

# Appendix H

## Policies Related to the Nearshore Habitat

Compiled by Puget Sound Action Team and King County

STATUTE AND DESCRIPTION	AGENCIES and RESPONSIBILITIES		RELEVANCE TO THE NEARSHORE
<p><b>ENDANGERED SPECIES ACT (ESA) (1973)</b> Provides significant protection for listed species of insects, animals, and plants in the United States. Once listed under ESA, “critical habitat,” or habitat containing physical or biological features essential to the species’ conservation, is designated. Federal agencies are prohibited from authorizing, through permits, licenses, easements or contracts, funding or carrying out any action that will result in the “take” of an endangered or threatened species, or in the destruction or adverse modification of critical habitat.</p>	<p><i>National Oceanic and Atmospheric Administration– Fisheries (NOAA Fisheries)</i></p>	<p>Responsible for listing and protecting marine species, including anadromous fish.</p>	<p>§ 9 of the ESA prohibits the “take” of an endangered species by anyone – this includes habitat degradation. <i>This prohibition is routinely extended to threatened species as well by a rule adopted under authority granted to NOAA Fisheries and Fish and Wildlife by § 4(d) of the ESA.</i></p> <p><b>NOAA Fisheries has proposed designating nearshore habitat in Puget Sound as critical habitat for Chinook salmon.</b></p> <p>A 4(d) rule prohibiting take has been adopted for Chinook and Hood Canal chum salmon. This includes harmful alterations of the nearshore.</p>
	<p><i>Fish and Wildlife Service</i></p>	<p>Responsible for listing and protecting terrestrial species.</p>	
<p><b>CLEAN WATER ACT (CWA) (1977 – successor to 1972 Federal Water Pollution Control Act)</b> The primary federal law that protects the nation’s waters, including coastal areas. Among its purposes includes “the protection and propagation of fish, shellfish, and wildlife.” The two fundamental goals of the Clean Water Act are:</p> <ul style="list-style-type: none"> <li>• Eliminate the discharge of pollutants into the nation's waters.</li> <li>• Achieve water quality levels that are fishable and swimmable.</li> </ul>	<p><i>Environmental Protection Agency (EPA)</i></p>	<p>Charged with implementing most of the CWA, including:</p> <ul style="list-style-type: none"> <li>• §303 (water quality standards and TMDLs)</li> <li>• §402 (NPDES permitting).</li> <li>• §320 (National Estuary Program).</li> </ul> <p>EPA has delegated implementation authority for §303 and §402 to the state Department of Ecology, though EPA does NPDES permitting for federal facilities. Also, under the CWA, any tribe may choose to develop water quality standards and be delegated to administer the act on the same basis as a state.</p> <p>EPA has delegated implementation authority for §320 to the Puget Sound Action Team (PSAT). PSAT complies with §320 requirements with the Puget Sound Management Plan.</p>	<p>The Clean Water Act provides funding to states and communities to help them meet their clean water infrastructure needs; protects valuable wetlands and other aquatic habitats through a permitting process that ensures development and other activities are conducted in an environmentally sound manner.</p> <p><b>The CWA is one of two main mechanisms the federal government has to address uses that affect nearshore habitat.</b></p> <p>The Puget Sound Management Plan (last updated in 2000) contains numerous recommendations aimed at protecting nearshore habitat.</p>
	<p><i>Army Corps of Engineers</i></p>	<p>Charged with implementing:</p> <ul style="list-style-type: none"> <li>• § 404 (dredge and fill permitting).</li> </ul>	

