



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

August 14, 2024

Bay Center Mariculture Company
Attn: Richard L. Wilson
PO Box 365
Bay Center, WA 98527

Re: Amendment to 401 Water Quality Certification Order No. **20002** for U.S. Army Corps of Engineers Reference No. NWS-2007-1180-AQ, Bay Center Mariculture Co. dba Bay Center Farms project, Willapa Bay, Bay Center, Pacific County, Washington

Dear Richard L. Wilson:

Enclosed is an amendment to Water Quality Certification Order No. 20002, issued on April 29, 2021, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 20002 remain in effect.

The purpose of this amendment is to correct the project description and parcel locations.

If you have any questions, please contact Lydia Albright at 360-870-2983. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Maria Sandercock, Section Manager
Southwest Region Office
Shorelands and Environmental Assistance Program

Enclosure (2)

By certified mail: 9489 0090 0027 6391 8521 32

First Amendment to Order No. 20002
Aquatics No. 139440, Corps No. NWS-2007-1180-AQ
August 14, 2024
Page 2 of 2

Sent via e-mail: bcfarms@baycenterfarms.com

E-cc: Danette Guy, U.S. Army Corps of Engineers
Laura Hendricks, Coalition to Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Lydia Albright, Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov

In The Matter of Granting a Water Quality
Certification (WQC) to Bay Center Mariculture Company
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

Bay Center Mariculture Company
Attn: Richard L. Wilson
PO Box 365
Bay Center, WA 98527

WQC Order No.	20002, First Amendment
Corps Reference No.	NWS-2007-1180-AQ
Site Location	Bay Center Mariculture Co. dba Bay Center Farms project located within Willapa Bay, Bay Center, Pacific County, Washington.

On April 29, 2021, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Bay Center Mariculture Company for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

The Corps notify Ecology on July 30, 2024, of the amended information. On August 1, 2024, Ecology and the Corps verified the amended information with Bay Center Mariculture Company to correct the project description and parcel locations.

WQC Order No. 20002 dated April 29, 2021, is hereby amended as follows:

- I. Paragraph number 2 on page 1 which reads:

This project proposes to continue farming 453 acres of privately owned or leased tidelands in Willapa Bay. Specifically this proposal consists of 423 acres of tidelands currently used for the cultivation of Pacific Oyster, Manilia clams and cockles. The number of acres in production varies depending on crop rotations, production needs and has decreased due to burrowing shrimp population infestations. These tidelands have been actively farmed by Bay Center Mariculture using traditional bottom culture methods for over 40 years and were in production under previous company ownership. Planting new oysters involves scattering the ten or so new small oysters attached to an older oyster shell (cultch) on the area being seeded. This usually amounts to around ten or so cultch pieces per square meter. After two to four years of growth on the seed bed harvest involves either hand picking or mechanical harvest. Clam grounds are harvested by hand during low tide on a 2–4-year rotation depending on growth. Clam ground may be enhanced for larval recruitment by sprinkling crushed oysters shell pieces for the clam larvae to attach.

Is replaced with:

This project proposes to continue farming approximately 600 acres of privately owned or leased tidelands in Willapa Bay.

Oysters seed set on oyster shells in mesh bag which are stacked and roped to pallets to over winter for spring planting on areas cleared of the previous crops. Twenty-five seed bags are stacked 3-feet-high on a (40"x48") pallet with a one-inch diameter polyolefin ± 20-foot line looped around the stack of 25 seed bags and through the pallet thus binding all together. The tie down and pickup rope with a loop in one end and a heavy-duty buoy on the other. This rope serves to lift the seed pallet up and on board when it is time to plant, or an area is cleared to allow replanting. A maximum of 500 pallets are placed in close groupings covering a total area of 6,550 square feet. There are a maximum of 12,000 bags (about a bushel in content) on pallets placed on a nursery area of approximately 1-acre (all groups of pallets combined). The nursery is far away from the main channel and not in an area used for navigational purposes. The bags would sit +3.5 feet above Mean Lower Low Water (MLLW) and -5.0 feet below the Mean Higher High Water (MHHW) elevation. Pallets are sited allowing for the boat to access between batches with each stack marked with a large white buoy.

