



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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December 28, 2021

Heckes Clams Company Inc.  
Attn: John Heckes  
PO Box 1657  
Ocean Park, WA 98640

RE: Water Quality Certification Order No. **20881** for Corps Reference No. **202100755**,  
Heckes Bundle 11 - Mort's, Pacific County, Washington

Dear John Heckes:

On October 14, 2021, Heckes Clams Company Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Heckes Bundle 11 - Mort's, located on tidelands within Willapa Bay, near Nemah, Pacific County, Washington. On December 17, 2021, Heckes Clams Company Inc. notified the Department of Ecology (Ecology) that they have requested a Nationwide Permit (NWP) 48 authorization from the US Army Corps of Engineers (Corps).

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (JARPA) and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions about this decision, please contact Marco Pinchot by e-mail at [marco.pinchot@ecy.wa.gov](mailto:marco.pinchot@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

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

Enclosure

e-cc: Timothy M. Long, Corps of Engineers (Corps)  
Loree' Randall, Ecology  
Marco Pinchot, Ecology  
ecyrefedpermits@ecy.wa.gov  
Aquaculture-Reinforcement-Team@usace.army.mil

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 20881</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 202100755</b>
<b>CERTIFICATION TO</b>	)	Heckes Bundle 11 - Mort's located on tidelands
Heckes Clams Company Inc.	)	within Willapa Bay, near Nemah, Pacific
pursuant to 33 U.S.C. 1341 (FWPCA	)	County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260	)	
and Chapter 173-201A WAC	)	

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 Attn: John Heckes  
 PO Box 1657  
 Ocean Park, WA 98640

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This project proposes to continue commercial cultivation of Pacific oysters (*Crassostrea gigas*) on 108.72 acres of privately owned and leased tidelands in Willapa Bay. Pacific oysters will be grown directly on the substrate between -15 to +3.7 MLLW. Pacific Oyster may also be suspended off bottom. Seeding will occur by hand at low tide or from a vessel at high tide. Harvest will occur by hand or dredge/barge after one to four years.

#### Oyster Bottom Culture

Oysters will be grown directly on the substrate in areas with suitable cultivation conditions. There are currently 78.54 acres in oyster bottom cultivation, and the number of acres in oyster bottom cultivation is expected to vary from time to time based on environmental, market, and other conditions. The maximum area anticipated to be under oyster bottom cultivation at any given time is 78.54 acres. Oysters may naturally set on the bed or may be seeded by hand or from a vessel. Shell may be spread for catching naturally recruiting larvae. Oysters may be transplanted during grow-out to fattening beds. Oyster beds may be harrowed during grow-out to move the oysters back to the sediment surface. Oysters will be harvested by hand during low tide or by dredge after 3-4 years, depending on site conditions.

#### Oyster Off Bottom Culture

Oysters will be grown off the bottom of the substrate, utilizing the longline and/or the tumble bag methods. There are currently 0 acres in oyster off-bottom cultivation, and the number of acres in oyster off-bottom cultivation is expected to vary from time to time based on environmental, market, and other conditions. The maximum area anticipated to be under oyster off-bottom cultivation at any given time is 20 acres. The longline method involves inserting pipes into the substrate, and placing seeded cultch onto a rope suspended off the bottom by the pipes. The tumble bag method involves placing oysters in bags or baskets off the bottom, and attaching a

float to the bag that tumbles the oysters. The oysters will be harvested by hand or mechanical means, either at high tide or at low tide.

The project site is located on tidelands within Willapa Bay, on parcel number 79003000147, 79003000148, 79003000092, DNR Lease # 20-A12552 and DNR Lease # 20-A12079, near Nemah, Pacific County, Washington; Section 4, Township 11 North, Range 10 West; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Heckes Clams Company Inc.'s request for a Section 401 Water Quality Certification for the Heckes Bundle 11 - Mort's project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on October 14, 2021, supplemental information submitted on November 16, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated October 14, 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 Heckes Clams Company Inc. water quality monitoring plan, and Heckes Clams Company Inc. 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, Heckes Clams Company Inc. 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 Heckes Clams Company Inc. 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 prohibited. If such work, conditions, or discharges occur, immediately notify 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 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 Heckes Clams Company Inc., Heckes Bundle 11 - Mort's project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Nationwide Permit 48 authorization for this project. Order No. **20881** will remain valid for the duration of the associated DA permit. Heckes Clams Company Inc. 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.

### **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 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

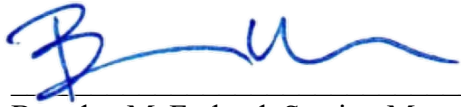
Please direct all questions about this Order to:

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>
- **Chapter 90.48 RCW – Water Pollution Control**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

**SIGNATURE**



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

December 28, 2021

Date