

STEPHAN C. VOLKER
ALEXIS E. KRIEG
DANIEL GARRETT-STEINMAN
LAW OFFICES OF STEPHAN C. VOLKER
436 14th Street, Suite 1300
Oakland, California 94612
Telephone: (510) 496-0600
Fax: (510) 496-1366
svolker@volkerlaw.com

DAVID BRICKLIN
JULIE AINSWORTH-TAYLOR
BRICKLIN & NEWMAN, LLP
1001 4th Avenue
Suite 3303
Seattle, WA 98154
Telephone: (206) 264-8600
Fax: (206) 264-9300
bricklin@bnd-law.com

Attorneys for Appellant
Case Inlet Shoreline Association

BEFORE THE STATE OF WASHINGTON
POLLUTION CONTROL HEARINGS BOARD

In re)
WATER QUALITY CERTIFICATION)
ORDER:)
8977 (NWS-2010-1238))
(Taylor Shellfish Farms))
_____)

NOTICE OF APPEAL OF CASE INLET SHORELINE ASSOCIATION
FROM DECISION OF DEPARTMENT OF ECOLOGY
TO ISSUE SECTION 401 WATER QUALITY CERTIFICATION
ORDER 8977 FOR PROJECT NWS-2010-1238

I. IDENTIFICATION OF APPELLANT

In accordance with WAC 371-08-340(1), the appellant's name and address are:

1. Case Inlet Shoreline Association
c/o Curt Puddicombe
P.O. Box 228
Vaughn, WA 98394
Telephone: (206)730-0288

The appellant association is represented by attorneys Stephan C. Volker, Alexis Krieg and Daniel Garrett-Steinman of the Law Offices of Stephan C. Volker and David Bricklin and Julie Ainsworth-Taylor of Bricklin & Newman, LLP, whose mailing and email addresses, and telephone and facsimile numbers, appear on the cover page of this Notice of Appeal.

II. IDENTIFICATION OF RESPONDENTS

In accordance with WAC 371-08-340(2), the respondents' names and addresses are:

1. Washington Department of Ecology ("Ecology")
ATTN: Appeals Processing Desk
P.O. Box 47608
Olympia, WA 98504-7608
2. Taylor Shellfish Farms
ATTN: Diane Cooper
SE 130 Lynch Road
Shelton, WA 98584

III. IDENTIFICATION OF ORDERS APPEALED HEREIN

This is an appeal from respondent Ecology's approval on February 28, 2012, of Clean Water Act section 401 Certification Order 8977, for Project NWS-2010-1238, issued to Taylor Shellfish Farms, for geoduck aquaculture in Case Inlet at Fudge Point on Harstine Island, Mason County (hereinafter, the "Project").

In accordance with WAC 371-08-340(3), a true copy of Certification Order 8977 issued to Taylor Shellfish Farms is attached as Exhibit 1.

IV. STATEMENT OF GROUNDS FOR APPEAL

Appellant seeks review of the foregoing Certification on the grounds that it violates federal and state water quality standards and environmental laws and regulations in the following respects:

1. The Certification violates established water quality standards applicable to the receiving waters in contravention of the Clean Water Act, 33 U.S.C. sections 1311(a) and 1312(a); Revised Code of Washington (“RCW”) section 90.48.260(1)(a)(ii); and Washington Administrative Code (“WAC”), section 173-201A *et seq.*, as enumerated below:

A. The Certification violates established federal and state surface water quality standards promulgated at 40 Code of Federal Regulations (“CFR”) section 131.12 and WAC 173-201A-210, 173-201A-260, and 173-204-320 because the Certification allows the applicant to exceed established water quality standards, degrade existing water quality and adversely affect the characteristic water uses at the Project site, including aquatic life uses.

B. The Certification violates federal and state antidegradation requirements set forth in 40 CFR section 131.12, RCW 90.48.010 and WAC 173-201A-300 and 173-201A-320, because the Certification allows a new activity that is expected to cause a measurable change in the quality of the water pursuant to WAC 173-201A-320(3)(e) and Ecology failed to perform Tier II review. In the alternative, in issuing the Certification, Ecology failed to protect the existing and designated uses of the Project’s waters in violation of WAC 173-201A-310.