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<p><b>ANADROMOUS FISH CONSERVATION ACT (AFCA) (1965)</b>  This act authorizes the Secretary of the Interior to enter into cooperative agreements with the states and other non-federal interests for the conservation, development, and enhancement of the nation's anadromous fishery resources that are subject to depletion from water resources developments and other causes.</p>	<p><i>NOAA Fisheries</i></p> <hr/> <p><i>Fish and Wildlife Service</i></p>		<p>Established a grant program that provides funding to states for habitat or fish enhancement work and specifies cost-sharing and appropriation provisions. Funds can be used to improve spawning areas and to conduct research to improve management.</p>
<p><b>NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (1969)</b>  A policy designed to encourage productive and enjoyable harmony between man and his environment; promote efforts to prevent or eliminate damage to the environment and biosphere; and enrich the understanding of the ecological systems and natural resources important to the nation.</p>	<p><i>All federal agencies</i></p>	<p>The White House Council on Environmental Quality was established as a result of this legislation and is responsible for reviewing and appraising all federal agencies' various programs and activities and for determining whether the objectives of the policy are being achieved. It is also responsible for documenting and defining changes in the natural environment.</p>	<p>All federal agencies are required to utilize a systematic, interdisciplinary approach to decision making related to the environment, identify and develop methods and procedures to ensure that environmental amenities and values are given appropriate consideration in decision making, and include an environmental impact statement (EIS) in all reports on proposals for legislation or actions that may significantly affect the human environment. Can result in denial or mitigation; applies to federal licenses and permits as well as to direct federal actions.</p>
<p><b>COASTAL ZONE MANAGEMENT ACT (CZMA) (1972)</b>  Adopted to encourage and assist the states in developing and implementing management programs to preserve, protect, and, where possible, to restore or enhance the resources of the nation's coastal zone. Requires that federal agencies or licensees carry out their activities to conform with each state's coastal zone management program.</p>	<p><i>Department of Commerce</i></p>	<p>The Secretary of Commerce has the authority to make grants to any coastal state, including grants for up to 80 percent of the administrative cost of the programs.</p>	<p>Designed to encourage states to exercise their full authority over the lands and waters in the coastal zone by assisting them, in cooperation with federal and local governments and other affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance. Federal agencies must be consistent with approved state program.</p> <p><b>Shoreline master programs (SMPs) developed by local governments to comply with state SMA requirements are one of the most powerful tools in Washington state for protecting nearshore resources.</b></p>
	<p><i>Washington State Department of Ecology (Ecology)</i></p>	<p>In Washington state, CZMA compliance is achieved primarily through the Shoreline Management Act (SMA), administered by the state Department of Ecology. Local governments, however, have primary authority to implement SMA requirements through shoreline master programs (SMPs). Ecology reviews local SMPs for federal consistency.</p>	

***Other federal statutes with implications for the nearshore include:***

- Magnuson-Stevens Fishery Conservation and Management Act.
- Sustainable Fisheries Act.
- Estuary Restoration Act

