



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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September 16, 2021

Penn Cove Shellfish, LLC  
Attention: Ian Jefferds  
PO Box 148  
Coupeville, WA 98239

RE: First Amendment to 401 Water Quality Certification Order No. **19806** for U.S. Army Corps of Engineers Reference No. NWS-2017-511, Penn Cove Samish Bay Shellfish Farm – ATF Application, Samish Bay, near Bow, Skagit County, Washington

Dear Ian Jefferds:

Enclosed is an amendment to Water Quality Certification Order No. 19806 issued on March 30, 2021, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 19806 remain in effect.

The purpose of this amendment is to allow the use of the coil compactor to control invasive bamboo worms as approved by the National Marine Fisheries and U.S. Fish and Wildlife Service.

If you have any questions, please contact Lori Kingsbury at (360) 407-6926 or by e-mail at [Lori.kingsbury@ecy.wa.gov](mailto:Lori.kingsbury@ecy.wa.gov). The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Perry J Lund", is written over a blue circular stamp.

Perry J Lund, Section Manager  
Shorelands and Environmental Assistance Program  
Southwest Regional Office

cc: [Aquaculture-Reinforcement-Team@usace.army.mil](mailto:Aquaculture-Reinforcement-Team@usace.army.mil)  
Allison Murphy, U.S. Army Corps of Engineers  
Robert Smith, K&L Gates LLP  
Paul Blau, Blau Oyster Company  
Todd Woodard, Samish Indian Nation  
Amy Jensen, EPA  
Betsy Stevenson, Skagit County

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e-cc: Lori Kingsbury, Ecology, SWRO  
Rick, Mraz, ECY, Ecology, HQ  
Chris Luerkens, Ecology, NWRO  
Loree' Randall, Ecology, HQ  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov) – Aquatics No. 138557

<b>IN THE MATTER OF GRANTING</b>	)	<b>ORDER No. 19806</b>
<b>A WATER QUALITY</b>	)	<b>First Amendment</b>
<b>CERTIFICATION TO</b>	)	<b>Corps Reference No. NWS-2017-511</b>
<b>Penn Cove Shellfish, LLC</b>	)	Penn Cove Shellfish Samish Bay Farm ATF
In accordance with 33U.S.C. 1341	)	Application
(FWPCA §401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

TO: Penn Cove Shellfish, LLC  
ATTN: Ian Jefferds  
PO Box 148  
Coupeville, WA 98239

On March 30, 2021 the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Penn Cove Shellfish, LLC for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on August 9, 2021 to allow the use of the coil compactor to control invasive bamboo worms as approved by the Corps of Engineers (Corps) authorization for this project.

Order No. 19806 dated March 30, 2021, is hereby amended as follows:

I. The following conditions are removed from the Order:

The following conditions are applied to this project:

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. If the U.S. Army Corps of Engineers, after consultation with the National Marine Fisheries and U.S. Fish and Wildlife Service, subsequently approves the use of a coil compactor in areas that contain native eelgrass, Penn Cove Shellfish, LLC may submit a request to Ecology to amend Order No. 19795 to allow such use.

II. The following language is added to the Order:

The use of the coil compactor to control invasive bamboo worms is approved for use as approved by the Corps of Engineers for this project.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

## **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**

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

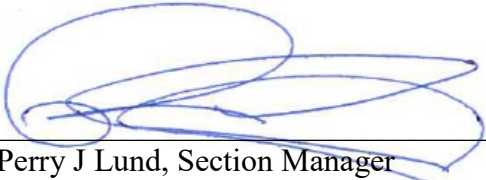
## **CONTACT INFORMATION**

Please direct all questions about this Order to:

Lori Kingsbury  
Department of Ecology  
Southwest Regional Office  
PO Box 47775  
Olympia, WA 98504-7775  
[lori.kingsbury@ecy.wa.gov](mailto:lori.kingsbury@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>



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Perry J Lund, Section Manager  
Shorelands and Environmental Assistance Program  
Southwest Regional Office  
Department of Ecology

September 16, 2021  
Date

This document shows the activities and conditions that have been amended since the original Order was issued. Therefore, it is not the official certification and should be used for informational purposes only.

September 16, 2021 First Amendment changes are reflected in RED.

