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# *ZOSTERA JAPONICA* MANAGEMENT ON COMMERCIAL CLAM BEDS IN WILLAPA BAY GENERAL PERMIT

National Pollutant Discharge Elimination System and
State Waste Discharge General Permit

**State of Washington**
**Department of Ecology**
Olympia, Washington 98504

In compliance with the provisions of
Chapter 90.48 Revised Code of Washington
(State of Washington Water Pollution Control Act)
and
Title 33 United States Code, Section 1251 et seq.
The Federal Water Pollution Control Act (The Clean Water Act)

Until this permit expires, is modified, or revoked, Permittees that have properly obtained coverage under this general permit are authorized to discharge in accordance with the special and general conditions that follow.

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# SUMMARY OF PERMIT REPORTS AND SUBMITTALS

Refer to the Special and General Conditions of this permit for submittal requirements.

**Table 1**. Required permit submittals

| Permit Condition | Submittal | Frequency | Due Date(s) |
|---|---|---|---|
| S2.C. | Application for new coverage | As necessary | At least 60 days prior to the start of discharge |
| S3.E. | Discharge Management Plan (DMP) | Once per coverage, or when DMP is updated | With NOI and when updated |
| S7.A. | Annual Pre-treatment Plan | Annually | March 1 |
| S7.B. | Annual report (post-treatment report) | Annually | December 31 |
| S.7.D. | Noncompliance notification | As necessary | As necessary |
| S.4.F. | Spill notification | As necessary | As necessary |
| G5. | Permit modification and revocation | As necessary | Within 14 days of request |
| G13. | Request for transfer of coverage | As necessary | As necessary |
| G.18. | Re-Application for permit coverage | Once per permit cycle | At least 180 days prior to the permit expiration date |

The text of this permit contains words or phrases in ***bold and italics***. These words or phrases are the first usage in the permit and are defined in Appendix A.

# SPECIAL CONDITIONS

## S1. PERMIT COVERAGE

### A. Activities Covered Under This Permit

This general permit covers all ***Zostera japonica*** (*Z. japonica*) management activities that result in a ***discharge*** of ***aquatic herbicides*** containing the ***active ingredient*** imazamox and ***marker dyes*** from ***treatment*** of ***commercial clam beds*** (excluding geoduck culture) to ***surface waters of the state of Washington***.

This permit will be issued for a duration of 5 years from the effective date. The application of aquatic herbicides and marker dyes is prohibited after the third year. Based on study (Fact Sheet Appendix B) and monitoring results, the Washington State Department of Ecology (Ecology) will make a determination to modify the permit to allow continued application of aquatic herbicides or terminate the permit after the third year.

***Permittees*** may apply chemicals not listed in this permit on a limited basis in the context of a research and development effort under the jurisdiction of the Washington State Department of Agriculture through the issuance of a ***state experimental use permit*** (EUP). Project proponents must obtain coverage under this general permit for any projects conducted under a state EUP (special condition S4.H).

### B. Geographic Area Covered

This permit covers the activities listed in special condition S1.A in Willapa Bay. This permit does not cover activities outside of Willapa Bay.

This permit does not apply to:
1. "Indian Country" as defined in 18 USC Sec. 1151.
2. Federal lands in Willapa Bay where a federal agency made the decision to apply herbicides or is the entity applying herbicides.

## S2. PERMIT ADMINISTRATION

### A. Who Must Apply for Permit Coverage

***Pesticide applicators*** with an ***aquatic license*** and their ***sponsor*** who plan to use imazamox to control *Z. japonica* on commercial clam beds in Willapa Bay must obtain coverage under this permit.

### B. Qualifications for Permit Coverage

A pesticide applicator with an aquatic license is the ***Permittee***. A Permittee must have a sponsor for each permit coverage.

Sponsors operating under separate business licenses must obtain separate permit coverages.

A sponsor may only obtain coverage for tidelands that it owns or leases. This permit does not allow the sponsor to violate any aspect of their lease agreement.

## C. How to Apply for Permit Coverage

Pesticide applicators that propose to begin *Z. japonica* control using imazamox on or after the effective date of this general permit must:

1. Submit an application for coverage no later than 60 days prior to the first proposed discharge date. A complete application includes:
   a. A complete and signed ***Notice of Intent*** (***NOI***).
   b. A complete and signed ***Discharge Management Plan*** (DMP) using the template provided in Appendix D and special condition S3.F.
   c. An Annual Pre-treatment Plan (see special condition S7.A)
2. Mail the complete application to:
   Department of Ecology
   Water Quality Program
   Attn: Pesticide Permit Manager
   PO Box 47696
   Olympia, WA 98504-7696

Ecology is moving to online permit application and report submittal. When it becomes available for this permit, Ecology may modify this permit to require electronic submittal of the permit application, supporting documents and reports.