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<p><b>WATER QUALITY PROTECTION ACT (WQPA) (1996)</b> Established the Puget Sound Action Team and a nine-member Puget Sound Council to take the lead on water quality protection efforts in Puget Sound.</p> <p>The act directs state and local agencies to coordinate with each other in order to produce a biennial work plan that delineates state and local actions necessary to protect and restore the biological health and diversity of Puget Sound.</p> <p>One purpose of the act is to implement the Puget Sound Management Plan, which is also the National Estuary Program plan for Puget Sound, implemented by the Puget Sound Action Team (see Clean Water Act §320 above).</p>	<p><b><i>Puget Sound Action Team (PSAT)</i></b></p>	<p>Brings together federal, state, local and tribal representatives to lead and coordinate efforts to protect Puget Sound.</p> <ul style="list-style-type: none"> <li>Identifies actions planned for the biennium to protect water quality and biological resources.</li> <li>Major purpose is to implement and amend the Puget Sound Management Plan.</li> </ul>	<p>PSAT’s responsibilities to ensure that the Puget Sound Management Plan and the biennial work plan are completed and implemented have far reaching implications for the nearshore. Priorities of the 2003-2005 work plan include the following long-term outcome measures:</p> <ul style="list-style-type: none"> <li>A net gain in ecological function and area of stream, nearshore and estuarine habitats within Puget Sound.</li> <li>Balanced, stable, and self-sustaining populations of all indigenous marine species in Puget Sound.</li> <li>Water quality that is adequate to prevent/eliminate harvest restrictions in shellfish growing areas.</li> </ul> <p>PSAT’s responsibilities for implementing this plan are to:</p> <ul style="list-style-type: none"> <li>Coordinate interagency technical-assistance teams.</li> <li>Collect, maintain, and distribute information on funding sources for local governments.</li> </ul> <p>PSAT also coordinates monitoring and research through the Puget Sound Ambient Monitoring Program (PSAMP). This includes monitoring and research conducted in the nearshore.</p>
<p><b>SHORELINE MANAGEMENT ACT (SMA) (1971)</b> Washington state complies with the federal Coastal Zone Management Act (CZMA—see description in first section) through the Shoreline Management Act (SMA). The SMA is designed to manage and protect the shorelines of the state by regulating development in the shoreline area. A major goal of the act is “<i>to prevent the inherent harm of an uncoordinated and piecemeal development of the state’s shorelines.</i>” It states that shorelines should be managed to foster all reasonable and appropriate uses and to ensure uses are designed and conducted in a manner to minimize damage to the environment.</p> <p>The SMA was integrated with the Growth Management Act (see GMA description below) in 1995, when the goals and policies of the SMA were added as the 14<sup>th</sup> planning goal of the GMA.</p>	<p><b><i>Department of Ecology</i></b></p>	<p>Serves in a support and review capacity to assist and ensure that local governments implement the act via shoreline master programs (SMPs). Ecology must approve SMPs.</p> <p>Ecology issues guidelines and provides grants.</p>	<p>Many nearshore areas fall under the purview of the SMA.</p> <p>Uses and activities that could affect nearshore habitat include shoreline modifications such as dredging, landfills, piers, and bulkheads. Many, but not all, SMPs address these uses and activities. While substantial development permits (SDPs) are required for many of these activities, a great many activities are exempt from the SDP requirement. The state Department of Ecology is responsible for ensuring that local governments enforce and monitor their permitting processes; however, it is the role of the Shoreline Hearings Board to hear appeals.</p>
	<p><b><i>Local governments</i></b></p>	<p>Must develop SMPs and administer shoreline permits.</p> <p>Must revise programs if state adopts new guidelines.</p>	

<p><b>GROWTH MANAGEMENT ACT (GMA) (1990)</b>  The Washington State Legislature found that uncoordinated and unplanned growth threatened the environment and sustainable economic development. They therefore established a process for citizens, local governments, and the private sector to cooperate and coordinate in comprehensive land use planning. The GMA establishes goals and policy direction on a wide range of issues, including environmental protection and shoreline management.</p> <p>The GMA was integrated with the Shoreline Management Act (SMA – see description above) in 1995, when the goals and policies of the SMA were added as the 14<sup>th</sup> planning goal of the GMA.</p>	<p><i>City and county governments</i></p>	<p>Directed to implement and develop mechanisms to meet the GMA’s goals through comprehensive plans and development regulations. Most counties have adopted development regulations that require permits for activities in or near <i>critical areas</i>, one of the designated land use areas. Designating critical areas is one of the first requirements under the GMA.</p> <p>Requires development regulations that address things like stormwater.</p>	<p>Applies to all land within those county and city boundaries required to complete GMA planning.</p> <p><i>Critical areas</i> include fish and wildlife habitat conservation areas (FWHCAs). Counties can prohibit development in these areas.</p> <p>FWHCAs also involve restrictions and include areas with endangered/threatened/sensitive species; habitats and species of local importance; commercial/recreational shellfish areas; kelp and eelgrass beds; and herring and smelt spawning areas.</p>
<p><b>STATE ENVIRONMENTAL POLICY ACT (SEPA) (1971)</b>  Establishes a policy for state and local agencies to use all practicable means and measures to create and maintain conditions under which people and nature can exist in productive harmony. Requires that state and local agencies analyze the environmental impacts of proposed projects. This analysis is intended to coordinate with permit reviews, including those required for activities in nearshore habitats.</p> <p>Amendments to the SEPA Rules made in November 1995, integrated SEPA requirements with those of the GMA. Amendments in 1997 integrated SEPA requirements with those of the Local Project Review Act.</p>	<p><i>All state, county and city agencies, and local agencies such as ports, school districts, air authority, etc.</i></p>	<p>SEPA requires environmental review for any nonexempt proposal (either project or non-project). This includes a review of likely environmental impacts on the natural and built environments, including earth, air, water, plants and animals, energy and natural resources, environmental health, land and shoreline use, transportation, public services, and utilities.</p>	<p>SEPA is one of the main tools available to local governments and other agencies for evaluating the impacts of projects on nearshore habitats. Much (but not all) nearshore habitat falls within the scope of SEPA.</p> <p>SEPA environmental review is triggered by the need for a state or local agency “action” which includes an agency decision to license, fund, or undertake a proposal including private proposals. If no agency action is required, no SEPA review is needed.</p> <p>A variety of permits are subject to SEPA requirements, including but not limited to building, Hydraulic Project Approval (HPA), National Pollutant Discharge Elimination System, and Shoreline Management Act permits. A proposed activity’s potential affect on nearshore habitats is analyzed during review under SEPA. This includes permits for docks, bulkheads, and dredging and filling projects. An agency may condition a proposal using SEPA supplemental authority when the proposal is likely to have a specific adverse environmental impact. An agency may deny permits or other approvals under SEPA if the proposal would likely result in significant adverse environmental impacts (based on impacts evaluated in a final environmental impact statement).</p>

