



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 12, 2021

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

RE: Amendment to 401 Water Quality Certification Order No. **19935** for U.S. Army Corps of Engineers Reference **200701202**, Hopley Lease, Samish Bay, Bow, Skagit County, Washington

Dear Erin Ewald:

Enclosed is an amendment to Water Quality Certification Order No. 19935, issued on April 15, 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. 19935 remain in effect.

The purpose of this amendment is to remove the cultivation of clams at this parcel and revisions to oyster cultivation practices.

If you have any questions, please contact Jennifer Riedmayer at (360) 995-3252. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

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

First Amendment to Order No. 19935

Hopley Lease

October 12, 2021

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e-cc: Samantha Dailey, U.S. Army Corps of Engineers
Kirsten Brown, U.S. Army Corps of Engineers
Laura Hendricks, Coalition to Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Jennifer Riedmayer- HQ
Loree' Randall – HQ
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING) ORDER No. 19935
A WATER QUALITY) First Amendment
CERTIFICATION TO) Corps Reference No. 200701202
***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 April 15, 2021, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Taylor Shellfish Farms for the Hopley Lease project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on September 23, 2021 for revisions to the issued Water Quality Certification to remove clam cultivation and revise oyster cultivation methods.

Order No. 19935 dated April 15, 2021 is hereby amended as follows:

I. The following paragraphs, which reads:

This project proposes to commercially cultivate up to 30 acres of clams and oysters between +4.0 foot (ft.) and -3.5 ft. Mean Lower Low Water (MLLW) on parcel number P61639. Access to tidelands is by boat.

The cultivation of oysters for commercial production are grown in bags, near bottom, and on-bottom as both singles and clusters. Harvest takes place manually by hand during low tide and oysters are placed into tubs for pick up and transfer. Bags are harvested by pulling and emptying oysters onto barges for transfer. Bags are reused and hatchery seed is used.

Clam seed is broadcasted by hand into the intertidal area. Some areas are netted, and some are not. Mechanical row nets may be used to prevent predation. Nets are swept of silt and algae as needed using a tractor and sweeps. Harvest takes place manually by hand at low tide by using rakes to loosen the sediment and clams are collected. The grower may also use a mechanical clam digger, which is powered by a small engine that propels a blade to loosen the soil and collect clams. The clams are collected by a rake under the machine that gathers them onto a conveyor belt and placed in a tub for sorting by staff. Once the clams are harvest they are placed into sacks for pick up by boat. Littleneck and butter clams may be harvested incidentally when seeded clams are harvested.

Is replaced with:

This project proposes to commercially cultivate up to 30 acres of oysters between +4.0 foot (ft.) and -3.5 ft. Mean Lower Low Water (MLLW) on parcel number P61639. Access to tidelands is by boat.

The cultivation of oysters for commercial production are grown in bags, near bottom, and on-bottom as both singles and clusters. Harvest takes place manually. On-bottom oysters are placed into tubs for pick up and transfer by boat. Oyster bays are harvested by pulling bags up and emptying oysters onto barges for transfer. Bags are reused.

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

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>



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

October 12, 2021

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. 19935 – 1st Amendment
WATER QUALITY) Corps Reference No. 200701202
CERTIFICATION TO) Hopley Lease located on tidelands within Samish
Taylor Shellfish Farms) Bay, 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)

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

On March 5, 2021, Taylor Shellfish Farms submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Hopley Lease, Bow County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on March 19, 2021.

This project proposes to commercially cultivate up to 30 acres of ~~elams and~~ oysters between +4.0 foot (ft.) and -3.5 ft. Mean Lower Low Water (MLLW) on parcel number P61639. Access to tidelands is by boat.

The cultivation of oysters for commercial production are grown in bags, near bottom, and on-bottom as both singles and clusters. Harvest takes place manually. ~~On-bottom oysters are placed into tubs for pick up and transfer by boat. Oyster bays are harvested by pulling bags up and emptying oysters onto barges for transfer. by hand during low tide and oysters are placed into tubs for pick up and transfer. Bags are harvested by pulling and emptying oysters onto barges for transfer.~~ Bags are reused ~~and hatchery seed is used.~~

~~Clam seed is broadcasted by hand into the intertidal area. Some areas are netted, and some are not. Mechanical row nets may be used to prevent predation. Nets are swept of silt and algae as needed using a tractor and sweeps. Harvest takes place manually by hand at low tide by using rakes to loosen the sediment and clams are collected. The grower may also use a mechanical clam digger, which is powered by a small engine that propels a blade to loosen the soil and collect clams. The clams are collected by a rake under the machine that gathers them onto a conveyor belt and placed in a tub for sorting by staff. Once the clams are harvest they are placed into sacks for pick up by boat. Littleneck and butter clams may be harvested incidentally when seeded clams are harvested.~~

The project site is located on tidelands within Samish Bay, on parcel number P61639, adjacent to 9461 Samish Island Road, near Bow, Skagit County, Washington; Section 29, Township 36 North, Range 3 West; WRIA 3, Low Skagit-Samish Watershed.

With this Order, Ecology is granting Taylor Shellfish Farms's request for a Section 401 Water Quality Certification for the Hopley Lease project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on March 5, 2021, and the following supporting documentation:

1. March 5, 2021 - Memo from Taylor Shellfish – Taylor Shellfish Water Quality Monitoring Protection Plan for this project. 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 Taylor Shellfish Farms water quality monitoring plan.

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, Taylor Shellfish Farms 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 Taylor Shellfish Farms 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.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

1st Amendment October 12, 2021
Order No. 19935, Corps No. 200701202
Aquatics No. 139681
April 15, 2021
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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 Taylor Shellfish Farms, Hopley Lease 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. **19935** will remain valid for the duration of the associated permit. Taylor Shellfish Farms 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:

Jennifer Riedmayer
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Jennifer.Riedmayer@ecy.wa.gov