



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 15, 2021

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

RE: Amendment to 401 Water Quality Certification Order No. **9048** for U.S. Army Corps of Engineers Reference No. **201001237**, Sullivan Geoduck Farm, Totten Inlet, Shelton, Mason, Washington

Dear Erin Ewald:

Enclosed is an amendment to Water Quality Certification Order No. 9048, issued on March 5, 2012, 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. 9048 remain in effect.

The purpose of this amendment is to extend the issued Water Quality Certification timing to match with the Army Corps of Engineers Letter of Permission permit.

If you have any questions, please contact Jennifer Riedmayer by e-mail at jennifer.riedmayer@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 "Brenden", is written over a horizontal line.

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

e-cc: Tarrie Ostrofsky, U.S. Army Corps of Engineers
Aquaculture-Reinforcement-Team@usace.army.mil
Jennifer Riedmayer- HQ
Loree' Randall – HQ
Lori Kingsbury- SWRO/SEA
ecyrefedpermits@ecy.wa.gov – Aquatics No. 125659

IN THE MATTER OF GRANTING) **ORDER No. 9048**
A WATER QUALITY) **First Amendment**
CERTIFICATION TO) **Corps Reference No. 201001237**
Taylor Shellfish Farms)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

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

On March 5, 2012, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification (WQC) to Taylor Shellfish Farms for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request from the U.S. Army Corps of Engineers (Corps) regarding the timeframe of the issued WQC. The Corps is issuing a Letter of Permission for this application, in which requires a WQC to match the timeline of the Corps permit.

Order No. 9048 dated March 5, 2012 is hereby amended as follows:

I. The following timeline, which reads:

This Order expires ten (10) years from the date of issuance of the Corps permit.

Is replaced with:

This Order expires seven (7) years from the date of the issuances of the Corps Letter of Permission permit.

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 Hearings 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 all 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.

Filing an appeal with the PCHB:

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Serving a copy of the appeal on Ecology:

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

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
(360) 995-3252

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>

SIGNATURE



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

October 15, 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 information purposes only.

IN THE MATTER OF GRANTING A)	ORDER # 9048 1st Amendment
WATER QUALITY)	Corps Reference No. NWS-2010-1237
CERTIFICATION TO)	Taylor Shellfish Sullivan Geoduck Farm
Taylor Shellfish Farms)	Totten Inlet, Puget Sound,
in accordance with 33 U.S.C. 1341)	Mason County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: Taylor Shellfish Farms
ATTN: Diane Cooper
SE 130 Lynch Road
Shelton, WA 98584

On January 14, 2011 Taylor Shellfish Farms submitted a Joint Aquatic Resource Permit Application (JARPA) requesting a Clean Water Act (CWA) Section 401 Water Quality Certification from the Department of Ecology (Ecology) and a CWA Section 404 Permit from the U.S. Army Corps of Engineers (Corps). A revised JARPA was submitted on March 11, 2011. A joint public notice regarding the request was initially distributed by the Corps for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on March 16, 2011. A second Public Notice was issued by the Corps on April 26, 2011.

The proposed project site is located within Totten Inlet of Puget Sound on tidelands associated with 1041 SE Somers Drive, Shelton, Mason County, Washington, 98584; Section 6, Township 19 North, Range 2 West; WRIA 14, Kennedy – Goldsborough Watershed.

The project proposes to install a commercial geoduck farm on up to 2-acres on the site known as the "Sullivan Lease". Project activities include the rotational planting of geoduck shellfish between the tidal range of +2.5 to -4.5 feet mean lower low water (MLLW). The geoducks would be seeded by hand by placing three to four seed into each 6-inch diameter by 8-12-inch-long PVC tube, which is installed into the substrate. The tubes would be positioned approximately one and a half feet apart. A one-inch mesh canopy net will be secured over the tube fields with rebar hooks for predator exclusion. Planting would occur between April and November. After one to two years, the tubes would be removed by hand and removed from the project site by barge. The canopy nets would be returned over the beds after tube removal for up to another six months. After final canopy net removal, the clams will grow for another two to three years until they reach a harvest size of about 1.5 to 2 lbs.

The first harvest will take place approximately four to seven years after planting. Harvest will occur by hand at low tide using a high volume, low pressure water hose (at approximately 40 psi) injected directly into the sediment adjacent to the geoduck siphon. This procedure loosens the sediment around the geoduck and allows it to be removed by hand. Pumps for the hoses are run

by a small internal combustion engine and are typically located in a small boat just offshore of the harvest site. Access to the planting area will be by boat; no upland access is proposed.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Taylor Shellfish Farms subject to the conditions within this Order.

