



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 17, 2021

BWH Shellfish
Attn: Nate Wight
902 Thorndyke Road
Point Ludlow, WA 98365

RE: Water Quality Certification Order No. **19900** for Corps Reference No. **201301288**,
BWH Shellfish, Mason County, Washington

Dear Nate Wight:

On March 14, 2021, BWH Shellfish submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for BWH Shellfish located on tidelands within Hood Canal, near Lilliwaup, Mason 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 Teresa Pucylowski by e-mail at teressa.pucylowski@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: Christine Jacek, Corps of Engineers (Corps)
Laura Hendricks, Coalition to Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Loree' Randall, Ecology
Teresa Pucylowski, Ecology
ecyrefedpermits@ecy.wa.gov – Aquatics No. 135277
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A)	ORDER No. 19900
WATER QUALITY)	Corps Reference No. 201301288
CERTIFICATION TO)	BWH Shellfish located on tidelands within Hood
BWH Shellfish)	Canal, near Lilliwaup, Mason County,
pursuant to 33 U.S.C. 1341 (FWPCA)	Washington
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

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On March 14, 2021, BWH Shellfish submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the BWH Shellfish, Mason County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on March 24, 2021.

This project will continue to cultivate Pacific oysters, Manila clams and geoduck clams on 9 acres between +0.4ft Mean Lower Low Water (MLLW) and -2.0ft MLLW. Both native and non-native eelgrass are present within the project area.

Oysters are hand-seeded and grown both directly on to the tidelands as well as in aquaculture mesh bags. Oyster harvesting is done by handpicking at low tide. Manila clams are hand-seeded on the beach under canopy nets secured with rebar stakes. They are harvested by hand using rakes to dig up the clams.

Juvenile geoduck clams are seeded into 10"-long x 4"-wide PVC tubes which are pushed into the substrate and covered with canopy nets that are secured to the beach with rebar stakes. The tubes are left for approximately 3 years. When they are removed, the geoduck are left to grow out under canopy nets to harvest size, for approximately 5-10 years. Geoduck clams will be harvested 5-10 years after planting using conventional industry methods of inserting water wands with pressurized seawater into the substrate to loosen the sediment and extract the geoduck. This occurs during the low tide and/or possibly by dive harvest using the same methods.

There is an oyster hatchery located on the associated upland area. The building is outfitted with pumps and tanks for rearing oyster seed, which involves a seawater intake PVC pipe that extends out onto the tidelands about 300 feet and is buried about 8 inches beneath the substrate. This is a pump driven system that involves discharging seawater back to the tidelands.

The project site is located on tidelands within Hood Canal, on parcel number 32434-33-00010, adjacent to 34550 N Hwy 101, near Lilliwaup, Mason County, Washington; Section 34, Township 24 North, Range 3 West; WRIA 16, Skokomish-Dosewallips Watershed.

With this Order, Ecology is granting BWH Shellfish's request for a Section 401 Water Quality Certification for the BWH Shellfish project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on March 14, 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 BWH Shellfish's water quality monitoring plan, and BWH Shellfish's 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, BWH Shellfish 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 BWH Shellfish 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 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.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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 BWH Shellfish, BWH Shellfish 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. **19900** will remain valid for the duration of the associated DA permit. BWH Shellfish 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.

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

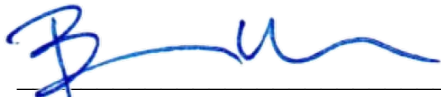
Please direct all questions about this Order to:

Teressa Pucylowski
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
teressa.pucylowski@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

May 17, 2021
Date