



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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June 7, 2021

Upper Skagit Indian Tribe Samish Bay Shellfish Farm  
Attn: David Hawkins  
25944 Community Plaza Way  
Sedro Wolley, WA 98284

RE: Water Quality Certification Order No. **19903** for Corps Reference No. **201300220**,  
Upper Skagit Indian Tribe Samish Bay Shellfish Farm, Skagit County, Washington

Dear David Hawkins:

On March 23, 2021, Upper Skagit Indian Tribe submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Upper Skagit Indian Tribe Samish Bay Shellfish Farm 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 Adam Sant by e-mail at [adam.sant@ecy.wa.gov](mailto:adam.sant@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

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

Upper Skagit Indian Tribe Samish Bay Shellfish Farm  
Corps No. 201300220, Aquatics No. 137233  
June 7, 2021  
Page 2 of 2

Enclosure

e-cc: Kirsten Brown, Corps of Engineers (Corps)  
Loree' Randall, Ecology  
Adam Sant, Ecology  
ecyrefedpermits@ecy.wa.gov – Aquatics No. 137233  
Aquaculture-Reinforcement-Team@usace.army.mil

**IN THE MATTER OF GRANTING A ) ORDER No. 19903**  
**WATER QUALITY ) Corps Reference No. 201300220**  
**CERTIFICATION TO ) Upper Skagit Indian Tribe Samish Bay Shellfish**  
Upper Skagit Indian Tribe Samish Bay ) Farm located on tidelands within Samish Bay,  
Shellfish Farm ) near Bow, Skagit County, Washington  
pursuant to 33 U.S.C. 1341 (FWPCA )  
§ 401), RCW 90.48.120, RCW 90.48.260 )  
and Chapter 173-201A WAC

Upper Skagit Indian Tribe Samish Bay Shellfish Farm  
Attn: David Hawkins  
25944 Community Plaza Way  
Sedro Wolley, WA 98284

On March 23, 2021, the Upper Skagit Indian Tribe submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Upper Skagit Indian Tribe Samish Bay Shellfish Farm, Skagit County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on April 27, 2021.

This project proposes to continue clam and oyster cultivation that was previously permitted by the Army Corps of Engineers under NWS 2013-0220 using the same cultivation methods as previously approved. However, the Tribe proposes to revise the acreage dedicated to each cultivation method as follows:

- 22 subunits (approximately 10.2 acres) will be used for combined clam and oyster cultivation, using clam nets and oyster longlines
- 9 subunits (approximately 4.2 acres) will be used for clam cultivation using clam nets
- 5.5 subunits (approximately 2.5 acres) contain native eelgrass and are currently fallow
- 2 subunits (approximately 0.8 acre) will be designated as a staging area with an anchor and mooring buoy
- 1/2 subunit (approximately 0.3 acre) will be designated for subsistence oyster longlines and clams

The Tribe is reducing the amount of oyster longline cultivation and replacing that area with additional combined clam and oyster cultivation and separate clam cultivation. The Tribe is also seeking approval for use of a coil compacter. Certain portions of Samish Bay are occupied by invasive bamboo worms, which burrow into intertidal sand and mud flats and continuously pump mud as they filter feed. If left unchecked, this invasive species pumps loose mud sediment piles around its burrow, creating loose unstable sediment incapable of supporting demersal fish, shellfish, crustacean species, and eelgrass.

The project site is located on tidelands within Samish Bay, on parcel number P61576, near Bow, Skagit County, Washington; Section 30, Township 36 North, Range 3 East; WRIA 3, Lower Skagit-Samish Watershed.

With this Order, Ecology is granting Upper Skagit Indian Tribe's request for a Section 401 Water Quality Certification for the Upper Skagit Indian Tribe Samish Bay Shellfish Farm project,

provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on March 23, 2021.

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, the Upper Skagit Indian Tribe 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 Upper Skagit Indian Tribe 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.

**Additional Special Conditions:**

1. At this time, the use of a coil compactor to control invasive Bamboo Shoot worms is not authorized for use in areas with native eelgrass (*Zostera marina*).
2. 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<sup>1</sup>. If such work, conditions, or discharges occur, immediately notify<sup>2</sup> 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<sup>3</sup> 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 Upper Skagit Indian Tribe Samish Bay Shellfish Farm 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. **19903** will remain valid for the duration of the associated DA permit. Upper Skagit Indian Tribe should send a copy of the final DA permit to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) within two weeks of receiving it.

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<sup>1</sup> RCW 90.48

<sup>2</sup> WAC 173-303-145

<sup>3</sup> 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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503  <b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608  <b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## CONTACT INFORMATION

Please direct all questions about this Order to:

Adam Sant  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600  
adam.sant@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

June 7, 2021  
Date