The seed nursery area is clearly marked for all tidal levels and not near any main channel or navigational route. The seed on whole shells is placed out in mid to late summer and brought to the pier for opening in early spring. From there the individual shells are loaded on to one of the boats to be planted during the next high tide on one of the grow-out or seed beds. Planting is by shovel with a twist to scatter the individual shells as evenly as possible from the moving boat. High-pressure water may be used to wash the cultch pieces onto the seed bed. Typically, the oysters are allowed to grow on the seed bed for two or three years and are either handpicked or dredged. The oyster collection rake (dredge) is used to collect living oysters for transplant (from seed growing area) or to harvest for processing. The harvest or fattening bed is an area where better growth will develop a full-bodied oyster. The transplanted oysters reside for another six months to a year then harvested by dredge or picking, which is determined by tides and crop elevation. The total area of Pacific oyster cultivation is 450 lower intertidal acres between a -2.0 to +3.0 MLLW. The ongoing project is located at various distances from the Mean High Water(MHW) shoreline as the upper intertidal on this shallow bay usually is several hundreds of feet if not thousands from the shore. All access to the major site groups is by boat.

With up to ten Manila clam cultivation areas, which are generally less than one acre in size and located on areas not workable for oyster culture, are cultivated in the project area. The maximum total Manila clam harvest area is 10-acres. Manila clams are naturally seeded or seed that is spread by hand directly onto the substrate. Clam beds may be enhanced by sprinkling crushed oyster shell pieces up to 1-inch-thick yearly onto the substrate (i.e. frosting). The Manila clam cultivation areas are surrounded by the

pacific oyster cultivation areas mentioned above, so elevation and distance to MHW shorelines would be the same. No anti-predation nets are used. All Manila clams are harvested by hand during low tide on a two to four-year rotation, depending on the rate of growth which can be variable. Harvest entails hand raking out the larger harvest size and carefully leaving the smaller ones to reestablish in the fresh exposure of sandy sediment.

II. The project location paragraph on page 1 which reads:

The project site is located on tidelands within Willapa Bay, on parcel numbers 79001000036, 79001000037, 79001000038, 79001000179, 79001000351, 79001000059, 79001000066, 79001000067, 79001000069, 79001000073, 79001000182, 79001000268 DNR 20-A12781, 79001000071, 79001000077, 79001000078, 79001000079, 79001000083, 79001000084, 79001000085, 79001000086, 79001000089, 79001000090, 79001000091, 79001000093, 79001000094, 79001000095, 79001000096, 79001000233, 79001000111, 79001000112, 79001000113, 79001000125, 79001000128, 79001000133, 79001000134, 79001000174, 79001000210, 79001000333, TL 131008 423 A, DNR lease 13100920-A12782, near Bay Center, Pacific County, Washington; WRIA 24, Willapa Watershed.

Is replaced with:

The project site is located on tidelands within Willapa Bay, on parcel numbers 79001000036, 79001000037, 79001000038, 79001000179, 79001000351, 79001000059, 79001000066, 79001000067, 79001000069, 79001000073, 79001000182, 79001000268 DNR 20-A-12781, 79001000071, 79001000077, 79001000078, 79001000079, 79001000083, 79001000084, 79001000085, 79001000086, 79001000089, 79001000090, 79001000091, 79001000093, 79001000094, 79001000095, 79001000096, 79001000233, 79001000111, 79001000112, 79001000113, 79001000125, 79001000126, 79001000133, 79001000128, 79001000033, DNR 13100930-A12782, 79001000174, 79001000210, 79001000333, 79001000344, TL 131008374, TL 131008 423 A, 79001000143, TL 131008 235, TL 131008 348 near Bay Center, Pacific County, Washington; WRIA 24, Willapa Watershed.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

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 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 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 mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Contact Information

Please direct all questions about this Order to:

Lydia Albright
Department of Ecology
360-870-2983
Lydia.Albright@ecy.wa.gov

More Information

- I. **Pollution Control Hearings Board Website**
<https://elaho.wa.gov>
- II. **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>
- III. **Chapter 371-08 WAC – Practice and Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- IV. **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>

Signature

Dated this 14th day of August, 2024 at the Department of Ecology, Lacey, Washington.