C. The Certification fails to include sufficient environmental monitoring and reporting requirements to ensure that the Project’s discharges of pollutants comply with state water quality standards as required by WAC 173-201A-210, 173-201A-260 and 173-204.

2. The Certification allows the unregulated and unmonitored discharge of pollutants, including tubes, netting and other plastic and metal components, into waters of the United States in violation of the Clean Water Act, 33 U.S.C. sections 1311(a) and 1342(b), 40 CFR sections 122.1(b) and 122.44, RCW 90.48.520, and WAC 173-220-130. The Certification allows the installation of polyvinyl chloride (“PVC”) tubes and netting that will be discharged from the Project into surrounding waters without a National Pollutant Discharge Elimination System

("NPDES") permit and without providing all known, available, and reasonable methods of treatment ("AKART") to prevent or mitigate the discharge of these pollutants into the surrounding waters.

3. The Certification violates the State Environmental Policy Act ("SEPA"), RCW 43.21C.030(2)(e), in that the Project poses unresolved conflicts concerning alternative uses of available resources and Ecology failed to consider alternatives to the Project that would mitigate or eliminate the Project's adverse impacts on water quality and aquatic uses dependent thereon as enumerated below:

A. Ecology issued the Certification without determining whether the Project posed unresolved conflicts concerning alternative uses of available resources. Regardless of whether an environmental impact statement is required, under SEPA, Ecology must conduct a detailed examination of "alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." RCW 43.21C.030(2)(e). Ecology failed to determine whether the Project involved such unresolved conflicts.

B. Ecology issued the Certification without "study[ing], develop[ing], and describ[ing] appropriate alternatives" to the proposed Project even though the Project poses "unresolved conflicts concerning alternative uses of available resources." RCW 43.21C.030(2)(e). Such alternatives include alternative sites with fewer resource conflicts, less intensive geoduck planting, geoduck planting without predator exclusion, or additional mitigation measures to avoid or reduce the Project's damaging sediment plumes, discharge of plastics and metals, adverse impacts to forage fish habitat, permanent alterations to the intertidal ecosystem and substrate, and obstructions of recreational uses.

V. SUPPORTING STATEMENT OF FACTS

The Project involves the creation of a geoduck farm on a 3-acre site in Case Inlet. It is one of three adjacent geoduck farms proposed on one of the few remaining pristine areas of shoreline in Case Inlet. The Project falls within waters located in "South Puget Sound, south and

west to longitude 122°52'30"W (Brisco Point) and longitude 122°51'W (northern tip of Harstene [sic] Island)." WAC 173-201A-612, Table 612. This location's designated uses include extraordinary aquatic life, primary contact recreation, wildlife habitat, harvesting, commerce and navigation, boating, and aesthetic values. WAC 173-201A-612, Table 612. The surface waters at the Project location are recognized to be of extraordinary quality for "salmonid and other fish migration, rearing and spawning; clam, oyster and mussel rearing, crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning." WAC 173-201A-610, Table 610. Surface waters designated as having extraordinary aquatic life uses are subject to the most stringent water quality standards in the state. WAC 173-201A-210.

The Certification fails to ensure compliance with state and federal water quality laws for the seven reasons enumerated below.

First, the Certification allows the discharge of pollutants from a point source into waters of the United States without an NPDES permit. As proposed, the project involves rotational planting of about 3 acres of geoduck clams in the tidal range of +2.5 to -4.5 feet mean lower low water ("MLLW"). These clams will be planted in approximately 1-foot-long, 6-inch diameter PVC tubes that are driven into the substrate "approximately one and a half feet apart" throughout the active geoduck planting fields. These massive fields of tubing are then covered with netting that is secured with iron reinforcing rod ("rebar") hooks. This netting is designed to prevent animals that may eat the geoducks from accessing the geoduck tubes. However, it has the deleterious effect of preventing aquatic organisms including forage fishes such as Pacific sand lance and surf smelt, crustaceans, mollusks, shore birds and other water fowl from feeding in the intertidal waters +2.5 to -4.5 feet MLLW. The netting also blocks spawning in these intertidal waters by herring and other fishes. Many of these aquatic organisms perish when they are caught in the netting, adversely affecting not only those species but also other species higher in the food chain that feed on them. These pernicious effects ripple throughout the aquatic food chain, harming keystone species and iconic predators like salmon, killer whales and bald eagles.

