STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

December 29, 2021

Seattle Shellfish, LLC
Attn: Derek Epps
2101 4th Ave E, STE 201
Olympia, WA 98506

RE: Water Quality Certification Order No. **20929** for Corps Reference No. **200901567**, Penner Shellfish Farm, Thurston County, Washington

Dear Derek Epps:

On November 23, 2021, Seattle Shellfish, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Penner Shellfish Farm located on tidelands within Eld Inlet, near Olympia, Thurston County, Washington.

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 Teressa Pucylowski by e-mail at teressa.pucylowski@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: Joseph Rivera, Corps of Engineers (Corps)
Laura Hendricks, Coalition To Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Loree' Randall, Ecology
Teressa Pucylowski, Ecology
Aquaculture-Reinforcement-Team@usace.army.mil
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Seattle Shellfish, LLC pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))	**ORDER No. 20929** **Corps Reference No. 200901567** Penner Shellfish Farm located on tidelands within Eld Inlet, near Olympia, Thurston County, Washington

Seattle Shellfish, LLC
Attn: Derek Epps
2101 4th Ave E, STE 201
Olympia, WA 98506

On November 23, 2021, Seattle Shellfish, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Penner Shellfish Farm, Thurston County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on November 30, 2021.

This project will continue to commercially cultivate up to 0.65 acres of geoduck clams and various species of oysters (Pacific, Kumamoto, Eastern, Olympia, and European flat oysters) with no fallow ground. The entire project area lies between +5.0ft Mean Lower Low Water (MLLW) and -4.5ft MLLW, or other property boundary, and within the property boundaries. Both geoduck and oysters are cultivated on about 0.47 acres of the project area, with oyster-only cultivation occurring on about 0.18 acres of the project area closest to the +5.0ft MLLW boundary. There is no use of mechanical bed preparation equipment.

Single-set seed or oyster cultch are cultivated in mesh grow bags that are either secured directly to the substrate bottom or are suspended in a tide-tumbled/flip bag system. Bags are attached to the racks, stakes, or lines using reusable plastic or wire ties. Installation occurs during low tide. Oyster tumbling involves attaching a buoy and securing the bags to a horizontal crossbeam (stainless steel rod, polypropylene or nylon line, or plastic coated cable) for the hanging lines and held in place by rebar stakes or similar posts driven into the substrate. Oysters grow in the bags and are checked periodically during low tides to ensure that the bags remain secure and to remove fouling organisms and predators. Oysters are harvested by hand at low or high tide.

Juvenile geoducks are planted in PVC or flexible mesh tubes, up to 6 inches in diameter and up to 13 inches in length. The tubes are inserted into the substrate such that only the top section (approximately 1/3) of the tube protrudes above the beach. Two to four seed clams are placed in each tube and tubes are typically installed at a density of about 1 tube per square foot. PVC tubes may be covered by individual and/or area netting. Individual netting consists of a small, plastic mesh net secured to the tube by a UV-resistant rubber band. Area netting is secured with rebar stakes placed vertically into the substrate and may be installed over the PVC or flexible mesh tubes.

About two years after planting, tubes are removed while area netting may be redeployed over the bed for several months for continued predator protection. Geoduck are then harvested as much as eight years after planting. Geoducks are harvested using a hand-operated water wand, which can occur at low (beach harvest) or high (dive harvest) tide. Typically, a wand is a pipe about 18 to 24 inches long with a nozzle on the end that releases surface-supplied seawater from a hose at a pressure of approximately 40 pounds per square inch (about the same pressure as that from a standard garden hose) and a flow of 20-30 gallons per minute. Multiple divers may work in an area at one time.

The project site is located on tidelands within Eld Inlet, on parcel number 92031601000, near Olympia, Thurston County, Washington; Section 3, Township 19 North, Range 2 West; WRIA 14, Kennedy-Goldsborough Watershed.

With this Order, Ecology is granting Seattle Shellfish, LLC's request for a Section 401 Water Quality Certification for the Penner Shellfish Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on November 23, 2021.

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, Seattle 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 Seattle 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.

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 Seattle Shellfish, LLC, Penner 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. **20929** will remain valid for the duration of the associated DA permit. Seattle Shellfish, LLC should send a copy of the final DA permit to 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

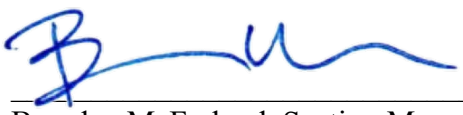
Please direct all questions about this Order to:

Teressa Pucylowski
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
teressa.pucylowski@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 29, 2021
Date