3. Publish twice, one week apart, a public notice in a local newspaper of general circulation that an application for permit coverage has been made pursuant to WAC 173-226-130(5). At the time the second notice is published, a 30-day public comment period begins.

4. Publish the public notice only after Ecology has received the complete application for coverage.

5. Use the **PUBLIC NOTICE TEMPLATE FOR NEW APPLICANTS** provided in Appendix B of this permit. The applicant may add additional information to the template as long as the required information remains as stated on the template.

Applicants may cooperate and publish a single public (following guideline 3. above) notice as long as the public notice contains contact information about each applicant and lists all locations proposed for treatment. At the end of the 30-day public comment period, Ecology will consider any received comments about the applicability of this permit to the proposed treatment activity before issuing a decision on permit coverage.

### D. Transfer of Permit Coverage

A Permittee may transfer coverage to a new Permittee using the Transfer of Coverage Form which can be found here:
http://www.ecy.wa.gov/programs/wq/pesticides/eelgrass.html

Both the original Permittee and the new Permittee must sign the form and provide the date that the new applicator will take responsibility for permit coverage. Once both parties have signed the form, the new Permittee becomes responsible for permit compliance and permit fees on the date indicated on the Transfer of Coverage Form. The original Permittee remains responsible for, and subject to, all permit conditions and permit fees until the permit coverage transfer is effective.

### E. How to Terminate Permit Coverage

A Permittee may request termination of permit coverage by submitting a Notice of Termination form (NOT) to Ecology. The Permittee will continue to incur an annual permit fee unless it submits an NOT.

## S3. DISCHARGE LIMITS

### A. Compliance with Standards

1. The application of imazamox must not cause or contribute to a violation of the Water Quality Standards for Surface Waters of the State of Washington (chapter 173-201A WAC), Ground Water Quality Standards (chapter 173-200 WAC), Sediment Management Standards (chapter 173-204 WAC), and human health criteria in the National Toxics Rule (40 CFR 131.36).

2. Permittees must use ***all known, available, and reasonable methods of prevention, control, and treatment (AKART)*** when applying imazamox. Compliance with this permit, the ***Washington Pesticide Control Act***, the ***Washington Pesticide Application Act***, the requirements of the ***Federal Insecticide, Fungicide, and Rodenticide Act*** (FIFRA) label constitute AKART.

### B. Temporary Exceedance of Water Quality Standards

Temporary exceedance of water quality standards are allowed under this permit, provided the Permittee complies with the provisions of WAC 173-201A-410**.**

### C. Impaired Water Bodies

The Permittee must ensure that treatment does not cause or contribute to further impairment of Willapa Bay for any parameter for which Willapa Bay is listed as impaired.

### D. Sensitive, Threatened, or Endangered (Rare) Plants

The Permittee must ensure treatment does not cause permanent harm to ***sensitive, threatened, or endangered*** plant populations.

### E. Discharge Management Plans (DMP)

The Permittee must follow their DMP.

1. Multiple Permittees may combine efforts to develop one DMP that applies to all areas that may be treated in Willapa Bay. All Permittees that develop the DMP must follow it unless the Permittee decides to develop their own DMP at a later date.

2. The DMP must include the plan elements in Appendix D. However, equivalent elements of an Environmental Impact Statement prepared for this activity may substitute for DMP plan elements.

3. The Permittee or Permittees if combining efforts to develop one DMP, must update and submit the updated DMP to Ecology whenever there are changes to treatment scenarios or treatment areas.

## S4. PRODUCT USE

The Permittee must comply with all requirements on the FIFRA product label. Permit requirements do not reduce the requirements on the FIFRA label.

Ecology prohibits treatment that causes oxygen depletion to the point of stress or lethality to aquatic biota from plant die-off, the mortality of aquatic vertebrates, or unintended impacts to water quality or biota.

This permit does not convey property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

### A. Pesticide Application Requirements

The Permittee must ensure that:

1. ***Direct supervision*** of the application of imazamox is performed by an aquatic licensed pesticide applicator.

2. All pesticide applicators must have current training in the use of equipment necessary to apply herbicides correctly.

3. Appropriately trained personnel calibrate the application equipment prior to each application.

The Permittee shall:

1. Only apply imazamox, or another herbicide if the Permittee is also covered under an experimental use permit (special condition S4.H), to commercial clam beds, excluding geoduck beds.

2. Not apply other pesticides to commercial clam beds during the four days before and after application of imazamox.

3. Apply imazamox to its commercial clam beds once *Z. japonica* levels meet or exceed the ***action threshold(s)*** in its DMP based on at least one pre-treatment survey.

