NEPA SCREENING FORM FOR LOW-EFFECT HCP DETERMINATIONS

I. Project Information

A. Project Name: Habitat Conservation Plan (HCP) for Washington Department of Natural Resources' (WDNR) Commercial Geoduck Fishery

B. Affected species: Bull Trout, Coastal Cutthroat Trout, Marbled Murrelet, California Brown Pelican, Bald Eagle, and Tufted Puffin

C. Project size (in acres): Washington's commercial geoduck fishery occurs within the submerged lands of Puget Sound, the Strait of Juan de Fuca and areas north to the Canadian border. Within this broad area, harvest occurs subtidally in areas that have been surveyed between depth contours of -18 and -70 feet (corrected to mean lower low water (MLLW). There are currently about 400 individual geoduck tracts comprising approximately 30,000 acres of subtidal bedlands. Future surveys could identify additional commercial tracts. The total acreage fluctuates because newly discovered beds are added, or the status of an existing tract is changed. The commercial status of a tract can change if a tract is rendered unharvestable by pollution, a tract gets "fished down" and placed in recovery status, or geoduck densities are too low for a viable commercial fishery. The HCP imposes a maximum annual harvest rate of 6,000 acres per year in the six management regions and nor more than 1,500 acres in any one management region per year.

D. Brief project description including minimization and mitigation plans:

Washington's commercial geoduck fishery is jointly managed by WDNR, the Washington Department of Fish and Wildlife (WDFW), and the sixteen tribes that have a right to up to 50 percent of the harvestable surplus of geoducks (as affirmed in United States v. Washington, 873 F. Supp. 1422 W.D. Wash. 1994 and United States v. Washington, 898 F. Supp. 1453 W.D. Wash. 1995). The State agencies and the Tribes are jointly responsible for estimating population size, determining sustainable yield, and ensuring that adverse effects to the environment are kept to a minimum.

WDNR has proprietary rights over half of the harvestable geoducks and auctions the right to harvest specific quantities in specific areas to private companies and individuals. The terms of harvest are stipulated in a harvesting agreement, which is a legally binding contract between the state and each private harvest company that participates in the fishery. Geoduck harvest has been occurring for over 35 years, and has been occurring at about the same levels since the late 1990's. The fishery is managed using a sustainable harvest rate model and it is expected to continue in the future at a similar harvest level.

Harvesting is done by divers, licensed by the WDFW, who are hired by the harvest companies. Commercial geoduck tracts are accessed via boats, ranging in size from 25-70 feet. Divers use hand-operated water jets which consist of a pipe with a 5/8 inch nozzle on the end. The harvester simultaneously inserts the nozzle into the substrate next to the exposed geoduck siphon and grasps the siphon. By discharging pressurized water around the clam the sediment is liquefied and the clam is removed by hand.

Long-term provisions to minimize environmental impacts are integrated into the management of the fishery. Through the HCP, WDNR commits to these provisions, identified below. A maximum annual harvest of no more than 6,000 acres in the six management regions combined, and no more that 1,500 acres per year in any one management region (item h) is included as an additional minimization and mitigation measure.

(a) Minimizing possible disruptions to the covered species from noise related to geoduck harvest. WDNR will reduce the likelihood of disturbing species vulnerable to surface noise by limiting surface noise levels to 50 decibels at a distance of 200 yards (600 feet) from each vessel;

(b) Protecting eelgrass beds adjacent to geoduck harvest tracts by establishing a 2-foot vertical or 180-foot horizontal (on very gradual slopes) buffer between geoduck tracts and the deepest occurrence of eelgrass;

(c) Applying harvest restrictions that protect spawning activities of forage fish, such as herring, Pacific sand lance and surf smelt. On tracts adjacent to documented herring spawning areas (eelgrass, macroalgae, or other substrate), the shoreward harvest boundary will be restricted to waters deeper than –35 feet MLLW during spawning season and deeper than –25 feet during the remainder of the year;

(d) Continual coordination with WDFW and the State-Tribal Herring Technical Committee to assess and reaffirm that the above buffers are adequate to protect nearshore environments, eelgrass, and herring spawning areas;

(e) Limiting the area impacted by harvest activities by permitting harvest only from tracts designated through contract by WDNR and by clearly marking tracts with easily identifiable stakes and/or buoys, and recording latitude and longitude positions on all markers;

