



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

December 15, 2022

Penn Cove Shellfish LLC
Attn: Ian Jefferds
PO Box 148
Coupeville, WA 98239

Re: Water Quality Certification Order No. **21457** for Corps Reference No. **200701137**,
Blau Shellfish Farm, Skagit County, Washington

Dear Ian Jefferds:

On September 15, 2022, Penn Cove Shellfish LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Blau Shellfish Farm located on tidelands within Samish Bay, near Bow, Skagit 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 Teresa Pucylowski by e-mail at teressa.pucylowski@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described within the Order.

WQC Order No. 21457, Corps No. 200701137

Aquatics No. 141911

December 15, 2022

Page 2 of 2

Sincerely,



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

Sent via e-mail: ian@penncoveshellfish.com

Enclosure

E-cc: Danette Guy, U.S. Army Corps of Engineers (Corps)
Robert Smith, K&L Gates LLP
Loree' Randall, Ecology
Teresa Pucylowski, Ecology
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A WATER) WQC ORDER No. 21457
QUALITY CERTIFICATION TO) Corps Reference No. 200701137
Penn Cove Shellfish LLC) Blau Shellfish Farm located on tidelands within
pursuant to 33 U.S.C. 1341 (FWPCA) Samish Bay, near Bow, Skagit County,
§ 401), RCW 90.48.120, RCW 90.48.260) Washington
and Chapter 173-201A WAC)

Penn Cove Shellfish LLC
Attn: Ian Jefferds
PO Box 148
Coupeville, WA 98239

On September 15, 2022, Penn Cove Shellfish LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Blau Shellfish Farm, Skagit County, Washington. The U.S. Army Corps of Engineers (Corps) issued a joint public notice on October 19, 2022.

The project proposes to continue cultivating Manila clams and Pacific and Kumamoto oysters on privately-owned tidelands between approximately +1ft and -3ft Mean Lower Low Water (MLLW) tidal elevations, and within the surveyed property boundaries. The operation would occur on two separate parcels that total 67.5 acres; however, commercial shellfish aquaculture would occur on 54 acres. The project consists of up to 37 acres of Manila clam cultivation, and up to 17 acres of oyster cultivation. Site access is by boat at high tide and worked during low tides. Eelgrass is present within the project area.

Oysters will be grown on longlines, which involve SEAPA oyster baskets and/or oyster flip bags suspended off bottom from 100 ft. long intertidal longlines spaced 10 ft. apart. Oysters are planted as 2,380 to 12,000-micron seed in seed baskets, sorted monthly or bimonthly, restocked as needed in larger mesh SEAPA baskets or flip bags and re-suspended from the longlines. Oysters are graded as they grow and are harvested 18-24 months after planting once they reach market size. Oysters are harvested by hand from the baskets into totes after 2-3 years of growth. Baskets, bags and longlines are monitored on each series of low tides to check for storm damage and conduct any needed repairs.

Clams would be seeded directly onto the substrate. Clams are grown under 4' wide x 100' long clam nets with 3/8" mesh, spaced approximately 3 ft. apart. All edges are buried, and nets are secured with rebar staples every 20' for the length of the nets. Nets are monitored on each series of low tides to check for storm damage and conduct any needed repairs. Clam seed will be planted as 2,380 to 6,000-micron seed onto the nets in spring and summer and clams are then harvestable 18-24 months later. Manila clams would be harvested using mechanical harvesting methods. The nets would be removed by a mechanical harvester that rolls up the netting and excavates the substrate up to 6-inches to harvest the clams.

Certain portions of Samish Bay are occupied by invasive bamboo worms, which burrow into intertidal sand and mud flats and continuously pump mud as they filter feed. If left unchecked,

this invasive species pumps loose mud sediment piles around its burrow, creating loose unstable sediment. An agricultural coil compactor is used to offset these effects. The coil compactor is comprised of a 2 in. square steel bar wound as a 2 ft. x 6 ft. long coil, weighing about 600 lbs. It has a center axle which allows it to be pulled across broken or loose mud ground. The weight of the rolling steel coil causes a collapse of the loose burrows created by the bamboo worms. The compactor would only be used before planting a bed that has the invasive species present. Use will be limited to a couple of days and will not need to be used again for a planted site unless that site is fallowed for several years prior to replanting. The use of the coil compactor to control invasive bamboo worms is approved for use as approved by the Corps of Engineers for this project.

The project site is located on tidelands within Samish Bay, on parcel numbers P61561 and P61562, near Bow, Skagit County, Washington; Section 25, Township 36 North, Range 2 East; WRIA 3, Lower Skagit Samish Watershed.

With this Order, Ecology is granting Penn Cove Shellfish LLC's request for a Section 401 Water Quality Certification for the Blau Shellfish Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on September 15, 2022, and the following supporting documentation:

1. E-mail letter to Ecology dated November 28, 2022, detailing the United States Fish & Wildlife Service and the National Marine Fisheries Services' correspondence approving the use of the coil compactor on shellfish farms. This includes verification from the Corps that the correspondence acknowledges that the use of the coil compactor will not introduce any potential effects that have not already been addressed in the programmatic Endangered Species Act (ESA) consultation.

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, Penn Cove 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 Penn Cove 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 Conditions:

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.

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 Penn Cove Shellfish LLC, Blau 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. WQC Order No. **21457** will remain valid for the duration of the associated DA permit. Penn Cove 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 Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by RCW 43.21B and WAC 371-08. "Date of receipt" is defined in RCW 43.21b.001(2). More information is available at <https://eluh.wa.gov/content/11>.

To appeal, you must do all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:

<https://eluhwa.gov/content/11>

Filing by mail

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Filing in person (or by certified mail/courier)

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW, STE 301
Tumwater, WA 98501

Filing electronically

E-mail Address:

Pchb-shbappeals@eluhwa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10)

Filing by mail

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Filing in person (or by certified mail/courier)

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:

Teresa 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/content/11>
- **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

December 15, 2022

Date