenous traditions over generations. In particular, bull kelp has played a prominent role in traditional knowledge and technology and is used in fishing, hunting, and food preparation and storage. Decline in kelp forests threatens these uses, and the cultural livelihoods of Northwest tribal nations.

(4) Washington state's native eelgrass meadows (*Zostera marina*) also provide vital habitat for many organisms, including nursery habitat for juvenile salmon and feeder fish. Native eelgrass can provide a refuge for shellfish from the effects of ocean acidification. Native eelgrass also helps prevent erosion and maintain shoreline stability by anchoring seafloor sediment with its spreading roots and rhizomes. Native eelgrass is used as an indicator of estuary health, because of its fast response to changes in water quality. Examples of rapid native eelgrass loss include Westcott Bay in San Juan county, where in 2000 there were 37 acres of eelgrass meadows and 20 years later less than one acre remains. Changes in the abundance or distribution of this resource are likely to reflect changes in environmental conditions and therefore are key species to monitor and protect to ensure marine ecosystem health.

(5) Kelp forests and eelgrass meadows also provide and enhance diverse recreational opportunities, including productive fishing and picturesque kayaking and diving. These activities are important for local economies and for promoting strong senses of place and overall human well-being in communities.

(6) There is a need for greater education and outreach to communities to promote sustainable recreation practices in and near native kelp forests and eelgrass meadows, such as those called for in the Puget Sound kelp conservation and recovery plan.

(7) Existing regional plans for conservation of kelp forests and eelgrass meadows, including the Puget Sound kelp conservation and recovery plan (2020) and the Puget Sound eelgrass recovery strategy (2015), identify the need to prioritize areas for conservation and restoration based on historical and current distributions.

(8) Existing state plans for combatting ocean acidification in Washington, adopted in 2013 and 2017, identify actions to advance research and explore conservation and restoration of kelp and eelgrass, along with other aquatic vegetation, to help mitigate impacts of ocean acidification locally.

(9) The legislature further finds that our terrestrial and marine ecosystems are interlinked and the state must be proactive in conserving our resources from trees to seas by protecting and restoring our marine forests and meadows in concert with conservation and reforestation of terrestrial forests. Therefore, it is the intent of the legislature to conserve and restore 10,000 acres of native kelp forests and eelgrass meadows by 2040." [2022 c 230 s 1.]

RCW 79.135.900 Savings—1982 1st ex.s. c 21. The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule,

regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder. [1982 1st ex.s. c 21 s 181. Formerly RCW 79.96.901.]

RCW 79.135.901 Captions—1982 1st ex.s. c 21. Chapter and section headings as used in this act do not constitute any part of the law. [1982 1st ex.s. c 21 s 182. Formerly RCW 79.96.902.]

RCW 79.135.903 Effective date—1982 1st ex.s. c 21 ss 176 and 179. Sections 176 (amending RCW 79.01.525) and 179 (creating a new section providing for an aquatic lands joint legislative committee) of this act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1982 1st ex.s. c 21 s 185. Formerly RCW 79.96.904.]

RCW 79.135.904 Effective date—1982 1st ex.s. c 21. Except as provided in *RCW 79.96.904, this act shall take effect July 1, 1983. [1982 1st ex.s. c 21 s 186. Formerly RCW 79.96.905.]

***Reviser's note:** RCW 79.96.904 was recodified as RCW 79.135.903 pursuant to 2005 c 155 s 1010.