(f) Protecting nearshore habitats by locating the closest shoreward harvest boundary at or deeper than the –18 foot MLLW water depth contour on all tracts;

(g) Restricting the harvest method to the removal of individual geoducks using hand-operated water jets as stipulated in WAC 220-52-019(2a);

(h) Limiting annual harvest to the State's half of the total allowable catch (TAC) of 2.7 percent of the commercial biomass in each region, which is

2 to 3 million pounds. The maximum annual harvest will be no more than 6,000 acres per year (1,500 acres in any one management region);

(i) Protecting the covered species and habitat from direct mortality associated with toxic spills;

(j) Daily, continuous on-site monitoring and compliance enforcement performed by WDNR compliance staff; and

(k) Submitting/presenting yearly reports on the above conservation measures.

II. Does the HCP meet the low-effect criteria in the HCP Handbook?

A. Would the effects of the HCP be minor or negligible on federally listed, proposed, or candidate species and their habitats covered under the HCP prior to implementation of the mitigation plan?

Yes.

Bull Trout: The proposed action is anticipated to result in incidental take of bull trout in the form of harassment through the disruption of normal migratory and foraging behaviors associated with direct impacts from elevated sediment levels. Potential injury and/or direct mortality are expected to result from these impacts. Because the temporary effects of the harvesting activities are expected to impact so few individual bull trout we do not expect that the effects of the proposed project will reduce the species' likelihood of survival and recovery in the wild. No long-term impacts to bull trout via their prey species are expected as a result of the project. Long-term provisions to minimize these impacts are integrated into the management of the fishery (See Section I.D., above).

The FWS anticipates the action is not likely to destroy or adversely modify designated critical habitat because water quality impacts associated with elevated sediment levels are expected to be localized and will not preclude use by bull trout of designated critical habitat throughout the plan area.

Moreover, the applicant will avoid and minimize take and adverse effects by fully implementing this HCP (see long-term provisions above). This finding will be further evaluated in the FWS's intraservice Section 7 consultation under the Endangered Species Act of 1973 (Act), as amended.

Marbled Murrelets: The FWS anticipates adverse affects to individual marbled murrelets from disturbance related to sound generated by boat operations and dive support equipment, the presence of boats and divers, elevated sediment levels related to harvesting activities, oil spills, and discarded debris. In-air sound generated by boat operations and dive support equipment could disrupt foraging and mask vocalizations by marbled murrelets, potentially resulting in reduced foraging efficiency. Localized disruption of foraging activity from turbidity related to harvesting activities could occur due to turbidity from harvesting activities. However, we do not anticipate these activites to result in harassment or harm in the form of mortality or injury to murrelets. Injury to

marbled murrelets may result from an oil spill from harvest boats, but this would be considered a rare occurrence. The geoduck fishery incorporates a specific conservation strategy to reduce the risk of an oil spill, and to lessen the effects of a spill, should one occur. These effects are not expected to jeopardize the continued existence of the marbled murrelet in its listed range because the primary threats to marbled murrelets in Recovery Zone 1 (Puget Sound) are habitat loss, predation, and mortality in the marine environment from oil spills and commercial (net) fisheries.

No long-term impacts to marbled murrelets via their prey species are expected as a result of the project. Long-term provisions to minimize these impacts are integrated into the management of the fishery (See Section I.D., above).

Critical habitat for this species has been designated in Washington; however no critical habitat was designated in the marine environment, therefore no destruction or adverse modification of critical habitat is anticipated.

Moreover, the applicant will avoid and minimize take and adverse effects by fully implementing this HCP (see long-term provisions above). This finding will be further evaluated in the FWS's intraservice Section 7 consultation under the Act.

California Brown Pelican: In Washington, the California brown pelican is currently fairly common to locally abundant as a nonbreeding summer and fall visitor on the ocean coast and, to a lesser extend, Puget Sound. The species is rare in winter and spring. Therefore, California brown pelicans would not be exposed to harvesting activities occurring during the winter and spring months. The largest concentrations of California brown pelicans in Washington do not occur in or near geoduck harvest tracts.

California brown pelicans in Washington are limited to a narrow band of shoreline along the Pacific coast, with concentrations in the estuaries and bays. They are uncommon in the Straits of Juan de Fuca and Puget Sound where harvesting occurs. However, as their numbers increase, more individuals may be seen in inland marine waters.

