



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 25, 2022

Heckes Clams Inc.  
Attn: John Heckes  
PO Box 131  
Chinook, WA 98614

RE: Water Quality Certification Order No. **21012** for Corps Reference No. **200701138**  
Nationwide Permit (NWP) 48, Heckes Shellfish Aquaculture within Samish Bay, Skagit  
County, Washington

Dear John Heckes:

Heckes Clams 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) for the Heckes Shellfish Aquaculture within Samish Bay located on tidelands within Samish Bay, near Bow, Skagit County, Washington. Because the Corps Seattle District has notified Ecology that individual Section 401 Water Quality Certifications (WQC) are required for all NWP 48's, Heckes Clams Inc. submitted a request for a WQC on January 13, 2022.

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. The enclosed Order may be appealed by following the procedures described within the Order.

*Heckes Shellfish Aquaculture within Samish Bay  
Order No. 21012, Corps No. 200701138 NWP 48  
Aquatics No. 139800  
February 25, 2022  
Page 2 of 2*

Sincerely,



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

Enclosure

E-cc: Ronnie Smith, U.S. Army Corps of Engineers  
Loree' Randall, Ecology  
Marco Pinchot, Ecology  
ecyrefedpermits@ecy.wa.gov  
Aquaculture-Reinforcement-Team@usace.army.mil

**IN THE MATTER OF GRANTING TO ) ORDER NO. 21012**  
**WATER QUALITY CERTIFICATION TO ) Corps Reference No. 200701138 (NWP 48)**  
Heckes Clam Inc. ) Heckes Shellfish Aquaculture within Samish  
In accordance with 33 U.S.C. 1341 ) Bay located on tidelands within Samish Bay,  
(FWPCA §401), RCW 90.48.120 ) near Bow, Skagit County, Washington  
RCW90.48.260 and Chapter 173-201A WAC )

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This project proposes to continue commercial cultivation of up to 4.25 acres of Geoduck clam (*Panopea generosa*) and/or Manila clams (*Venerupis philippinarum*). The Site is located on privately owned tidelands between the -2.0-feet to -1.0-feet Mean Lower Low Water (MLLW) tidal elevations.

**Geoduck clam:**

The project would involve cultivation of up to 4.25 acres of Geoduck clams. These clam cultivation areas would overlap with the manila clam cultivation areas. PVC tubes would be used to grow Geoduck clam. The PVC tubes would be 4-inches in diameter and 9-inches in length and would be pushed 2/3 of the way into the substrate by hand at low tide and at an approximate density of 1 tube per square foot. Three to four juvenile geoduck clams would be placed in each tube. Individual nets with a mesh size of ¼ inch would be attached to the top of the tubes and secured with a UV resistant rubber band or the tube field would be covered with heavy gauge area netting with a mesh size of ¼ inch. Area netting would be secured to the substrate with rebar stakes. This work would be performed manually.

The PVC tubes and netting would be present on the Site for approximately 2 years. Upon removal, all tubes and netting would be removed from the Site and transported by boat to an upland site for later use.

After approximately 5 to 6 years, market-sized geoduck clams would be harvested using a hand-operated, high volume/low pressure water wand to liquify the substrate whereupon geoduck clams can be removed by hand. Harvest would occur during low tide or by divers at high tide.

The cultivation area would be accessed by boat with no overland access occurring. Maintenance and monitoring would occur as needed, dependent on weather conditions and could occur weekly or up to once every three months. Damaged materials, including tubes and netting, would be repaired as necessary.

Manila clam:

The project would involve cultivation of up to 4.25 acres of manila clams. Typical tidal elevations suitable for Manila clam cultivation are between +3.5-feet and 0.0-feet MLLW. These clam cultivation areas would overlap with the Geoduck clam cultivation areas. Harrowing of the substrate may be conducted to prepare the beds and enhance the substrate. The clams would be seeded by hand or from a vessel. After seeding, the clam beds would be covered with predator exclusion netting that has a mesh size of ¼ inch. The nets would be installed by hand and the edges of the nets would be buried in sediment and secured to the substrate with rebar. A rotary brush sweeper would be used to de-foul the predator nets. Clams would be harvested by hand and with a clam rake with 4-inch to 12-inch tines during low tide every 2 to 3 years. Clam beds may contain multiple year classes of clams and clam harvest may occur on an annual basis. Harvested clams would be placed in a container and transferred to an ATV or a tractor for transport to shore.

The project site is located on tidelands within Samish Bay, on parcel number P47937, near Bow, Skagit County, Washington; Section 20, Township 36 North, Range 3 West; WRIA 3, Lower Skagit/Samish Watershed.

With this Order, Ecology is granting Heckes Clams Inc.'s request for a Section 401 Water Quality Certification for the Heckes Shellfish Aquaculture within Samish Bay project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on January 13, 2022, and the following supporting documentation:

1. E-mail letter to Ecology dated January 13, 2022, 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 Inc. water quality monitoring plan, and Heckes Clams 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 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 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 Inc., Heckes Shellfish Aquaculture within Samish Bay project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues Nationwide Permit 48 authorization for this project. Order No. **21012** will remain valid for the duration of the associated Nationwide permit. Heckes Clams Inc. should send a copy of the final Nationwide 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**



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

February 25, 2022

Date