4. Apply imazamox from April 15 through June 30 (dates inclusive).

5. Not treat a commercial clam bed more than once per year. Treatment of a commercial clam bed may be completed over multiple days if each area within the clam bed is only treated once per year.

6. Treat only after the commercial clam bed is exposed by the falling tide. After imazamox application there must be at least one hour of dry time before tidal inundation.

7. Aerial application of imazamox is prohibited. Ground based applications must not be made when wind speed exceeds 10 miles per hour.

8. Not directly apply imazamox into any ***drainage*** that contains *Z. marina* and is moving water off the treatment site.

## B. Treatment Buffers

The Permittee must maintain a buffer inside their sponsor's property line where treatment will not occur. See Appendix E Figure 1.

A buffer width of 10 meters, measured perpendicular to the parcel boundary, is required for all treatment sites.

Where a Permittee and sponsor who have a clam bed that is contiguous with an adjacent commercial shellfish bed, and both parties agree, a buffer is not required on the connecting parcel boundary. Each Permittee must indicate whom they are cooperating with and on which parcel(s) in their annual pre-treatment plan (special condition S7.A). See Appendix E, Figure 2 for an example of this situation.

## C. Annual Pre-treatment Plan Public Notice

The Permittee must submit to Ecology a pre-treatment plan (special condition S7.A) by March 1 annually. Ecology will post pre-treatment plans to the *Zostera japonica* Management on Commercial Clam Beds General Permit website at least 30 days prior to the first application of the season.

## D. Shoreline Posting

The Permittee must:

1. Post signs at all corners of the treatment site, using the template provided in Appendix C. The Permittee may add additional treatment-related information to the sign, but may not remove required information.

2. Post signs no more than 24 hours before treatment.

3. Post signs so they are secure from the normal effects of weather and tide but cause minimal damage to private or public property. For example, signs could be posted on long poles so that signs are above the high tide mark.

4. Ensure that the posted signs remain in place for 24 hours after treatment.

5. Remove all signs by the end of the treatment season.

6. Post signs in English and the language, if other than English, commonly spoken by the community that uses the area.

## E. Spill Prevention

Permittees must:

1. Handle, store, and use all oil, fuel, chemicals, or products authorized under this permit in a manner that prevents spills.
   -
2. Ensure that they maintain all mobile equipment to prevent leaks or spills of petroleum products.

3. Have absorbent materials available for cleanup and the spill containment materials recommended in the Material Safety Data Sheet for imazamox.

## F. Spill Notification Requirements

Permittees must immediately report spills to Ecology by calling 800- 258-5990 *and* 800- 424-8802. See http://www.ecy.wa.gov/programs/spills/other/reportaspill.htm for more environmental reporting information.

### G. Spill Cleanup Requirements

1. In the event of a spill, Permittees must begin immediate containment and cleanup using appropriate materials. Cleanup takes precedent over normal work.

2. Cleanup includes proper disposal of any spilled materials and used cleanup materials.

### H. Experimental Use

Experimental use of chemicals not listed in this permit may occur on a limited basis in the context of a research and development efforts related to the chemical control of *Z. japonica*. Research and development efforts:

1. Must be conducted under coverage of this permit. See special condition S2 for permit application requirements.

2. Must be conducted under a state experimental use permit issued by Washington State Department of Agriculture.

3. Must be limited to one acre or less, except for situations where Ecology has reviewed and approved a federal EUP.

4. Must be in support of chemical approval for inclusion in future versions of this permit.

5. Are subject to all other conditions of this permit.

## *S5. MONITORING*

Sampling and analytical methods used to meet the monitoring requirements specified in this permit must conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136 (or as applicable in 40 CFR subchapters N [Parts 400–471] or O [Parts 501-503]) unless otherwise specified in this permit. Ecology may only specify alternative methods for parameters without limits and for those parameters without an EPA approved test method in 40 CFR Part 136.

All samples must be analyzed by a laboratory registered or accredited under the provisions of *Accreditation of Environmental Laboratories*, Chapter 173-50 WAC. The following parameters need not be accredited or registered:

a. Flow.
b. Temperature.
c. Settleable solids.
d. Conductivity, except that conductivity must be accredited if the laboratory must otherwise be registered or accredited.

e. pH, except that pH must be accredited if the laboratory must otherwise be registered or accredited.
f. Turbidity, except that turbidity must be accredited if the laboratory must otherwise be registered or accredited.
g. Parameters which are used solely for internal process control

Documentation of monitoring activities and results must include (if applicable):
a. The date, exact place, and time of sampling.
b. The date analyses were performed.
c. Who performed the analyses.
d. The analytical techniques/methods used (if any).
e. The results of such analyses.

**A. Monitoring**

The Permittee must conduct routine monitoring on all commercial clam beds treated with imazamox.