The FWS anticipates adverse effects to individual California brown pelicans from sound generated by boat operations and dive support equipment, the presence of harvest boats and divers, and sediment generated by harvest of geoducks. However, the effects of temporary displacement of California brown pelicans to adjacent areas is expected to be insignificant, because potential disturbance would be limited in duration and alternative foraging and roosting habitat is typically available. Injury to California brown pelicans may result from an oil spill or the ingestion of discarded debris from harvest boats, but this would be considered a rare occurrence. The geoduck fishery incorporates a specific conservation strategy to reduce the risk of an oil spill, and to lessen the effects of a spill, should one occur. These effects are not expected to jeopardize the continued existence of the California brown pelicans in its listed range.

Critical habitat has not been designated for the California brown pelican, therefore; no destruction or adverse modification of critical habitat is anticipated.

Moreover, the applicant will avoid and minimize take and adverse effects by fully implementing this HCP (see long-term provisions above). This finding will be further evaluated in the FWS's intraservice Section 7 consultation under the Act.

B. Would the effects of the HCP be minor or negligible on other environmental values or resources (e.g., air quality, geology and soils, water quality and quantity, socio-economic values, cultural resources, recreation, visual resources) prior to implementation of the mitigation plan?

Yes.

Air Quality: Exhaust from vessel engines will contribute emissions into the air. However, exhaust from harvest vessel engines and auxiliary equipment such as air and water pumps was determined to have no measurable or significant impacts to air quality. This is due to the limited number of boats in a harvest area and the dissipation of carbon monoxide. The primary engines that power the geoduck harvest vessels are turned off when harvest is occurring and are only utilized to enter, leave or move about the harvest tract.

Water Quality: Small amounts of fine sediment (silt) are released into the water, increasing turbidity. However**,** any impacts are confined to the immediate area where harvest is occurring and should have no effect outside the harvest tract boundaries. Contamination of water may result for an oil spill event. However, this is an illegal activity and only the efforts of DNR to minimize and mitigate such events in the HCP provide DNR with incidental take of covered species. Additional information can be found in section 3.3, (pgs. 30-37) of the Supplemental Environmental Impact Statement (SEIS) for the State of Washington Commercial Geoduck Fishery.

Water Quantity: There is no impact on water quantity from geoduck harvest. Fishermen utilize ambient water pumped from the tracts in their water jets. This water is reintroduced to marine waters during harvest.

Socioeconomic values: The geoduck fishery directly supports employment for 40-50 harvesters and indirectly supports employment for people that transport, package, and sell the harvested geoducks, and provide support services to harvest vessels. Geoduck harvest is a traditional commercial fishery that is unique to the Pacific Northwest.

Cultural Resources: The fishery has no identified impact on cultural resources.

Land and Shoreline Use: Geoduck harvest does not interfere with or preclude other shoreline or upland uses. The only aspect of harvest visible from the surface is the harvest vessel anchored (at least 200 yards) offshore. The presence of a geoduck vessel and associated dive operations requires that recreational and other vessels must use caution and avoid the area of the diver and anchored vessel. Some commercial harvest may temporarily displace sport fishing from the area of the anchored vessel and where

the divers are working. Additional information can be found in section 4.2, (pgs. 104-106) of the Supplemental Environmental Impact Statement (SEIS) for the State of Washington Commercial Geoduck Fishery.

C. Would the impacts of the HCP, considered together with the impacts of other past, present and reasonably foreseeable, similar projects not result, over time, in significant cumulative effects to environmental values or resources?

Yes. The proposed action is similar in nature and effect to other subtidal disturbance activities, for example, construction of docks and removal of pilings. These activities have been conducted for decades in the Pacific Northwest and have been concurred on, in Section 7 consultations under the Endangered Species Act, by the FWS Western Washington Office in many prior, consecutive years. These activities may have short-term adverse effects on the environment. The amount of sediment resuspended by harvest activities is not expected to result in significant cumulative effects to environmental values or resources. Substrate disturbance, subsequent sediment suspension and eventual deposition, and impact to fauna on the tracts is anticipated to cause temporary, local (confined to the tract and immediate vicinity) effects.

III. Do any of the exceptions to categorical exclusions apply to this HCP?

Would implementation of the HCP:

A. Have significant adverse effects on public health or safety?

No. The proposed action is not expected to have significant adverse effects on public health or safety. Local public emergency services would be called upon to respond to an emergency situation created by the unlikely possibility of a dive accident, boat accident or other emergencies related to commercial geoduck harvest operations. The risk of fuel spills or spills of other hazardous materials are minimized by implementation of the HCP, specifically the Fuel Spill Risk Management Conservation Strategy.