<p><b>STATE HYDRAULICS CODE (1955)</b>  The Hydraulics Code requires state approval for the construction of hydraulic project(s) or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. The code is intended to protect all fish life from the potential harmful effects of activities occurring below the ordinary high water mark. This program is linked to the Corps' Section 404 Permit. Also applies to repair and maintenance.</p>	<p><i>Department of Fish and Wildlife (WDFW)</i></p>	<ul style="list-style-type: none"> <li>DFW issues authorizations for activities in the nearshore that can affect fish in the form of a HPA.</li> </ul>	<p><b>This is one of the main mechanisms the state has to address uses that impact nearshore habitats.</b> The regulations identify habitats of special concern such as surf smelt spawning areas, eelgrass beds, etc. The types of activities that require an HPA permit include piers, docks, pile driving, dredging, gravel removal, placement of outfall structures, bulkheads, fills, boat launches, floats and marinas. HPAs contain provisions developed from best available science that are designed to protect all fish.</p>
<p><b>AQUATIC LANDS ACT (ALA) (1984)</b>  In 1984, the Washington State Legislature passed the Aquatic Lands Act which states that aquatic lands are to be used to provide a balance of public benefits for all the state's citizens, including encouraging direct public use and access and ensuring environmental protection.</p> <p>The act established the management guidelines to be used in the management of state-owned aquatic lands.</p>	<p><i>Washington State Department of Natural Resources (DNR)</i></p>	<ul style="list-style-type: none"> <li>Any activity that interferes with the public's use of a state-owned aquatic land requires DNR authorization.</li> <li>DNR focuses management of aquatic lands on protecting areas with statewide significance, meaning areas with statewide implications and/or benefits. The primary means used by the department to identify significant aquatic lands is through the Shoreline Management Act.</li> </ul>	<p>This is one of DNR's primary pieces of legislation used when making management decisions about aquatic lands.</p> <p>DNR-owned aquatic lands include many nearshore areas such as tidelands, shorelands, harbor areas, and oyster land tracks.</p> <p>DNR requires a lease of permit for activities that can impact aquatic lands, such as marinas, moorage, piers, booming, rafting and storage of logs, swim rafts, mooring buoys, marine aquatic plant removal, commercial clam harvesting and aquaculture, dredge disposal and easements for utility crossings. DNR must balance an application to occupy state-owned aquatic lands for private and local purposes with the public interest. The Shoreline Management Act is the vehicle by which DNR makes this determination. DNR is required to utilize the local shoreline master program process to identify aquatic lands of statewide value for public access, habitat and water dependent and renewable resource use.</p>

***Other state statutes with implications for the nearshore include:***

- State Clean Water Act (sometimes applies when the federal CWA does not).
- State Endangered Species Act.
- State fish regulations (ability to establish marine protected areas or limit gear types).
- Port laws.
- Diking and drainage district laws.
- Shellfish Protection Districts.