A. General Conditions:

1. For purposes of this Order, all submittals required by its conditions shall be sent either by regular mail to Ecology's Southwest Regional Office, SEA Program, Attn: Federal Permit Manager, P.O. Box 47775, Olympia, WA 98504-7775 or via e-mail to loch461@ecy.wa.gov. Any submittals shall reference Order No. **9048** and Corps No. **NWS-2010-1237**.
2. This Order authorizes only those activities identified in the JARPA received January 14, 2011 and as revised on March 11, 2011; and in the *"Biological Evaluation of Potential Impacts from a Proposed Geoduck Aquaculture Farm to ESA-Listed Species, Essential Fish Habitat, and Forage Fish in Totten Inlet, Mason County, Washington,"* dated March 1, 2011, or as otherwise specified or modified by this Order. Taylor Shellfish Farms must

contact Ecology if a change is proposed to any technologies or methodologies on the project site.

3. Within 30 days of receipt of updated information, Ecology will determine whether the revised project requires a new water quality certification and public notice or whether a modification to this Order is required.
4. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, Taylor Shellfish Farms, the harvest manager, lead workers, and government inspectors.
6. Taylor Shellfish Farms shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project installation or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
8. Taylor Shellfish Farms shall ensure that all appropriate harvest managers and lead workers at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. Taylor Shellfish Farms shall provide Ecology a signed statement (see Attachment A for an example) from each harvest manager that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before any site preparation or planting begins at the project site.
9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
10. Failure of any person or entity to comply with the order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Water Quality Conditions:

1. The point of compliance as specified in WAC 173-201A-210(1)(e)(i) allows a radius of 150-foot temporary turbidity area of mixing from the point of the in-water activities.
2. For this project, the project boundary will be defined by the nozzle endpoint (farthest reach) of the hose from a fixed barge and the following is considered to be an exceedance of the standard:
 - a. 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50NTU, at the point of compliance when a turbidimeter is used OR
 - b. Project-related turbidity visible 150 feet from the boundary of the project area.
3. Geoduck harvest activities shall be monitored daily during daylight harvests with a turbidimeter as follows:
 - a. Two hours after the start of harvest activities;
 - b. Four hours after the start of harvest activities;
 - c. At the end of the harvest for that day*

***Note:** If the period “four hours after the start of harvest” occurs within one hour of the end of harvest, that sample will suffice for the end of harvest sample.

4. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
5. Monitoring and documentation shall occur at: 100 feet (within the mixing zone), 150 feet (the point of compliance), and 200 feet down-current from the project boundary.
6. Results of the water quality monitoring shall be documented in a report and submitted to Ecology within 90 days of the end of the harvest cycle for that season. (See Attachment B for an example.) The report must include:

Sampling information (date, time, sample location, sample results, name of personnel collecting the sample, and weather conditions).

7. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and Taylor Shellfish Farms or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, Taylor Shellfish Farms shall follow the protocols and notification procedures below:
 - a. Notify Ecology within 24 hours of exceedances that are detected through water quality monitoring. Taylor Shellfish Farms shall, at a minimum, provide Ecology with the following information:

- i. A description of the nature and cause of the exceedance,
 - ii. The period of the exceedance, including exact dates, duration, and times and/or the anticipated time when the project will return to compliance; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the exceedance.
 - iv. In addition, within five (5) days after notification of an exceedance, Taylor Shellfish Farms shall submit a written report to Ecology that describes the nature of the exceedance(s), corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
 - b. Mitigation and/or additional monitoring may be required as a result of the exceedance(s).
8. If, after the first four weeks of monitoring the harvest activities, no turbidity exceedances are detected, Taylor Shellfish Farms can submit the data and a request to Ecology to suspend the monitoring. At that time Ecology will review the data and provide a written response to whether monitoring can be suspended or not.

C. Timing Requirements:

1. This Order expires **seven (7)** ~~ten (10)~~ years from the date of issuance of the Corps **Letter of Permission** permit.