B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks?

No. The proposed action would have no effect on unique characteristics in geographic areas such as those found in historic sites, parks, recreation or refuge lands, wilderness areas, wild or scenic river features, and wetland or ecologically critical areas because geoduck harvest activities have minimal if any habitat or land-based impacts. If the proposed action is conducted in refuge lands it would be constrained by the specific requirements of those areas.

The fishery generates a significant amount of money, which is re-invested in the management and improvement of aquatic lands, and in increasing and improving public use and access to the waterfront throughout the state.

C. Have highly controversial environmental effects?

No. There is no current published research that identifies long-term environmental impacts associated with the management of sustainable commercial geoduck fishery. Long-term provisions to minimize environmental impacts and impacts to adjacent shoreline uses are integrated into the management of the fishery. Past controversies regarding the fishery have been settled. Their conclusions are outlined below:

Overview of WDNR's applications to Kitsap County for a substantial development permit to conduct geoduck harvest:

1991 harvest permit:

- In 1991, WDNR applied to Kitsap County for a substantial development permit (SDP) to harvest geoducks on sub-tidal aquatic beds within the county.
- The Kitsap County Board of Commissioners denied the permits after holding hearings in 1991.
- The Shoreline Hearings Board reversed Kitsap County's denial and ordered the county to issue the permit with conditions.
- The County subsequently filed an appeal against the Shorelines Hearings Board and WDNR in Superior Court.
- During the time the matter was in Superior Court, the parties settled and the County granted WDNR a five-year permit allowing harvest on three tracts. Harvest occurred in 1993-1996.

1997 harvest permit:

- WDNR applied to Kitsap County for a second SDP permit in March 1997 to continue harvesting geoduck clams within the county. The permit was remanded to WDNR in December 1998 for development of a SEIS.
- WDNR released the final SEIS in the fall of 2001 and asked Kitsap County to reactivate the permit application.
- In 2002, the Kitsap County hearings examiner denied WDNR's permit "on the basis that no independent analysis of the 2001 SEIS had occurred," and the Kitsap County Board of Commissioners upheld the hearings examiner's decision on appeal.
- WDNR appealed Kitsap County's denial to the Shorelines Hearings Board, and WDFW intervened as a co-petitioner.
- WDNR moved for partial summary judgment. The Shorelines Hearings Board ruled in favor of WDNR, finding that WDNR's participation as the lead agency

In conclusion, WDNR prevailed in both proceedings in which Kitsap County had attempted to deny shorelines permits for geoduck harvest. Although the harvest activity may have been controversial in the sense that a group of county residents opposed the activity, none of the residents' alleged environmental concerns were supported by evidence that was submitted during the permit process.

D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

No. In 1985 an Environmental Impact Statement (EIS) was written under the State Environmental Policy Act (SEPA). The EIS was written to review the impacts associated with harvest of geoduck using the water-jet method. Harvest had been conducted for over 10 years without significant adverse impact. However, the then Washington Department of Fisheries (WDF) and WDNR concluded, due to the nature of the fishery and concerns expressed by the public, that an EIS would provide a suitable means for inviting public and agency comment and allowing an opportunity to review and reassess the management of the fishery. The major concerns expressed about geoduck harvest had come from a small contingent of waterfront property owners living near existing and proposed harvest sites. Their concerns included impacts from noise (from harvest) on adjacent upland property and interference with their uses of the water (primarily recreational boating and view vistas), trespass by harvesters on private tidelands, and possible reductions in intertidal geoduck stocks. Concern had been expressed about the impact of harvest on the geoduck population. At the time, it was thought that geoduck stocks replenish themselves at a slow rate. Refinement of methods to determine geoduck recovery and confirmation of recovery rates was necessary and were being studied at the time the 1985 EIS was developed.

The WDNR completed a SEIS in 2001. The purpose for writing the SEIS was to update the 1985 EIS with the additional research that had been developed since the adoption of the original document. WDNR was concerned about the applicability of the 1985 EIS on the current and future harvesting decisions so they voluntarily developed the SEIS. There were no controversies surrounding this decision. All the new research used to develop the SEIS is included in the Appendices to the Final SEIS. Appendix 2, 4, 6, 7,

and 9 were specifically developed to address uncertain environmental effects from the fishery.