Tubes and nets from similar geoduck farms in Puget Sound have been observed miles from their source farms and are a significant source of plastic pollution in Puget Sound. Here,

Taylor Shellfish plans to leave these tubes and nets in the substrate up to two years. During this time, some of the tubes and nets will come loose and pollute the surrounding waters. Thereafter, Taylor Shellfish plans to remove the remaining tubes, leaving the nets in place for up to six additional months. During this time the netting will continue to come loose and contaminate the surrounding waters. These tubes and nets constitute pollutants that harm the water quality and designated uses of Case Inlet, in violation of the Clean Water Act's prohibition on pollutant discharges from point sources to waters of the United States without an NPDES permit. In addition, by failing to address this significant pollution source, the Certification fails to protect the receiving waters from degradation in violation of 173-201A-210, 173-201A-310 and/or 173-201A-320.

Second, the Certification fails to prevent water quality degradation and excessive turbidity in receiving waters during "high run-off periods." During such events, sandbags will be placed "to redirect the surface runoff" for up to "seven consecutive days." Rerouting drainage courses in this manner during times of extreme runoff will cause increased sedimentation and turbidity in receiving waters. The Certification contains *no* monitoring mechanisms to ensure that its "temporary control measures" do not degrade water quality, in violation of WAC 173-201A-210, 173-201A-401, 173-201A-310 and/or 173-201A-320 and 173-204-400(2).

Third, the Certification fails to prevent excessive turbidity because it does not require turbidity monitoring during geoduck tube removal. Geoduck tubes alter and destabilize the composition of the substrate, and the distribution of sand in the affected intertidal zone. This causes (1) increased release of sediment and resulting turbidity during storms, high tides and other natural and Project-related disturbances, and (2) increased sediment and turbidity at the time of removal. The Certification's failure to require turbidity monitoring violates WAC 173-201A-210(1)(e).

Fourth, the Certification fails to adequately prevent violations of turbidity limits in surrounding waters during geoduck harvest. By allowing Taylor Shellfish to self-monitor and self-report turbidity violations – and by not requiring any independent monitoring at all – despite

the obvious conflict of interest, the Certification fails to prevent turbidity violations in the surrounding waters. Even worse, the Certification allows the applicant to obtain permission to *suspend* turbidity monitoring based solely upon these self-reported results, again with no independent expert monitoring or analysis. In addition, the Certification erroneously utilizes the point of compliance applicable to “in-water construction activities” in determining whether the Project violates the turbidity standards of WAC 173-201A-210(1)(e), yet geoduck harvesting is not “in-water construction.”

Fifth, the Certification fails to prevent significant damage to forage fish habitat as required by WAC 220-110-250 and 220-110-171. The Certification fails to address the impact that geoduck aquaculture has on forage fish populations, including the geoduck’s consumption of forage fish eggs and larvae. Experts in the field of beach geomorphology have pointed out that sediment disturbances from geoduck operations can adversely impact forage fish spawning grounds by depositing sediment in these areas. Impacts include the smothering of eggs along with modifications to the substrate so as to preclude future use of the area for spawning. Intensive geoduck aquaculture relies on existing food resources in the area, both phytoplankton and zooplankton, since they are not artificially fed (like salmon farms). This intensive monoculture structure strips the waters of these vital nutrients that forage fish and other aquatic species currently rely on for their survival, thereby changing the habitat structure. Consequently, the Certification is likely to cause grave harm to protected forage fish species.

Sixth, the Certification fails to provide adequate monitoring and compliance mechanisms. It allows “visual[] survey[s]” for “herring spawn” to be conducted by unqualified employees of Taylor Shellfish with a self-interest in avoiding the reporting of adverse impacts, rather than requiring these critical assessments to be conducted by a qualified independent biologist with relevant expertise. The lack of any independent monitoring or compliance mechanisms creates incentives for the applicant’s employees to *not* thoroughly survey for spawn lest their work be indefinitely postponed. Although the Department of Fish and Wildlife has designated the parcel adjacent to the Project as a breeding area and priority habitat for Pacific sand lance, the Certification fails to include any conditions to avoid harm to these important

forage fish, in violation of WAC 220-110-171. Compounding this omission, the Certification expressly *disclaims* any intent to regulate or protect eelgrass that is recruited into planted areas. This unlawful abdication of water quality regulatory authority exposes these plants, and the panoply of aquatic species they support, to significant harm and potential destruction by the Project.

