



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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March 2, 2021

Baywater Shellfish Farm  
Attn: Jonathan Davis  
10610 NE Manitou Park Blvd.  
Bainbridge Island, WA 98110

RE: Water Quality Certification Order No. **19630** for Corps Reference No. **200701153**,  
Baywater Shellfish Farm, Jefferson County, Washington

Dear Jonathan Davis:

On June 17<sup>th</sup>, 2020, Baywater Shellfish Farm submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Baywater Shellfish Farm located on tidelands within Hood Canal, near Port Ludlow, Jefferson 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 Adam Sant by e-mail at [adam.sant@ecy.wa.gov](mailto:adam.sant@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

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

Enclosure

Baywater Shellfish Farm  
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e-cc: Meghan E. Fullam, Corps of Engineers – Baltimore District  
Robert Smith, Consultant  
Laura Hendricks – Executive Director Coalition To Protect Puget Sound Habitat  
Amy van Saun, Senior Attorney – Center for Food Safety  
Loree' Randall, Ecology  
Adam Sant, Ecology  
[ECYREFEDPERMITS@ecy.wa.gov](mailto:ECYREFEDPERMITS@ecy.wa.gov) – Aquatics No. 138950

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 19630</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 200701153</b>
<b>CERTIFICATION TO</b>	)	Baywater Shellfish Farm located on tidelands
Baywater Inc.	)	within Thorndyke Bay, Hood Canal, near Port
pursuant to 33 U.S.C. 1341 (FWPCA	)	Ludlow, Jefferson County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260	)	
and Chapter 173-201A WAC	)	

Baywater Inc. DBA Baywater Shellfish Farm  
 Attn: Jonathan Davis  
 10610 NE Manitou Park Blvd.  
 Bainbridge Island, WA 98110

On June 17th, 2020, the Baywater Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Baywater Shellfish farm, Jefferson County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on October 14<sup>th</sup>, 2020.

The applicant proposes to continue existing commercial aquaculture operations by cultivating 5.67 acres of Pacific oysters (*Crassostrea gigas*), Olympia Oysters (*Ostrea lurida*) and Kumamoto oysters (*C. sikamea*) between +3.5 feet and -2.0 feet mean low lower water (MLLW) tidal elevations; 13.71 acres Geoduck clams (*Panopea abrupta*) between +1.5 feet and -2.0 feet MLLW tidal elevations; and wild harvest of 10.87 acres Manila clam (*Venerupis philippinarum*), Varnish clams (*Nuttallia obscurata*), and Pacific oysters (naturalized) between +6.5 feet and +3.0 feet MLLW tidal elevations on privately owned tidelands on 30.25 acres in Thorndyke Bay.

The project site is located on tidelands within Thorndyke Bay in Hood Canal, on parcel numbers 721193001, 701251007, 701251006, 701251003, adjacent to 4225 Thorndyke Bay Road, near Port Ludlow, Jefferson County, Washington; Section 19, Township 27 North, Range 01 East West; WRIA 17, Quilcene-Snow Watershed.

With this Order, Ecology is granting Baywater Inc. request for a Section 401 Water Quality Certification for the Baywater Shellfish Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request Ecology received on June 17th, 2020, and the following supporting documentation:

1. E-mail letter to Ecology dated February 12, 2021, regarding 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 Baywater Inc. water quality monitoring plan.

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, Baywater 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 Baywater 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.

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.

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 Baywater Inc., Baywater Shellfish Farm project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a permit for this project. Order No. Order #**19630** will remain in effect for a period of fifteen (15) years from the issuance of the Corps permit.

## **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

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503  <b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608  <b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

#### CONTACT INFORMATION

Please direct all questions about this Order to:


Adam Sant  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600  
[adsa461@ecy.wa.gov](mailto:adsa461@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 2, 2021

Date