SEPA (determination of significance)

The WDNR adopts the SEIS in the determination of significance (DS) for each auction in order to incorporate all of the analysis of the impacts under the SEIS to auctioned geoduck tracts, reducing any potential significant adverse impacts to below significance. The SEPA process for establishing a commercial site is as follows:

1. WDNR files a DS for the harvest areas to be auctioned. The SEIS is adopted under the DS to mitigate the impacts of the fishery. The biological assessment is also included with the documentation to describe the harvest area and details of the harvest.

2. Notification is sent out to the Tribes, local governments, and State and Federal agencies with management and/or regulatory authority in the area where harvest will occur.

E. Establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects?

No. Future actions will be reviewed on their own merits. No significant environmental impacts are anticipated from this project. Therefore, the issuance of this permit would not establish a precedent for future actions.

F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?

No. The proposed action is similar in nature and effect to other subtidal disturbance activities, for example, construction of docks and removal of pilings. These activities have been conducted for decades in the Pacific Northwest and have been concurred on, in Section 7 consultations under the Endangered Species Act, by the FWS Western Washington Office in many prior, consecutive years. These activities may have short-term adverse effects on the environment. The amount of sediment resuspended by harvest activities is not expected to result in significant cumulative effects to environmental values or resources. Substrate disturbance, subsequent sediment suspension and eventual deposition, and impact to fauna on the tracts is anticipated to cause temporary, local (confined to the tract and immediate vicinity) effects.

G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?

No. The proposed action would not have an impact on historic places or cause the loss or destruction of significant scientific, cultural, or historic resources because the fishery is anticipated to have minimal habitat or land-based impacts. It is anticipated that minor, temporary in-water disturbances may occur but the effects would not be measurable.

Further, if the activity was to be conducted in areas with scientific, cultural, or historic resources, it would be constrained by the specific State and local requirements for those areas.

H. Have adverse effects on listed or proposed species, or have adverse effects on designated critical habitat for these species?

No. Although the proposed action may result in the incidental take of the covered species, any such take would result in minor or negligible effects to the persistence of the species as explained in Section II. A, above. The minimization measures contained in the HCP submitted by WDNR and in the issued permit (referred to as the conservation strategy) would be applied to the geoduck harvest activities. The conservation strategy is intended to: (a) avoid direct impacts to covered species; (b) minimize and avoid possible effects to the habitat for covered species, and (c) ensure that FWS receives information about the effects the permitted activities have on the species concerned. This finding will be evaluated in further detail in the FWS's intraservice Section 7 consultation under the Endangered Species Act.

Critical habitat has been designated in the plan area; however, none will be adversely affected (see Section II. A, above).

I. Have adverse effects on wetlands, floodplains or be considered a water development project thus requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

The HCP will not have adverse effects on wetlands or floodplains, as those areas are not located in the plan area. The HCP is not considered a water development project.

J. Threaten to violate a Federal, State, local or Tribal law or requirement imposed for the protection of the environment?

Implementation of the HCP would not violate Federal, State, local or Tribal law imposed for the protection of the environment. The take covered by this HCP is legal and allowable, only if it is incidental to, and not the purpose of, the carrying out of otherwise lawful activities.

IV. ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. Based on the analysis above, this HCP qualifies as a "low-effect" HCP as defined in the FWS's Habitat Conservation Planning Handbook (November 1996). Therefore this action is a categorical exclusion as provided by 516 DM 2,

Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation will be made.

Other supporting documents:

WDNR (Washington Department of Natural Resources). 2008. Habitat Conservation Plan for Washington Department of Natural Resources' Geoduck Fishery. July 2008. Aquatic Resources Program, Washington Department of Natural Resources. Olympia, Washington.

Washington Department of Fisheries and Department of Natural Resources. 1985. The Commercial Geoduck Fishery: Management Plan and Environmental Impact Statement. Olympia.

Washington Department of Natural Resources and Washington Department of Fish and Wildlife. 2001. Final supplemental environmental impact statement (SEIS) for the State of Washington commercial geoduck fishery. Washington Department of Natural Resources, Aquatic Resources Program. Olympia.

Washington Department of Natural Resources. 2001. State of Washington commercial geoduck fishery management plan. Washington Department of Natural Resources, Aquatic Resources Program. Olympia.

Signature Approval:

Ken S. Berg, Manager
Western Washington Fish and Wildlife Office

Date