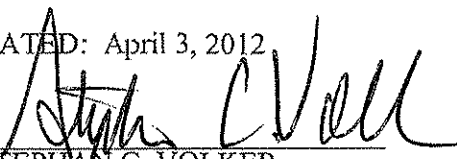
Seventh, the Certification violates SEPA's mandate that Ecology address less harmful alternatives to the Project. SEPA requires Ecology to conduct a detailed examination of "alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." RCW 43.21C.030(2)(e). As noted above, the Project poses numerous "unresolved conflicts concerning alternative uses of available resources." In addition to the direct conflicts with water quality for fish and wildlife habitat, the Project also poses conflicts with recreational use of the Project site and adjacent intertidal and shoreline areas by watercraft, fishermen, beachcombers, and other recreationalists. This duty is independent and separate from any duty to prepare an environmental impact statement. Ecology's Certification for this Project fails to even identify, let alone study, develop and describe, appropriate alternatives that would avoid or reduce these unresolved resource use conflicts, in violation of SEPA. RCW 43.21C.030(2)(e).

VI. REQUEST FOR STAY AND VACATION OF CERTIFICATION

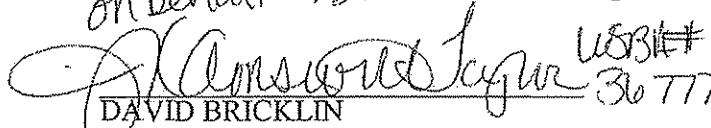
Pursuant to RCW 43.21B.320, for the foregoing reasons, appellant requests that the Pollution Control Hearing Board stay, and thereafter set aside, Ecology's Clean Water Act Section 401 Water Quality Certification Order 8977 for the Taylor Shellfish Geoduck Aquaculture Project in Case Inlet at Fudge Point on Harstine Island, Mason County. Appellant also requests that this Board stay issuance by Ecology of any further Clean Water Act section 401 certifications, pending Ecology's compliance with the Clean Water Act, related Washington water pollution laws, SEPA, and their implementing regulations that bear on such certifications as noted above.

VII. VERIFICATION

I have read the foregoing Notice of Appeal and believe its contents to be true. Pursuant to WAC 371-08-340(7), the appellant is not available to sign this Notice of Appeal.

DATED: April 3, 2012


STEPHAN C. VOLKER
LAW OFFICES OF STEPHAN C. VOLKER
436 14th Street, Suite 1300
Oakland, CA 94612
Telephone: (510) 496-0600
Fax: (510) 496-1366

on behalf of David Bricklin
 USB# 36777

DAVID BRICKLIN
BRICKLIN & NEWMAN, LLP
1001 4th Avenue, Suite 3303
Seattle, WA 98154
Telephone: (206) 264-8600
Fax: (206) 264-9300



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

February 28, 2012

Taylor Shellfish Farms
ATTN: Diane Cooper
SE 130 Lynch Road
Shelton, WA 98584

RE: Water Quality Certification Order No. **8977** for Corps Public Notice No. **NWS-2010-1238, Hitchcock Lease**, for the planting, maintenance, and harvest of a geoduck aquaculture farm within Case Inlet of Puget Sound, Harstine Island, Mason County, Washington

Dear Ms. Cooper:

On January 14, 2011, Taylor Shellfish Farms submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the establishment of a 3-acre commercial geoduck aquaculture farm known as the "Hitchcock Lease" at Fudge Point on Harstine Island.

