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. **9005** for Corps Public Notice No. **NWS-2010-131, Scott 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 two-acre commercial geoduck aquaculture farm known as the "Scott 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

Enclosures

By Certified Mail 7009 3410 0000 1272 8743

cc: Pam Sanguinetti, Corps of Engineers
Grace Miller, Mason County
Fudge Point Property, LLC
CLS Harstine LLC
Taylor Shellfish Company, Inc.
Sarah Weaver
Kathryn Townsend
Cynthia Fulton
Nancy Eggleston
Robert Wenman
Larry Vandeberg
Linda S. Benson
Genee L. Fenton
Kris Mansfield
Ronald R. Murgo
Jean Rushing
Brian Eggleston
Jules Michel
Laura Hendricks, Sierra Club
Debbie Taaffe
Donald Stave
Linda Liebl
Gail Sheikhizadeh

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 WATER QUALITY CERTIFICATION TO Taylor Shellfish Farms in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)	**ORDER # 9005** **Corps Reference No. NWS-2011-131** Fudge Point Geoduck Farm (Scott) Case Inlet, Puget Sound, Mason County, Washington

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 is located within Case Inlet of Puget Sound at Fudge Point on Harstine Island, 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 commercial geoduck farm on Fudge Point, on the east side of Harstine Island. Project activities include the rotational planting of about 2-acres of geoduck clams on the 3.5-acre site 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.**9005** and Corps No. **NWS-2011-131**.

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 50 NTU, 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 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 or higher;
   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, 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 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. 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 run-off. 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 tidal elevation at MLLW 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

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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 Rd SW STE 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

SIGNATURE

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

Date 2/28/2012

Attachment #A
Taylor Shellfish Farms
Taylor Shellfish Fudge Point Geoduck Farm (Scott Lease)
Order # **9005**

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 geoduck at the Fudge Point Geoduck Farm (Scott 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 **#9005** 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

Attachment #B
Water Quality Monitoring
Turbidity Data Sheet

Project Name: _____

Ecology Order No.: _____ Corps Reference No. _____

Date	Background Turbidity			100' Turbidity		150' Turbidity		200' Turbidity		Notes (Weather, calibration, etc.	Name of Personnel Collecting Sample
	Time	Reading	Location	Time	Reading	Time	Reading	Time	Reading		