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 19806</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2017-511</b>
<b>CERTIFICATION TO</b>	)	Penn Cove Shellfish Samish Bay Farm ATF
Penn Cove Shellfish, LLC	)	Application; located on tidelands within Samish
pursuant to 33 U.S.C. 1341 (FWPCA	)	Bay near Bow, Skagit County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260	)	
and Chapter 173-201A WAC	)	

Penn Cove Shellfish LLC  
Attn: Ian Jefferds  
P.O. Box 148  
Coupeville, Washington 98239

On June 16, 2020, Penn Cove Shellfish, LLC Farms submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Penn Cove Samish Bay Shellfish Farm ATF Application, Skagit County, Washington. The U.S. Army Corps of Engineers (Corps) issued a joint public notice on April 2, 2020.

This project proposes to authorize a previously unauthorized commercial shellfish operation, cultivating up to 32 acres of Manila clam, and expand operations to include the cultivation of Pacific and Kumamoto oysters. A total of up to 38.70 acres is proposed to be cultivated. Up to 37.85 acres would be in cultivation with either Manila clam or oysters, and up to 0.85 acre would be in cultivation with oysters. The remaining 1.25 acres would not be subject to shellfish aquaculture.

The currently unauthorized aquaculture at the site consists of Manila clams grown in the substrate under 4-foot wide by 100-foot long clam nets with 3/8-inch mesh, spaced 3-feet apart. All edges are buried, and nets secured with rebar staples every 20-feet for the length of the nets. A mulch layer dragged behind a tractor would be used to simultaneously lay the netting and bury the edges of the nets. On an incoming tide, the length of the netting would be walked and Manila clams are spread over the nets by hand.

Clams would be harvested 18-24 months after planting in the substrate. The nets would be removed by a mechanical harvester that rolls up the netting, excavates four to six inches of substrate, and harvests the clams.

In areas that have had recent active shellfish cultivation or do not contain eelgrass, both Manila clam and oysters would be cultivated. Manila clams would be cultivated as described above, however, the nets would be spaced 4-feet across, in sets of two, followed by two sets of oyster long lines with SEAPA brand baskets. The baskets would be suspended off the bottom from 100-foot long lines spaced 4-feet apart. The long lines would be held in place by galvanized steel posts that would not protrude more than four and a half feet above the substrate. Harvest would occur by hand after 18-24 months.

In areas that have not been in active cultivation and contain eelgrass beds, oyster cultivation would occur in long lines spaced 10-feet apart. **The use of the coil compactor to control invasive bamboo worms is approved for use as approved by the Corps of Engineers for this project.**

In areas that have not previously been in cultivation, a 16-foot buffer would be kept from eelgrass beds.

Site access is by boat at high tide, and worked during low tides. All shellfish activities would occur on privately-owned tideland within an area defined by +1' mean lower low water (MLLW) tidal elevation and the outer boundary at approximately -1.0 ft. MLLW tidal elevation, and within the surveyed property boundaries.

The project site is located on tidelands parcels P48476, P48477, and P48478 within Samish Bay associated with 11321 Blue Heron Road, Bow, Skagit County, Washington; Section 30, Township 36 North, Range 3 East; WRIA 3, Lower Skagit-Samish Watershed.

With this Order, Ecology is granting Penn Cove Shellfish LLC's request for a Section 401 Water Quality Certification for the Penn Cove Samish Bay Shellfish Farm- ATF Application provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on June 16, 2020, and the following supporting documentation:

- E-mail letter to Ecology dated February 12, 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 Penn Cove Shellfish LLC's water quality monitoring plan.

~~The following conditions are applied to this project:~~

- ~~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. If the U.S. Army Corps of Engineers, after consultation with the National Marine Fisheries and U.S. Fish and Wildlife Service, subsequently approves the use of a coil compactor in areas that contain native eelgrass, Penn Cove Shellfish LLC may submit a request to Ecology to amend Order No. 19806 to allow such use.~~

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, Penn Cove Shellfish LLC 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 Penn Cove Shellfish LLC 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 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 Penn Cove Shellfish Samish Bay Farm ATF Application.

This Certification is not effective until the U.S. Army Corps of Engineers (Corps) Seattle District issues an individual Department of the Army (DA) permit for this project. Order No. **19806** will remain valid for the duration of the associated DA permit. Penn Cove Shellfish LLC 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