On behalf of the State of Washington, Ecology certifies that the work described in the 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.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Perry J. Lund
Shorelands and Environmental Assistance Program
Southwest Regional Office

Enclosure

By Certified Mail 7009 3410 0000 1272 8750



cc: Pam Sanguinetti, Corps of Engineers
Grace Miller, Mason County
Walter & Helen Hitchcock
Patra & Steven Boots
John & Karen Trueman
John Hitchcock
Sarah Weaver
Kathryn Townsend
Cynthia Fulton
Nancy Eggleston
Robert Wenman
Larry Vandeberg
Linda S. Benson
Genee L. Fenton
Kris Mansfield
Ronald R. Murgio
Jean Rushing
Brian Eggleston
Jules Michel
Laura Hendricks, Sierra Club
Debbie Taaffe
Donald Stave
Linda Liebl
Gail Sheikhezadeh

e-cc: ecyrefedpermits@ecy.wa.gov
Loree' Randall, Ecology HQ
Rick Mraz, Ecology SWRO/SEA
Deb Cornett, Ecology SWRO/WQ
Lori Ochoa, Ecology SWRO/SEA

IN THE MATTER OF GRANTING A) ORDER # 8977
WATER QUALITY) Corps Reference No. NWS-2010-1238
CERTIFICATION TO) Fudge Point Geoduck Farm (Hitchcock)
Taylor Shellfish Farms) Case Inlet, Puget Sound,
in accordance with 33 U.S.C. 1341) Mason County, Washington
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
))
))

TO: Taylor Shellfish Farms
ATTN: Diane Cooper
SE 130 Lynch Road
Shelton, WA 98584

On January 14, 2011, Taylor Shellfish Farms submitted a Joint Aquatic Resource Permit Application (JARPA) requesting a Clean Water Act (CWA) Section 401 Water Quality Certification from the Department of Ecology (Ecology) and a CWA Section 404 Permit from the U.S. Army Corps of Engineers (Corps). A revised JARPA was submitted on April 18, 2011, and a request to withdraw and re-apply for a 401 Certification was submitted on December 13, 2011. A joint public notice regarding the request was initially distributed by the Corps for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 4, 2011. A second Public Notice was issued by the Corps on April 26, 2011.

The proposed project site is located within Case Inlet of Puget Sound at Fudge Point on Harstine Island at 280 Buffington Lane, near Shelton, Mason County, Washington, 98584; Section 7, Township 20 North, Range 1 West; WRIA 14, Kennedy – Goldsborough Watershed.

The project proposes to install a 3-acre commercial geoduck farm on Fudge Point, on the east side of Harstine Island. Project activities include the rotational planting of geoduck shellfish between the tidal range of +2.5 to -4.5 feet mean lower low water (MLLW). The geoducks would be seeded by hand by placing three to four seed into each 6-inch diameter by 8 – 12 inch-long PVC tube, which is installed into the substrate. The tubes would be positioned approximately one and a half feet apart. A one-inch mesh canopy net will be secured over the tube fields with rebar hooks for predator exclusion. Planting would occur between May and September. After one to two years, the tubes would be removed by hand and removed from the project site by barge. The canopy nets would be returned over the beds after tube removal for up to another six months. After final canopy net removal, the clams will grow for another two to three years until they reach a harvest size of about 1.5 to 2 lbs.

The first harvest will take place approximately four to seven years after planting. Harvest will occur by hand at low tide using a high volume, low pressure water hose (at approximately 40 psi) injected directly into the sediment adjacent to the geoduck siphon. This procedure loosens the sediment around the geoduck and allows it to be removed by hand. Pumps for the hoses are run by a small internal combustion engine and are typically located in a small boat just offshore of the harvest site. Access to the planting area will be by boat; no upland access is proposed.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water-quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and,
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Taylor Shellfish Farms subject to the conditions within this Order.

A. General Conditions:

1. For purposes of this Order, all submittals required by its conditions shall be sent either by regular mail to Ecology's Southwest Regional Office, SEA Program, Attn: Federal Permit Manager, P.O. Box 47775, Olympia, WA 98504-7775 or via e-mail to loch461@ecy.wa.gov. Any submittals shall reference Order No. **8977** and Corps No. **NWS-2010-1238**.
2. This Order authorizes only those activities identified in the JARPA received January 14, 2011, and as revised on April 18, 2011; and in the "*Revised Biological Evaluation of Potential Impacts to ESA-listed Species, Critical Habitat and Essential Fish Habitat, from a Proposed Geoduck Aquaculture Farm on Three Adjacent Harstine Island Parcels, Case Inlet, Mason County, Washington,*" dated May 23, 2011, or as otherwise specified or modified by this Order. Taylor Shellfish Farms must contact Ecology if a change is proposed to any technologies or methodologies on the project site.