D. Notification, Documentation, and Reporting Requirements:

1. Taylor Shellfish Farms shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manager within two (2) weeks of receipt of the permit.
2. The Applicant shall submit a Farm Plan annually to the Federal Project Manager for review and approval, at least 30 days prior to commencing work each year at the project site. Work at the site shall not begin until Ecology provides written approval of the Farm Plan. At a minimum, the Farm Plan shall include:
 - a. Taylor Shellfish Farm's name, project name, project location, the number of this Order, contact name, and contact's phone number;
 - b. The Farm Plan shall define: the project area, property boundaries, beach access points, and landing areas in relation to the tidal height of +5 MLLW;
 - c. Pre-project baseline site conditions shall be documented by photograph from border to border of the project area for the first-year submittal;
 - d. Anticipated schedule for each of the following activities: site preparation, planting, tube and net removal, and harvesting;
 - e. Photo documentation of the planted areas.

- f. A written record of site inspections for derelict gear. The record shall include: inspector's name, date and time of inspection, and type and amount of aquaculture gear found
3. Ecology must approve, in writing any changes or additions to the approved Farm Plan.
4. Photographic site documentation (taken from border to border of the project area) of final site conditions shall be submitted to Ecology six months prior to the expiration of this authorization.

NOTE: All submittals shall include Taylor Shellfish Farms' name, project name, project location, the number of this Order, contact name and contact's phone number.

E. Conditions for In-water Activities:

The implementation of the proposed project has the potential to cause exceedances of applicable water quality standards, to result in the pollution of water of the state, and/or impair beneficial uses. The following conditions are placed on the project activities in order to protect beneficial uses and to ensure compliance with applicable water quality standards and other appropriate requirements of state law.

General

1. No staging or work areas are allowed at tidal heights of +5 or higher (MLLW). In order to ensure the proper location of staging areas, the +5 foot tidal elevation is to be permanently marked at the property boundaries such that the markers are visible at high tide.
2. All equipment, materials, and vessels, excluding installed tubes and nets, shall be removed from the project area each day. Nothing is to be stored on the project site.
3. No fertilizers, pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals shall be utilized in the operation of this shellfish farm.
4. All equipment, vessels, and hose pumps shall be maintained and fueled at an off-site location.
5. Barges shall not be allowed to ground out or be anchored over vegetated shallows.
6. Dive (wet) harvest in the project area is not authorized by this Order.

Site Preparation

7. No grading, filling, or re-contouring of the site is authorized by this Order.
8. No surface waters shall be channelized for the purpose of redirecting flows on the project site.
9. Temporary control of surface run-off may occur during high run-off periods when the survival of planted geoduck is threatened. Temporary control measures consist of placing sandbags to redirect the surface runoff. The temporary control measures will be suspended when the threat to the planted geoducks is reduced, and shall not be in place for more than seven consecutive days. Taylor Shellfish Farms shall provide Ecology with photo documentation of the conditions that required the re-direction and how the control measures were implemented at the site.

Site Access

10. The designated landing zone shall be located to avoid forage fish spawning areas and shall not exist higher than +5 MLLW tidal elevation unless specifically approved by Ecology.

Gear

11. No nursery grow-out facilities at this site are authorized by this Order.
12. All tubes shall be permanently marked or tagged to identify ownership.
13. Tubes, nets, and bands shall be made of a material suitable for use in the marine environment.
14. Tubes and nets shall be removed from the beach as soon as they are no longer needed, and not to exceed a period of twenty-four months unless otherwise approved by Ecology.
15. Harvest hoses shall be kept under control by the harvesters in such a manner that they do not cause uncontrolled erosion or scouring of the sediment. The hoses shall be fitted with an on-off valve and shall be turned off when not in use for harvesting.
16. The harvest pump intake shall be screened with a 1/8-inch mesh to prevent fish from entering the system. The screen shall remain in place whenever water is withdrawn through the pump intake.
17. Prior to engaging in any activities with the potential to cause a disturbance (e.g., net or tube maintenance or removal, harvest) Taylor Shellfish Farms shall visually survey the area to determine whether herring spawn is present within the planted area. If spawn is present, project activity shall be postponed until the eggs have hatched.
18. Site inspection shall occur at a minimum of once per month while materials (tubes and/or nets) are present on the beach. During inspection of the farm site, check nearby beaches for debris from project activities.

Eelgrass

19. Eelgrass for regulatory purposes of this Order is *Zostera marina*.

20. Eelgrass recruitment into planted areas will not be regulated. Should eelgrass recruit into the planted shellfish bed, no additional buffers or harvest limitations will be imposed.

F. Emergency/Contingency Measures:

1. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, Taylor Shellfish Farms or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, Taylor Shellfish Farms shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until Taylor Shellfish Farms is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407 - 6300 and the Washington State Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.