



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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April 1, 2021

Willapa Bay Shellfish Company
Attn: Warren Cowell
Post Office Box 43
Ocean Park, WA 98640

RE: Water Quality Certification Order No. **19825** for Corps Reference No. **200701484**,
Willapa Bay Shellfish - Clam Beds, Pacific County, Washington

Dear Warren Cowell:

On March 17, 2021, Willapa Bay Shellfish Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Willapa Bay Shellfish - Clam Beds located on tidelands within Willapa Bay, near Long Beach, Pacific County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (JARPA) and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions about this decision, please contact Marco Pinchot by e-mail at marco.pinchot@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Willapa Bay Shellfish - Clam Beds
Corps No. 200701484, Aquatics No. 139475
April 1, 2021
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Enclosure

e-cc: Jonathan Smith, Corps of Engineers
Laura Hendricks, Coalition To Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Loree' Randall, Ecology
Marco Pinchot, Ecology
ecyrefedpermits@ecy.wa.gov – Aquatics No. 139475

IN THE MATTER OF GRANTING A) ORDER No. 19825
WATER QUALITY) Corps Reference No. 200701484
CERTIFICATION TO) Willapa Bay Shellfish - Clam Beds located on
Willapa Bay Shellfish Company) tidelands within Willapa Bay, near Long Beach,
pursuant to 33 U.S.C. 1341 (FWPCA) Pacific County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)
and Chapter 173-201A WAC)

Willapa Bay Shellfish Company
Attn: Warren Cowell
Post Office Box 43
Ocean Park, WA 98640

On March 17, 2021, Willapa Bay Shellfish Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Willapa Bay Shellfish - Clam Beds, Pacific County, Washington. The U.S. Army Corps of Engineers (Corps) issued a joint public notice on October 5, 2020.

This project proposes to continue to farm manila clams on privately owned tidelands. The project will expand an existing, previously permitted commercial shellfish aquaculture operation from 15 acres to 28.2 acres. The proposed project includes an additional 13.2-acre parcel (tax parcel 79004001102), previously cultivated for clams by others without a Department of Army (DA) permit. The applicant will cultivate Manila clams on-bottom, including seeding and harvest by hand, between tidal elevations +1.5 and +3.0 feet. Harvest will occur on a 2-4 year rotation depending on size, growth, density and natural recruitment. The applicant will apply up to 50 cubic yards of gravel annually to maintain up to a 1-inch thick layer of gravel on the substrate ("frosting"). Shell may also be added to the clam beds. Clam nets will not be deployed.

The project site is located on tidelands within Willapa Bay, on parcel number 79004002081, 79004001102, and the 5-acre south-most portion of 11112255601, near Long Beach, Pacific County, Washington; Section 22, Township 11 North, Range 11 West; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Willapa Bay Shellfish Company's request for a Section 401 Water Quality Certification for the Willapa Bay Shellfish - Clam Beds project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on March 17, 2021 and the following supporting documentation:

1. E-mail letter to Ecology dated March 26, 2021, regarding the project's compliance with the conservation measures associated with the "Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters" (U.S. Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502). This email also includes a description of Willapa Bay Shellfish Company water quality monitoring plan, and Willapa Bay Shellfish

Company commitment to follow the 2019 Puget Sound Shellfish Growers Association Environmental Codes of Practice for Shellfish Aquaculture.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, Willapa Bay Shellfish Company must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize Willapa Bay Shellfish Company to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited¹. If such work, conditions, or discharges occur, immediately notify² Ecology's Regional Spill Response Office at 360-407-6300 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems. You will also need to notify the Washington Emergency Management Division³ at 1-800-258-5990, for actual spills to water only. This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, this WQC is granted to the Willapa Bay Shellfish Company, Willapa Bay Shellfish - Clam Beds project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues an individual Department of the Army (DA) permit for this project. Order No. **19825** will remain valid for the duration of the associated DA permit. Willapa Bay Shellfish Company should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

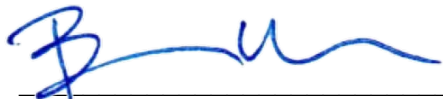
Marco Pinchot
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
marco.pinchot@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>

- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

SIGNATURE



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program
Department of Ecology

April 1, 2021

Date