3. Within 30 days of receipt of updated information, Ecology will determine whether the revised project requires a new water quality certification and public notice or whether a modification to this Order is required.
4. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, Taylor Shellfish Farms, the harvest manager, lead workers, and government inspectors.
6. Taylor Shellfish Farms shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project installation or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
8. Taylor Shellfish Farms shall ensure that all appropriate harvest managers and lead workers at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. Taylor Shellfish Farms shall provide Ecology a signed statement (see Attachment A for an example) from each harvest manager that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before any site preparation or planting begins at the project site.
9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
10. Failure of any person or entity to comply with the order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Water Quality Conditions:

1. The point of compliance as specified in WAC 173-201A-210(1)(e)(i) allows a radius of 150-foot temporary turbidity area of mixing from the point of the in-water activities.
2. For this project, the project boundary will be defined by the nozzle endpoint (farthest reach) of the hose from a fixed barge and the following is considered to be an exceedance of the standard:
 - a. 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50NTU, at the point of compliance when a turbidimeter is used OR
 - b. Project-related turbidity visible 150 feet from the boundary of the project area.
3. Geoduck harvest activities shall be monitored daily during daylight harvests with a turbidimeter as follows:
 - a. Two hours after the start of harvest activities;
 - b. Four hours after the start of harvest activities;
 - c. At the end of the harvest for that day*

***Note:** If the period "four hours after the start of harvest" occurs within one hour of the end of harvest, that sample will suffice for the end of harvest sample.

4. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
5. Monitoring and documentation shall occur at: 100 feet (within the mixing zone), 150 feet (the point of compliance), and 200 feet down-current from the project boundary.
6. Results of the water quality monitoring shall be documented in a report and submitted to Ecology within 90 days of the end of the harvest cycle for that season. (See Attachment B for an example.) The report must include:

Sampling information (date, time, sample location, sample results, name of personnel collecting the sample, and weather conditions).

7. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and Taylor Shellfish Farms or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem, and/or prevent further water quality turbidity exceedances. If an exceedance occurs, Taylor Shellfish Farms shall follow the protocols and notification procedures below:

- a. Notify Ecology within 24 hours of exceedances that are detected through water quality monitoring. Taylor Shellfish Farms shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of the exceedance,
 - ii. The period of the exceedance, including exact dates, duration, and times and/or the anticipated time when the project will return to compliance; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the exceedance.
 - iv. In addition, within five (5) days after notification of an exceedance, Taylor Shellfish Farms shall submit a written report to Ecology that describes the nature of the exceedance(s), corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
 - b. Mitigation and/or additional monitoring may be required as a result of the exceedance(s).
8. If, after the first four weeks of monitoring the harvest activities, no turbidity exceedances are detected, Taylor Shellfish Farms can submit the data and a request to Ecology to suspend the monitoring. At that time Ecology will review the data and provide a written response to whether monitoring can be suspended or not.

C. Timing Requirements:

1. This Order expires ten (10) years from the date of issuance of the Corps permit.

D. Notification, Documentation and Reporting Requirements:

1. Taylor Shellfish Farms shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manager within two (2) weeks of receipt of the permit.
2. The Applicant shall submit a Farm Plan annually to the Federal Project Manager for review and approval, at least 30 days prior to commencing work each year at the project site. Work at the site shall not begin until Ecology provides written approval of the Farm Plan. At a minimum, the Farm Plan shall include:
 - a. Taylor Shellfish Farm's name, project name, project location, the number of this Order, contact name, and contact's phone number;
 - b. The Farm Plan shall define: the project area, property boundaries, beach access points, and landing areas in relation to the tidal height of +5 MLLW;
 - c. Pre-project baseline site conditions shall be documented by photograph from border to border of the project area for the first-year submittal;
 - d. Anticipated schedule for each of the following activities: site preparation, planting, tube and net removal, and harvesting;
 - e. Photo documentation of the planted areas.

- f. A written record of site inspections for derelict gear. The record shall include: inspector's name, date and time of inspection, and the type and amount of aquaculture gear found.
3. Ecology must approve, in writing any changes or additions to the approved Farm Plan.
4. Photographic site documentation (taken from border to border of the project area) of final site conditions shall be submitted to Ecology six months prior to the expiration of this authorization.

