



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 1, 2011

Mr. Matt D. Smith
2721 E. South Island Drive
Shelton, WA 98584

RE: Water Quality Certification Order No. 8688 for Corps Public Notice No. NWS-2007-1721 for the planting, maintenance, and harvest of a geoduck aquaculture farm within Pickering Passage of Puget Sound, Mason County, Washington

Dear Mr. Smith:

On January 5, 2010, you submitted a Joint Aquatic Resources 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 geoduck aquaculture farm involving the harvest of 0.23 acres of geoduck shellfish previously installed between about the 0.0 feet and the -4.0 foot Mean Lower Low Water (MLLW) contour elevation of the intertidal zone and the installation of an additional 0.23 acre of geoducks between the 0.0 and +2.0 feet contour elevation shoreward of the existing planting for a total geoduck farm of 0.46 acre within Pickering Passage of Puget Sound. The U.S. Army Corps of Engineers issued a joint public notice on August 2, 2010 for the proposed project.

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,

 for
Gordon White

Gordon White
Program Manager
Shorelands & Environmental Assistance Program



Mr. Matt D. Smith
August 1, 2011
Page 2 of 2

Enclosure

cc: Pam Sanguinetti, Corps of Engineers
Margie Schirato, WDFW
Jules Michel

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

By Certified Mail 7009 1410 0002 4001 1651

IN THE MATTER OF GRANTING A) ORDER # 8688
WATER QUALITY)
CERTIFICATION TO)
Matt D. Smith) Trident Geoduck Aquaculture Farm,
in accordance with 33 U.S.C. 1341) Pickering Passage, Puget Sound,
(FWPCA § 401), RCW 90.48.120, RCW) Mason County, Washington.
90.48.260 and Chapter 173-201A WAC)

TO: Matt D. Smith
2721 E. South Island Drive
Shelton, WA 98584

On January 5, 2010 Matt Smith, 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). A revised JARPA was submitted on July 13, 2010 and then a request to withdraw and re-apply for a 401 Certification was submitted on December 6, 2010. A joint public notice regarding the request for the Section 404 and 401 was distributed by the U.S. Army Corps of Engineers (Corps) for the for the above-referenced on August 2, 2010.

The proposed project is located in Pickering Passage, Puget Sound at 61 East Scott Drive, Shelton, Mason County, Washington, 98584; NE Section 21, Township 20 North, Range 2 East; WRIA 14 Kennedy-Goldsborough Watershed.

The proposed project includes the harvest of 0.23 acres of geoduck shellfish previously installed between about the 0.0 feet and the -4.0 foot contour elevation of the intertidal zone (Mean Lower Low Water (MLLW) datum). The geoduck were installed without prior authorization and the Applicant voluntarily resolved this violation by removing the unauthorized structures (e.g., tubes and netting). The planted geoduck were left in the substrate and will be harvested as described below.

The proposed new work will install an additional 0.23 acre of geoducks between the 0.0 and +2.0 feet contour elevation shoreward of the existing planting for a total geoduck farm of 0.46 acre. The geoducks would be seeded by hand by placing three to four seed into each 4 – 6 inch diameter by 8 – 12 inch long PVC tube which is sunk into the substrate. The tubes would be positioned approximately one foot apart. For predator control, each individual tube would be covered with a plastic net secured with a band and the entire area of tubes would be covered by an additional net secured with rebar positioned every 3 feet. Planting would occur at minus tides between April and November. The tubes and netting would remain in place for about two years.

The geoducks will be harvested after approximately 4 - 7 years. Harvesting will occur by hand at low tide using a high volume, low pressure water hose 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.

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 Applicant subject to the conditions within this Order.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the Matt D. Smith, Trident Aquaculture, and its agents, assignees and contractors.
2. 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. **8688** and Corps No. **NWS-2007-1721**.
3. This Order only authorizes those activities identified in the JARPA dated July 13, 2010 or as otherwise specified or modified by this Order. The Applicant must contact Ecology per condition A.2. above if a change is proposed to any technologies or methodologies on the project site.

4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the Applicant, the Harvest Manager, lead workers, and state and local government inspectors.
7. The Applicant 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.
8. 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.
9. The Applicant 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. The Applicant 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.
10. 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.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

1. Pickering Passage is classified as “Excellent Quality” and the criteria of that class apply except as specifically modified by this Order. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
2. The point of compliance as specified in WAC 173-201A-210(1)(e)(i) allows a radius of 150-foot temporary area of mixing from the point of the in-water activities.

Water Quality Monitoring:

3. Turbidity shall be assessed and recorded during all geoduck harvest activities. A turbidimeter is recommended, however, visual gauging and photo documentation of turbidity is acceptable.
4. Monitoring and documentation shall occur at 100 foot, 150 foot, and 200 foot intervals down-current from the project site. Also a background samples shall be collected outside the area of influence of the in-water work (i.e. 100 foot up-current from the project). Background samples shall be collected at the same frequency as the other monitoring.
5. 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.

