



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

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. **19795** for U.S. Army Corps of Engineers Reference No. NWS-2019-951, Samish Bay Shellfish Farm, Samish Bay, near Bow, Skagit County, Washington

Dear Ian Jefferds:

Enclosed is an amendment to Water Quality Certification Order No. 19795 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. 19795 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. 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 or seal.

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

cc: 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

Penn Cove Shellfish, LLC
September 16, 2021
Page 2

e-cc: Lori Kingsbury, Ecology, SWRO
Rick, Mraz, Ecology, HQ
Chris Luerkens, Ecology, NWRO
Loree' Randall, Ecology, HQ
ecyrefedpermits@ecy.wa.gov – Aquatics No. 138564

IN THE MATTER OF GRANTING) **ORDER No. 19795**
A WATER QUALITY) **First Amendment**
CERTIFICATION TO) **Corps Reference No. NWS-2019-951**
Penn Cove Shellfish, LLC)
In accordance with 33U.S.C. 1341)
(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. 19795 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

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:

Lori Kingsbury
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775
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>



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.

IN THE MATTER OF GRANTING A)	ORDER No. 19795
WATER QUALITY)	Corps Reference No. NWS-2019-951
CERTIFICATION TO)	Samish Bay Shellfish Farm, located on tidelands
Penn Cove Shellfish, LLC)	within Samish Bay of Puget Sound, near Bow,
pursuant to 33 U.S.C. 1341 (FWPCA)	Skagit County, Washington.
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

Penn Cove Shellfish, LLC
Attention: Ian Jefferds
P.O. Box 148
Coupeville, WA 98239

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

The proposed project is to operate a commercial shellfish aquaculture operation cultivating Manila clam, and Pacific and Kumamoto oysters. The operation would occur on five separate parcels that total 43.4 acres, however, commercial shellfish aquaculture would occur on 35.19 acres. Up to 19.35 acres would be in cultivation with either Manila clam or oysters, and up to 15.84 acres would be in cultivation with oysters. The remaining 8.21 acres would not be subject to aquaculture.

In areas that have had recent active shellfish cultivation Penn Cove is proposing to either cultivate solely Manila clams, or a combination of Manila clams and oysters.

If Manila clam is the only shellfish being cultivated it would be grown under 4-foot wide by 100-foot long clam nets with 3/8-inch mesh, spaced 3-feet apart. A mulch layer dragged behind a tractor is used to simultaneously lay the netting and bury the edges of the nets. On an incoming tide, the length of the netting is walked and Manila clams are spread over the nets by hand. Nets would be secured with rebar staples every 20-feet for the length of the nets. 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, and excavates the substrate up to 6-inches to harvest the clams.

If Manila clam and oysters are cultivated within the same location, 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.

Site access is by boat at high tide, and worked during low tides. All farming activities would occur on privately owned tideland within an area defined by 0' mean lower low water (MLLW) tidal elevation and the outer boundary at approximately -2.0 ft. MLLW tidal elevation, and within the surveyed property boundaries.

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.

The project site is located within Samish Bay on tideland parcels P61600, P61602, P61597, and P61596 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 Samish Bay Shellfish Farm, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request 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. 19795 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 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 Penn Cove Shellfish LLC's, 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. **19795** 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 within two weeks of receiving it.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280