



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 18, 2021

Pacific Shellfish South Bend LLC
Attn: Tim Morris
1200 Robert Bush Drive
South Bend, WA 98586

RE: Amendment to 401 Water Quality Certification Order No. **19948** for U.S. Army Corps of Engineers Reference No. **200901297**, B64, Willapa Bay, Pacific County, Washington

Dear Tim Morris:

Enclosed is an amendment to Water Quality Certification Order No. 19948, issued on May 4, 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. 19948 remain in effect.

The purpose of this amendment is to remove Manila clams, remove gravel frosting, clarify that shell will be planted with oyster spat attached and to clarify that Pacific Shellfish South Bend LLC will culture 23.79 acres of the 122.51 total project area.

If you have any questions, please contact Marco Pinchot by e-mail at marco.pinchot@ecy.wa.gov. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Brenden McFarland, Section Manager, by

A handwritten signature in black ink, reading "Zoré Randall". The signature is fluid and cursive, with the first name "Zoré" and last name "Randall" clearly distinguishable.

Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Enclosure

First Amendment to Order No. 19948
B64
Aquatics No. 140027, Corps No. 200901297
October 18, 2021
Page 2 of 2

e-cc: Christina Schroeder, U.S. Army Corps of Engineers
Miranda Ries, Pacific Seafood
Laura Hendricks, Coalition To Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Loree' Randall, Ecology
Marco Pinchot, Ecology
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING) ORDER No. 19948,
A WATER QUALITY) First Amendment
CERTIFICATION TO) Corps Reference No. 200901297
Pacific Shellfish South Bend LLC)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Pacific Shellfish South Bend LLC
Attn: Tim Morris
1200 Robert Bush Drive
South Bend, WA 98586

On May 4, 2021, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Pacific Shellfish South Bend LLC for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request from Pacific Shellfish South Bend LLC on October 4, 2021 to remove Manila clams, remove gravel frosting and clarify that shell will be planted with oyster spat attached. Ecology also received a request from the U.S. Army Corps of Engineers on October 5, 2021 to clarify that Pacific Shellfish South Bend LLC will culture 23.79 acres of the 122.51 total project area.

Order No. 19948 dated May 4, 2021 is hereby amended as follows:

I. Paragraph 2, sentence 1, which reads:

This project proposes to continue existing operations on 122.51 acres.

Is replaced with:

This project proposes to continue existing operations on 23.79 acres, with a total project area of 122.51 acres.

II. Paragraph 2, sentence 2, which reads:

The company is currently growing Pacific Oysters (*Crassostrea gigas*) in one (1) way at this location, and currently growing Manila Clams (*Venerupis philippinarum*) in one (1) way at this location

Is replaced with:

The company is currently growing Pacific Oysters (*Crassostrea gigas*) in one (1) way at this location.

III. Paragraph 4, sentence 2, which reads:

No more than 1” of shell or gravel will be placed annually, as needed, if the substrate is enhanced for the purpose of oyster cultivation.

Is replaced with:

No more than 1” of shell with oyster spat attached will be placed annually, as needed, if the substrate is enhanced for the purpose of oyster cultivation.

IV. Paragraph 8, 9 and 10 which reads:

(2) Clams are grown on the ground in the project area are usually between 1 to 4 inches below the surface.

Bed Prep: Clams are harvested from the bed using harvest methods outlined below. No more than 1” of shell or gravel will be placed annually, as needed, if the substrate is enhanced for the purpose of oyster cultivation. Onsite inspections by farm management will be performed prior to any bed planting.

Planting: Clams are planted by hand and spread out over a bed during low water as the tide enters the bay. Antipredation netting is placed over clams for the first year to assist survival.

Paragraph 8, 9 and 10 are deleted.

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.

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 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:

Marco Pinchot
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
marco.pinchot@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>

SIGNATURE

Brenden McFarland, Section Manager, by

A handwritten signature in black ink, reading "Zoré Randall". The signature is written in a cursive style with a large, stylized "Z" and "R".

Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program
Department of Ecology

September 30, 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 No. 19948 – 1st Amendment
WATER QUALITY)	Corps Reference No. 200901297
CERTIFICATION TO)	B64 located on tidelands within Willapa Bay,
Pacific Shellfish South Bend LLC)	near South Bend, Pacific County, Washington
pursuant to 33 U.S.C. 1341 (FWPCA)	
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

Pacific Shellfish South Bend LLC
Attn: Tim Morris
1200 Robert Bush Drive
South Bend, WA 98586

On March 1, 2021, Pacific Shellfish South Bend LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the B64, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on March 18, 2021.

This project proposes to continue existing operations on 23.79 acres, with a total project area of 122.51 acres. The company is currently growing Pacific Oysters (*Crassostrea gigas*) in one (1) way at this location. , and currently growing Manila Clams (*Venerupis philippinarum*) in one (1) way at this location

(1) Oysters are grown on the ground using standard industry practices. The seed oysters are dispersed by boat at high tide and are harvested at high tide by boat or at low tide into tubs which are pulled at high tide by boat.

Bed Prep: Oysters are harvested or transplanted from the bed using harvest methods outlined below. No more than 1" of shell with oyster spat attached or gravel will be placed annually, as needed, if the substrate is enhanced for the purpose of oyster cultivation. Onsite inspections by farm management will be performed prior for any bed cleanup prior to planting.

Planting: The oysters are planted via a boat or scow at high tide.

Maintenance: Beds are harrowed periodically depending on the substrate conditions that are most often influenced by sediment deposition or burrowing shrimp densities.

Harvest: Oysters are harvested by hand at low tide or using mechanical harvest method (not hydraulic harvester). The crop cycle is 2-3 years depending on site specific conditions. Harvest will occur year round.

~~(2) Clams are grown on the ground in the project area are usually between 1 to 4 inches below the surface.~~

~~Bed Prep: Clams are harvested from the bed using harvest methods outlined below. No more than 1" of shell or gravel will be placed annually, as needed, if the substrate is enhanced for the purpose of oyster cultivation. Onsite inspections by farm management will be performed prior to any bed planting.~~

~~Planting: Clams are planted by hand and spread out over a bed during low water as the tide enters the bay. Antipredation netting is placed over clams for the first year to assist survival.~~

The project site is located on tidelands within Willapa Bay, on parcel numbers 79001000048, 79001000329, 79001000167, 79001000061 and 79001000217, near South Bend, Pacific County, Washington; Section 32 and 33, Township 14 North, Range 10 West; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Pacific Shellfish South Bend LLC's request for a Section 401 Water Quality Certification for the B64 project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on March 1, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated March 30, 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 Pacific Shellfish South Bend LLC water quality monitoring plan, and Pacific Shellfish South Bend LLC 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, Pacific Shellfish South Bend 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 Pacific Shellfish South Bend 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.

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.

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 Pacific Shellfish South Bend LLC, B64 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. **19948** will remain valid for the duration of the associated DA permit. Pacific Shellfish South Bend LLC should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

CONTACT INFORMATION

Please direct all questions about this Order to:

Marco Pinchot
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
marco.pinchot@ecy.wa.gov

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280