Monitoring Frequency:

6. Monitoring and/or photo documentation shall be recorded 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.

Documentation and Reporting:

7. Results of the water quality monitoring shall be documented in a report and submitted to Ecology (per condition A.2. above) within 90 days of the end of the harvest cycle for that season. The report shall include:
 - a. Map of the project site with the photo reference points;

- b. Sampling information (date, time, location of photo sample, name of personnel collecting the sample, and weather conditions);
- c. Sampling procedures;
- d. Sampling Frequency;
- e. Sampling Results.

Detection and Notification of Exceedances:

8. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant 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, the Applicant shall follow the protocols and notification procedures below:
 - a. Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A.2. above. The Applicant 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 Applicant 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, the Applicant 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).

C. Timing Requirements:

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

D. Notification Requirements:

1. The Applicant shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manager in accordance with condition A.2. above, within two (2) weeks of receipt of the permit.
2. The Applicant shall contact Ecology's Southwest Regional Office Federal Permit Manager per condition A.2. above, upon receipt of the Biological Opinion for this project from the Services.

3. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Project Coordinator in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to any site preparation;
 - b. At least ten (10) days prior to the onset of planting;
 - c. At least ten (10) days prior to the removal of tubes and/or nets;
 - d. At least ten (10) days prior to the start of harvesting for that season;
 - e. Within fourteen (14) days after the completion of the harvest cycle for that location.
 - f. Immediately following a violation of any condition of this Order.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact 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 corners such that the markers are visible at high tide.
2. All equipment, materials, and vessels, excluding emplaced 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. Dive harvest in the project area is not authorized by this Order.
6. The use of nursery bins or other method of nursery/grow out facilities on this site is not authorized by this Order.
7. The area of planting shall only occur as depicted per the plan sheet titled: McArthur//Burke Geoduck Plant (2007) that was included in the July 13, 2010 JARPA submittal.

Site Preparation

8. No grading, filling, or re-contouring of the site is authorized by this Order.
9. No channelizing or redirecting of surface water bodies entering the project area is authorized by this Order.
10. No removal of imbedded rock or cobble is authorized by this Order.

Site Access

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

Gear

12. All gear (including tubes, nets and bands) shall be permanently marked or tagged to identify ownership.
13. Tubes, netting, and bands shall be made of a marine-application material.
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 stingers shall be kept under control by the harvesters in such a manner that they do not cause uncontrolled erosion or scouring of the sediment. Stingers 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 disturbance – causing activities (net or tube maintenance or removal, harvest) the Applicant shall visually survey the area to determine if herring spawn is present within the planted area. If spawn is present, project activity shall be postponed until the eggs have hatched.

Site Maintenance and Monitoring

18. Site inspection shall occur at a minimum of once per month while materials (tubes and/or nets) are present on the beach. During site inspection of the farm site, check nearby beaches for debris from project activities.
19. The Applicant shall keep a written record of the site inspections. The record shall include:
 - a. Inspectors name;
 - b. Date and time of inspection;
 - c. Type and amount of aquaculture gear found
20. A copy of the inspection record shall be submitted to Ecology twice annually on May 1 and October 1 (per condition A.2. above) until all of the gear is removed from the beach.
21. No processing of the shellfish shall occur on site, except for the sorting or culling of the geoduck and the washing or removal of surface materials or organisms.

F. Project Documentation and Reporting

1. Pre-project baseline site conditions shall be documented by photograph from border to border of the project area and submitted to Ecology per Condition A.2. above within 90 days of receipt of this authorization.

2. An As-Built Report must be submitted within three months (90 days) of the completion of planting. The As-Built shall include:
 - a. Project Area;
 - b. Property boundaries;
 - c. Planted areas with the dates of planting;
 - d. Unplanted areas with dates of proposed planting;
 - e. Location and type of netting;
 - f. Beach access points (if applicable);
 - g. Landing areas in relation to the tidal height of +5 MLLW or higher;
 - h. Photo documentation of the planted project area.

3. Photographic site documentation (taken from border to border of the project area) of final site conditions shall be submitted to Ecology per condition A.2. above six months prior to the expiration of this authorization

G. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. 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, the Applicant 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, the applicant 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 the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. 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.

3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

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>

CONTACT INFORMATION

Please direct all questions about this Order to:

Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
loch461@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173.204 WAC – Sediment Management Standards

www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Gordon White
Program Manager
Shorelands & Environmental Assistance Program

August 1, 2011

Attachment # A

Mr. Matt D. Smith
Trident Geoduck Aquaculture Farm
Order # 8688

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for the Trident Geoduck Aquaculture Farm in the planting, maintenance, and/or harvest of geoduck within in Pickering Passage of Puget Sound at 61 East Scott Drive, 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 #8688 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

