



ELWHA FISHERIES OFFICE

760 Stratton Rd
Port Angeles, WA 98363

(360) 457-4012
FAX: (360) 452-4848

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LOWER ELWHA KLALLAM TRIBE Commercial Clam and Oyster Regulation for Public Tidelands S18-001

The following regulation is promulgated by the Lower Elwha Klallam Tribe and shall govern commercial fisheries for clams and oysters conducted off-reservation and on public tidelands by the Lower Elwha Klallam tribal members. This regulation is intended to conform with the agreements reached between the Lower Elwha Klallam Tribe and the State of Washington, as contained in the Annual 2017 Intertidal Bivalve Management Plans for Public Tidelands in Region 1 (Strait of Juan de Fuca), Region 2 (San Juan Islands), Region 4 (Central Puget Sound), Region 5 (Admiralty Inlet), and Region 8 (Hood Canal). In the event the Management Plan 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 January 1, 2018 through December 31, 2018. 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 the Lower Elwha Klallam Fishing Ordinance Third Edition 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, horse, cockle, inter-tidal geoduck, soft-shell, macoma, paddock.
- B. Oysters: Pacific, Olympia

2. AREAS

Shellfish Catch Reporting Areas 20B, 22A, 23A, 23B, 23C, 23D, 25A, 25B, 25C, 25D, 25E, 26A (all Klallam U & A areas in area 26A) 27A, 27B, (north of an east-west line from Ayock Point), and 29.

3. MANAGEMENT PERIOD

January 1, 2018 through December 31, 2018.

4. LEGAL GEAR

Only hand-held implements including forks, rakes, shovels, picks and prying tools will be allowed.

5. FISHERIES OPENINGS

- A. 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 Tribal Fisheries Office.

6. OTHER RESTRICTIONS

- A. **Paralytic Shellfish Poisoning (PSP) Closures:** All public tidelands are subject to emergency closure for clam and oyster harvest due to risk of PSP. Before harvesting any oyster and clam species from any beach, fishers shall determine whether any new closures or openings are in effect due to changes in PSP by contacting the Tribal Fisheries Office.

- B. **Vibrio Parahaemolyticus (V.P.) Restrictions:** In order to control the proliferation of V.P. during the months of June, July, August, and September within Hood Canal, fishers harvesting oysters for commercial purposes will attempt to keep their harvest shaded after harvest, and will ensure that harvested oysters are placed in refrigeration or ice within 4 hours after harvest occurs, provided that the oysters are not sold within that time period. Specific beach openings may have more severe restrictions depending on V.P. status at that time, and will be reflected in the emergency regulation. Harvesters wishing to harvest oysters need to complete a Vibrio Workshop.

- 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. Hamma Hamma Flats and Jorsted Creek, Region 8, Hood Canal.
8. Bywater bay, Region 8, Hood Canal.
9. Seal Rock Federal Camp, Region 8, Hood Canal.

D. Beach Monitor Requirements

1. All tribal commercial clam fisheries require a harvest monitor to be present on the beach to observe the fishery and record total catch. Likewise, all tribal commercial oyster fisheries will also require the presence of a harvest monitor:
2. 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.
3. Harvesters must notify the Lower Elwha Fisheries Office at least 24 hours Prior to the fisheries opening in order to arrange for a harvest monitor. If a harvest occurs on a Saturday, Sunday or Monday, harvesters must notify the Lower Elwha Fisheries Office by 9:00 am of the Friday preceding the opener.
4. All harvesters must report their harvest amount to the beach monitor before leaving the beach. An actual count of oysters must be reported not an estimate.

E. Clam Harvest Restrictions:

- 1) Minimum Size Limit – No clams smaller than 1-1/2 inches in length (38mm) shall be harvested in commercial fisheries, or except as specified by emergency regulations or prior agreement between the Lower Elwha Klallam Tribe 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) Commercial take-home amounts intended for personal consumption shall not exceed the subsistence limits specified in Lower Elwha regulation #S18-002, 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 (64 mm) shall be harvested in commercial fisheries. These harvest limitations shall not apply to commercial cluster oyster fisheries as specified by emergency regulations.

- 2) Use of oyster barge – No commercial oyster harvest may occur by removing oysters from the beach to an oyster barge except as may be specified by emergency regulations.
- 3) 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.
- 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 Lower Elwha regulation #S18-002, unless specifically modified by emergency regulation.

G. **Labeling:** A label must be affixed to each bag or container of commercially harvested clams or oysters immediately after filling the bag or container. Ready-to-use printed labels are 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) Certification Number
 - a. Lower Elwha – WA587HA – if harvesting under the Tribe’s certification, the harvester must have an approved buyer.
 - b. Own Certificate number – if harvesting and selling one’s own product, must purchase bag tags and use own certification number.
- 3) Harvest Name and/or ID Number
- 4) Harvest Date
- 5) Beach Area, DOH Growing Area Designation
- 6) Beach Number
- 7) Shellfish Type
- 8) Quantity Harvested

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 property by fishers while on any beach will be a violation of this regulation.

I. **Product Recall:** All commercial clam and oyster sales must be made to a buyer listed with the Tribe in the event an emergency recall is necessary. Tribal members can obtain a list of approved buyers from the Fisheries Office.

J. **Shellfish Sanitation Requirements:** Tribal harvesters are required to comply with provisions of the “Settlement Agreement, Regulation of Treaty Shell Fishing 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.

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.

8. **POST-HARVEST ACTIVITIES**

All commercially harvested clams and oysters shall be sold within a specified time period after harvest, as indicated on the emergency regulation.

9. **EMERGENCY REGULATIONS**

The above regulations may be amended at any time by emergency regulations. Prior to harvest, each fishery shall check with the Tribal Fishery Office for emergency regulation changes.

10. **AUTHORITY**

These regulations are promulgated by the Lower Elwha Klallam Fisheries Manager under authority specified by the Lower Elwha Klallam Fishing Ordinance Third Edition.

Robert Elofson
Fisheries Manager
Lower Elwha Klallam Tribe