



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 29, 2022

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

Re: Water Quality Certification Order No. **21096** for Corps Reference No. **202200169**,
Nationwide Permit (NWP) 48, Heckes Clams Inc. DNR Lease 20-013272 and 20-013271,
Pacific 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 Clams Inc. DNR Lease 20-013272 and 20-013271 located on tidelands within Willapa Bay, near Ocean Park, Pacific 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 February 17, 2022.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the WQC request 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.

Sincerely,

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

*Heckes Clams Inc. DNR Lease 20-013272 and 20-013271
Order No. 21096, Corps No. 202200169 NWP 48
Aquatics No. 141472
March 29, 2022
Page 2 of 2*

Enclosure

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

IN THE MATTER OF GRANTING A) **ORDER No. 21096**
WATER QUALITY CERTIFICATION TO) **Corps Reference No. 202200169 (NWP 48)**
Heckes Clams Inc.) Heckes Clams Inc. DNR Lease 20-013272
pursuant to 33 U.S.C. 1341 (FWPCA) and 20-013271 located on tidelands within
§ 401), RCW 90.48.120, RCW 90.48.260) Willapa Bay, near Ocean Park, Pacific
and Chapter 173-201A WAC) County, Washington

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This project proposes to continue commercial cultivation of Pacific Oysters (*Crassostrea gigas*) on 53.59 acres of leased tidelands in Willapa Bay. Pacific oysters will be grown directly on the substrate between +2.0 to -16.0 feet. Seeding will occur from a vessel and harvest by dredge/barge will occur 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 53.59 acres in oyster bottom cultivation, 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 53.59 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 not to exceed 1" averaged coverage. 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 1-4 years, depending on site conditions. Harvesting may occur at any time of the year, depending on environmental and market conditions. During hand harvest, workers use hand tools or hand-pick oysters and place them into containers. Larger containers may be equipped with ropes and buoys that can be lifted onto the deck of a barge at high tide. Smaller containers may be placed or dumped on decks of scows for retrieval at high tide or are carried off the beach at low tide. Dredge harvest occurs by use of a harvest bag that is lowered from a barge or boat at high tide and pulled along the bottom to scoop up the oysters, and then emptied onto the boat or barge. Two dredge bags may be towed simultaneously off each side of the boat. An area may be dredged twice in succession to ensure maximum recovery of oysters. Harrowing may occur between the two successive dredge events to increase recovery. Oysters may be

dredged after one year and then transplanted to a grow-out bed. In other cases, oysters may not be transplanted until they are closer to harvest size.

The project site is located on tidelands within Willapa Bay, on DNR Leases 20-013272 and 20-013271, near Long Island, Pacific County, Washington; Section 25, Township 12 North, Range 11 West; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Heckes Clams Inc.'s request for a Section 401 Water Quality Certification for the Heckes Clams Inc. DNR Lease 20-013272 and 20-013271 project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 17, 2022, and the following supporting documentation:

1. E-mail letter to Ecology dated February 17, 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 Clams Inc. DNR Lease 20-013272 and 20-013271 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. **21096** 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 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

March 29, 2022

Date