STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
*PO Box 47600 • Olympia, Washington 98504-7600 • (360) 407-6300*
*711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341*

April 28, 2021

Taylor Shellfish Farms
Attn: Erin Ewald
130 SE Lynch Road
Shelton, WA 98584

RE: Water Quality Certification Order No. **19905** for Corps Reference No. **202001186,** Samish Management Area 2, Skagit County, Washington

Dear Erin Ewald:

On February 15, 2021, Taylor Shellfish Farms submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Samish Management Area 2 located on tidelands within Samish Bay, near Bow, Skagit 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 Jennifer Riedmayer by e-mail at jennifer.riedmayer@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

Enclosure

e-cc: Aquaculture-Reinforcement-Team@usace.army.mil
Megan Biljan, Corps of Engineers (Corps)
Loree' Randall, Ecology
Jennifer Riedmayer, Ecology
ecyrefedpermits@ecy.wa.gov – Aquatics No. 139896

| | | |
|---|---|---|
| **IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO** Taylor Shellfish Farms pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC | ) ) ) ) ) ) | **ORDER No. 19905** **Corps Reference No. 202001186** Samish Management Area 2 located on tidelands within Samish Bay, near Bow, Skagit County, Washington |

Taylor Shellfish Farms
Attn: Erin Ewald
130 SE Lynch Road
Shelton, WA 98584

On February 15, 2021, Taylor Shellfish Farms submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Samish Management Area 2, Skagit County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on February 26, 2021.

This project proposes to commercially cultivate up to 400 acres of oysters, clams and geoducks between +3.0 foot (ft.) and -3.0 ft. tidal elevation on parcel numbers P47685, P47935, P47967, P48467, P61573, P120919, P61569, P61586, P47067, P61563, P61560, P47070, P47071, P61565, P61582, P61580, P61581, P61579, P61644, P61642, and P61605. Access to tidelands is by boat and upland from Taylor owned property off Chuckanut Drive, or off of Blue Heron Road in Bow or launched out of Blau Oyster Co. off of Blue Heron Road in Bow.

The cultivation of oysters for commercial production are grown in bags, near bottom, and on-bottom as both singles and clusters. Harvest takes place manually by hand during low tide and oysters are placed into tubs for pick up and transfer. Bags are harvested by pulling and emptying oysters onto barges for transfer. Bags are reused and hatchery seed is used.

Clam seed is broadcasted by hand into the intertidal area. Some areas are netted, and some are not. Harvest takes place manually by hand at low tide by using rakes to loosen the sediment and clams are collected. The grower may also use a mechanical clam digger, which is powered by a small engine that propels a blade to loosen the soil and collect clams. The clams are collected by a rake under the machine that gathers them onto a conveyor belt and placed in a tub for sorting by staff. Once the clams are harvest they are placed into sacks for pick up by boat. Littleneck and butter clams may be harvested incidentally when seeded clams are harvested.

Geoduck cultivation will entail placing nursery tubes, approximately 9” in length, manually into lower intertidal substrate at a density of approximately one tube per square foot. Three to four geoduck seed are placed in tubes. The tubes may be covered with canopy netting secured with rebar or individual net coverings.

After approximately 18-24 months, the tubes are removed and the area is re-netted with canopy netting. The net is removed once it has been determined the geoduck are able to evade predation

and the beach is left undisturbed until harvest. Harvest occurs by hand using a low-pressure water pump with an attached wand that loosen the sediment around the geoducks for removal by hand. Harvest activity will occur approximately 5-7 years after planting.

The project site is located on tidelands within Samish Bay, on parcel numbers P47685, P47935, P47967, P48467, P61573, P120919, P61569, P61586, P47067, P61563, P61560, P47070, P47071, P61565, P61582, P61580, P61581, P61579, P61644, P61642, and P61605, near Bow, Skagit County, Washington; Section 7, 8, 16, 17, 18, 19, 20, 25, 26, 27, 36, Township 35 and 36 North, Range 2 and 3 East; WRIA 3, Low Skagit-Samish Watershed.

With this Order, Ecology is granting Taylor Shellfish Farms's request for a Section 401 Water Quality Certification for the Samish Management Area 2 project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 15, 2021, and the following supporting documentation:

1. February 15, 2021 - Memo from Taylor Shellfish – Taylor Shellfish Water Quality Monitoring Protection Plan for this project. 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 01EWFW00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502). This email also includes a description of Taylor Shellfish Farms water quality monitoring plan.

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, Taylor Shellfish Farms 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 Taylor Shellfish Farms 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.

**Special Condition:**
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 prohibited[1]. If such work,

[1] RCW 90.48

conditions, or discharges occur, immediately notify[2] 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 Division[3] 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 Taylor Shellfish Farms, Samish Management Area 2 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. **19905** will remain valid for the duration of the associated permit. Taylor Shellfish Farms should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

## 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.

[2] WAC 173-303-145
[3] RCW 90.56.280

## ADDRESS AND LOCATION INFORMATION

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

## CONTACT INFORMATION

Please direct all questions about this Order to:

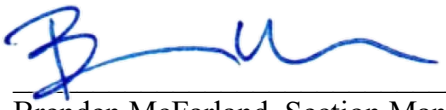
Jennifer Riedmayer
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Jennifer.Riedmayer@ecy.wa.gov

## 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



April 28, 2021
Date

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