



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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October 23, 2014

Josh Bouma
Puget Sound Restoration Fund
382 Wyatt Way NE
Bainbridge Island, WA 98110

RE: Water Quality Certification, First Amendment, for Order #7082

Dear Mr. Bouma:

On October 9, 2014, Ecology received a request from Puget Sound Restoration Fund to revise Water Quality Certification Order #7082, issued on November 4, 2009, for the Bloedel Community Shellfish Farm project. Enclosed is an amendment to this Order, as well as a strikeout version of the Water Quality Certification that reflects the changes that have been made. All other conditions of Water Quality Certification Order #7082 remain in effect.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

ES:rrp
Enclosure

By certified mail: 7011 0470 0003 3720 8360

cc: Pam Sanguinetti, U.S. Army Corps of Engineers
Chris Waldbillig, Washington Department of Fish and Wildlife
Lindie Schmidt, Washington Department of Natural Resources



Water Quality Certification #7082, 1st Amendment
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e-cc: Misty Blair – NWRO
Lori LeVander – NWRO
Loree' Randall – HQ
Raman Iyer – NWRO
Greg Combs, Washington State Department of Health greg.combs@doh.wa.gov
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #7082 First Amendment
WATER QUALITY) Corps Reference No. NWS-2008-228
CERTIFICATION TO) Bloedel Community Shellfish Farm Project; Port
Puget Sound Restoration Fund) Madison Sound, Kitsap County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Josh Bouma
Puget Sound Restoration Fund
382 Wyatt Way NE
Bainbridge Island, WA 98110

This amendment is to the above-referenced Administrative Order approved and issued by the Department of Ecology (Ecology) on November 4, 2009.

This amendment is issued under the provisions of Chapter 90.48 RCW and Chapter 173-201A WAC.

Administrative Order #7082 is hereby amended as follows:

- 1. The Applicant point of contact is changed from Morgan Rohrbach to Josh Bouma.**
- 2. The Applicant address is changed from 590 Madison Ave N, Bainbridge Island, WA 98110 to 382 Wyatt Way NE, Bainbridge Island, WA 98110.**
- 3. Condition F1 that reads:**

F1. This Order expires five (5) years from the date of issuance.

Is replaced with:

F1. This Order expires March 9, 2020. A new 401 Certification must be obtained prior to expiration in order to continue shellfish farming at this site.

No other conditions or requirements of the above-mentioned Order are affected by this Amendment. The Department of 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 amendment may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amendment.

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

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use 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

 FOR

Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office



October 23, 2014

October 23, 2014 – This document shows the conditions that have been amended since the original Order was issued. Therefore it is not the official certification and should only be used for informational purposes.

First Amendment changes are reflected in Red

IN THE MATTER OF GRANTING A) ORDER #7082
WATER QUALITY) Corps Reference #NWS-2008-228
CERTIFICATION TO) Bloedel Community Shellfish Farm Project; Port
Puget Sound Restoration Fund) Madison Sound, Kitsap County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Josh Bouma
Puget Sound Restoration Fund
382 Wyatt Way NE
Bainbridge Island, WA 98110

Deleted: Morgan Rohrbach

Deleted: 590 Madison Ave N

On July 1, 2009, the Puget Sound Restoration Fund submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 18, 2008.

The proposal is to establish a 1-acre community shellfish farm to grow shellfish to sell at local markets and to spur water quality restoration by engaging local residents.

The project is located on Bloedel Reserve tidelands, at 7571 NE Dolphin Drive, Bainbridge Island, Kitsap County, Port Madison Sound, Washington, Section 34, T. 26 N., R. 2E., WRIA 15.

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, 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

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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 meet the 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.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term “Applicant” shall mean Puget Sound Restoration Fund and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology’s Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #7082 and Corps Reference #NWS-2009-228.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 1, 2009. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. 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.

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- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
 - A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
 - A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
 - A8. 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 construction 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.
 - A9. The Applicant shall ensure that all appropriate project engineers and contractors 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 project engineer and contractor 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 construction begins at the project or mitigation sites.
 - A10. 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.
 - A11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.
- B. Water Quality Condition:**
- B1. Port Madison Sound is classified as Extraordinary Quality for Aquatic Life Turbidity Criteria in Marine Water, and the criteria of that class apply except as specifically

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modified by this Order. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-210(1)(e)(i) which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Port Madison Sound.

C. Conditions for In-Water Activities:

- C1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C2. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C3. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- C4. Project activities shall be conducted to minimize siltation of the beach area and seabed.

D. Operational Conditions:

- D1. In areas with kelp, native eelgrass, or macroalgae populations, vessel operation shall be conducted so as to prevent propeller-related damage to vegetation.
- D2. A boat landing zone shall be identified in order to prevent impact to native eelgrass beds or other fish and wildlife habitat. The location of the landing zone shall be identified in the uplands so that it is visible to boats arriving at the site.
- D3. The Applicant shall exclude forage fish spawning areas from shellfish culture activities in order to avoid impacts to these resources.
- D4. The Applicant shall observe a 10-foot buffer from all native eelgrass and macroalgae in order to avoid impacts to these resources.

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- D5. The Applicant shall not conduct any planting or harvesting work when the shellfish farm area is inundated by tidal waters.
- D6. No processing of the shellfish shall occur on site, except for the sorting or culling of the cultured shellfish and the washing or removal of surface materials or organisms.
- D7. Shellfish rinsing in seawater shall be completed using BMPs in order to minimize turbidity.
- D8. No mechanical equipment, with the exception of boats used to deliver aquaculture gear and seed product, shall be used in the installation of the shellfish bags or the harvesting and washing of the shellfish. All work is to be performed by hand.
- D9. All gear shall be adequately secured to the substrate and checked at least every two weeks and after storm events in order to ensure that aquaculture equipment is not released into the environment.
- D10. No fertilizers, pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals shall be utilized in operation of the shellfish farm.
- D11. The community shellfish farm shall be limited in size to a maximum of 1 acre.
- D12. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- D13. Reporting: The Applicant shall submit to Ecology (see A2) an annual report by July 31st of each year that includes the following information:
 - a. Results of the annual survey and assessment of the project, including the overall project status and any problems encountered and how these were addressed.
 - b. Lessons learned from the project.
 - c. Status of outreach activities.
 - d. Any impacts to forage fish spawning (e.g., herring).
 - e. Plans for the next year of operations.
- D14. All bags and other equipment shall be removed from the site upon cessation of shellfish farm operations.

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E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- E3. 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.
- E4. 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, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

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F. Timing Requirements

- F1. This Order expires March 9, 2020. A new 401 Certification must be obtained prior to expiration in order to continue shellfish farming at this site.

Deleted: This Order expires five (5) years from the date of issuance.

G. Reporting and Notification Requirement Conditions

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #NWS-2009-228, Order #7082 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

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November 4, 2009

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1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Deliver your appeal in person to:

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

OR

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.