Maria Sandercock, Section Manager
Southwest Region Office
Shorelands and Environmental Assistance Program

This document shows the activities and/or conditions that have been amended since the original Order was issued. Therefore, it is not the official certification and should be used for information purposes only.

IN THE MATTER OF GRANTING A) ORDER No. 20002, First Amendment
WATER QUALITY) Corps Reference No. 200701180
CERTIFICATION TO) Bay Center Mariculture Co. dba Bay Center
Bay Center Mariculture Co.) Farms located on tidelands within Willapa Bay,
pursuant to 33 U.S.C. 1341 (FWPCA) near Bay Center, Pacific County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)
and Chapter 173-201A WAC)

Bay Center Mariculture Co.
Attn: Richard L. Wilson
PO Box 365
Bay Center, WA 98527

On March 1, 2021, Bay Center Mariculture Co. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Bay Center Mariculture Co. dba Bay Center Farms, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on April 5, 2021.

~~This project proposes to continue farming 453 acres of privately owned or leased tidelands in Willapa Bay. Specifically this proposal consists of 423 acres of tidelands currently used for the cultivation of Pacific Oyster, Manila clams and cockles. The number of acres in production varies depending on crop rotations, production needs and has decreased due to burrowing shrimp population infestations. These tidelands have been actively farmed by Bay Center Mariculture using traditional bottom culture methods for over 40 years and were in production under previous company ownership. Planting new oysters involves scattering the ten or so new small oysters attached to an older oyster shell (cultch) on the area being seeded. This usually amounts to around ten or so cultch pieces per square meter. After two to four years of growth on the seed bed harvest involves either hand picking or mechanical harvest. Clam grounds are harvested by hand during low tide on a 2-4 year rotation depending on growth. Clam ground may be enhanced for larval recruitment by sprinkling crushed oysters shell pieces for the clam larvae to attach.~~

~~This project proposes to continue farming approximately 600 acres of privately owned or leased tidelands in Willapa Bay.~~

~~Oysters seed set on oyster shells in mesh bag which are stacked and roped to pallets to over winter for spring planting on areas cleared of the previous crops. Twenty-five seed bags are stacked 3-feet-high on a (40"x48") pallet with a one-inch diameter polyolefin ± 20-foot line looped around the stack of 25 seed bags and through the pallet thus binding all together. The tie down and pickup rope with a loop in one end and a heavy-duty buoy on the other. This rope serves to lift the seed pallet up and on board when it is time to plant, or an area is cleared to allow replanting. A maximum of 500 pallets are placed in close groupings covering a total area of 6,550 square feet. There are a maximum of 12,000 bags (about a bushel in content) on pallets placed on a nursery area of approximately 1-acre (all groups of pallets combined). The nursery is~~

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With this Order, Ecology is granting Bay Center Mariculture Co.'s request for a Section 401 Water Quality Certification for the Bay Center Mariculture Co. dba Bay Center Farms project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on March 1, 2021, and March 29, 2021, and the following supporting documentation:

E-mail letter to Ecology dated March 26, 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 Bay Center Mariculture Co. water quality monitoring plan, and Bay Center Mariculture Co. 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, Bay Center Mariculture Co. 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 Bay Center Mariculture Co. 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 prohibited¹. If such work,

¹ RCW 90.48

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 Bay Center Mariculture Co., Bay Center Mariculture Co. dba Bay Center Farms 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. **20002** will remain valid for the duration of the associated DA permit. Bay Center Mariculture Co. should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

² WAC 173-303-145

³ RCW 90.56.280