NOTE: All submittals shall include Taylor Shellfish Farms' name, project name, project location, the number of this Order, contact name, and contact's phone number.

E. Conditions for In-water Activities:

The implementation of the proposed project has the potential to cause exceedances of applicable water quality standards, to result in the pollution of water of the state, and/or impair beneficial uses. The following conditions are placed on the project activities in order to protect beneficial uses and to ensure compliance with applicable water quality standards and other appropriate requirements of state law.

General

1. No staging or work areas are allowed at tidal heights of +5 or higher (MLLW). In order to ensure the proper location of staging areas, the +5 foot tidal elevation is to be permanently marked at the property boundaries such that the markers are visible at high tide.
2. All equipment, materials, and vessels, excluding installed tubes and nets, shall be removed from the project area each day. Nothing is to be stored on the project site.
3. No fertilizers, pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals shall be utilized in the operation of this shellfish farm.
4. All equipment, vessels, and hose pumps shall be maintained and fueled at an off-site location.
5. Barges shall not be allowed to ground out or be anchored over vegetated shallows.
6. Dive (wet) harvest in the project area is not authorized by this Order.

Site Preparation

7. No grading, filling, or re-contouring of the site is authorized by this Order.

8. No surface waters shall be channelized for the purpose of redirecting flows on the project site.
9. Temporary control of surface run-off may occur during high run-off periods when the survival of planted geoduck is threatened. Temporary control measures consist of placing sandbags to redirect the surface runoff. The temporary control measures will be suspended when the threat to the planted geoducks is reduced, and shall not be in place for more than seven consecutive days. Taylor Shellfish Farms shall provide Ecology with photo documentation of the conditions that required the re-direction and how the control measures were implemented at the site.

Site Access

10. The designated landing zone shall be located to avoid forage fish spawning areas and shall not exist higher than +5 MLLW tidal elevation unless specifically approved by Ecology.

Gear

11. No nursery grow-out facilities at this site are authorized by this Order.
12. All tubes shall be permanently marked or tagged to identify ownership.
13. Tubes, nets, and bands shall be made of a material suitable for use in the marine environment.
14. Tubes and nets shall be removed from the beach as soon as they are no longer needed, and not to exceed a period of twenty-four months unless otherwise approved by Ecology.
15. Harvest hoses shall be kept under control by the harvesters in such a manner that they do not cause uncontrolled erosion or scouring of the sediment. The hoses shall be fitted with an on-off valve and shall be turned off when not in use for harvesting.
16. The harvest pump intake shall be screened with a 1/8 -inch mesh to prevent fish from entering the system. The screen shall remain in place whenever water is withdrawn through the pump intake.
17. Prior to engaging in any activities with the potential to cause a disturbance (e.g., net or tube maintenance or removal, harvest) Taylor Shellfish Farms shall visually survey the area to determine whether herring spawn is present within the planted area. If spawn is present, project activity shall be postponed until the eggs have hatched.
18. Site inspection shall occur at a minimum of once per month while materials (tubes and/or nets) are present on the beach. During inspection of the farm site, check nearby beaches for debris from project activities.

Eelgrass

19. Eelgrass for regulatory purposes of this Order is *Zostera marina*.

20. Eelgrass recruitment into planted areas will not be regulated. Should eelgrass recruit into the planted shellfish bed, no additional buffers or harvest limitations will be imposed.

F. Emergency/Contingency Measures:

1. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, Taylor Shellfish Farms or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, Taylor Shellfish Farms shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until Taylor Shellfish Farms is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407 - 6300 and the Washington State Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

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

SIGNATURE



Perry J Lund, Unit Manager
Department of Ecology
Shorelands and Environmental Assistance Program
Southwest Regional Office

2/28/2012
Date

Attachment #A
Taylor Shellfish Farms
Taylor Shellfish Fudge Point Geoduck Farm (Hitchcock Lease)
Order #8977

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that I will be involved as an agent or contractor for Taylor Shellfish Farms in the planting, maintenance, and/or harvest of geoducks at the Fudge Point Geoduck Farm (Hitchcock Lease) within Case Inlet of Puget Sound, Shelton, Mason County, Washington 98584. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #8977 and the applicable permits and approvals referenced therein that pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