1. If treatment does not occur up to the 10m property line buffer (see condition S4.B), monitoring consists of recording the date treatment occurred, amount of active ingredient applied, and the number of acres and the location(s) of acreage treated.

2. If treatment occurs up to the 10m property line buffer (see condition S4.B) on a treated parcel the Permittee must measure the distance into the buffer that *Zostera spp*. plants are affected by treatment. See Appendix E for diagrams of how buffers must be implemented on imazamox treated clam beds.

To quantify this distance, 30 days after treatment, the Permittee must measure the width of dead eelgrass (*Zostera spp.*) in the buffer.

The width of dead eelgrass must be measured from the inner edge of the buffer, perpendicular to the buffer edge, to the first instance of live *Zostera spp*.

For situations where no eelgrass is naturally present (not due to the effects of treatment) within the buffer area, no measurements must be taken.

The number of measurements taken will depend on the size of the commercial clam bed treated. Measurements must be spaced approximately equidistant across the parcel edge.

| Treatment Acreage | Up to 5 Acres | 5.1 to 10 Acres | 10.1 to 20 Acres | 20+ Acres |
|---|---|---|---|---|
| # Measurements per Parcel Edge | 3 | 5 | 8 | 10 |

Photographs must be taken at all measured locations to verify the measurement. Each photograph must be labeled by placing a card with the date, Global Positioning System (GPS) coordinates, sample site and permit number within the photographed area.

## S6. RECORDS

### A. Records Retention

1. The Permittee must retain records of all permitting and monitoring information for a minimum of five (5) years. Such information must include copies of all reports required by this permit and records of all data used to complete the application for coverage.

2. The Permittee must keep records longer in the event of any unresolved litigation regarding the discharge of pollutants by the Permittee or when requested by Ecology.

3. The Permittee must make the records, reports, surveys, plans, public notices, and other information required by this permit available to Ecology on request.

## S7. REPORTING

All reports submitted to Ecology must follow the signatory requirements of general condition G15.

The Permittee must submit a signed and dated copy of the annual Pre-treatment Plan required by this permit to Ecology by March 1 of each year. For new applications for coverage under this permit, the pre-treatment plan for the first year of coverage must be submitted with the NOI and DMP as part of the permit application.

The Permittee must submit a signed and dated copy of the Annual Report required by this permit to Ecology by December 31 of each year.

Reports must be mailed or delivered to:

Department of Ecology
Water Quality Program
Attn: Aquatic Pesticide Permit Manager
PO Box 47696
Olympia, WA 98504-7696

Ecology is moving to online permit application and report submittal. When it becomes available for this permit, Ecology may modify this permit to require electronic submittal of the reports.

## A. Annual Pre-Treatment Plan

Permittees must submit an annual pre-treatment plan to Ecology by March 1. The plan must include:

a. Locations of acreage planned for treatment, including GPS coordinates of each corner of the area.

b. The size, in acres, of each area planned for treatment.

c. Maps delineating the locations of the areas planned for treatment. After the first year of treatment, the maps must also indicate whether the location was treated the previous year.

## B. Annual Report

1. Permittees must submit an annual report to Ecology by December 31 each year, regardless of whether treatment or monitoring occurred.

2. The annual report must include:

   a. Locations of acreage treated, including GPS coordinates of each corner of the area.
   b. The size, in acres, of each treated area.
   c. Date treatment occurred on each area treated.
   d. The amount of active ingredient applied to the treated area.
   e. The results of the monitoring required in special condition S5.A.

## C. Noncompliance Notification

In the event a Permittee is unable to comply with any of the terms and conditions of this permit, which may endanger health or the environment, the Permittee must immediately stop the activity causing the noncompliance, correct the problem, orally notify the permit manager at Ecology within 24 hours of the failure to comply, and return to compliance as quickly as possible.

A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

## S8. APPENDICES

The attached appendices are incorporated by reference into this permit.

APPENDIX A – DEFINITIONS

APPENDIX B – PUBLIC NOTICE

APPENDIX C – SIGN TEMPLATE

APPENDIX D – DISCHARGE MANAGEMENT PLAN FOR *ZOSTERA JAPONICA* TREATMENTS ON COMMERCIAL SHELLFISH BEDS

APPENDIX E - FIGURES

# GENERAL CONDITIONS

## G1. DISCHARGE VIOLATIONS

All discharges and activities authorized by this general permit must be consistent with the terms and conditions of this permit. The discharge of any pollutant more frequently than, or at a concentration in excess authorized by this permit, constitutes a violation of the terms and conditions of this permit.

## G2. PROPER OPERATION AND MAINTENANCE

The Permittee must at all times properly operate and maintain all systems of treatment and control to achieve compliance with the terms and conditions of the general permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of this permit. The Permittee must not allow concentrations of imazamox to exceed FIFRA label requirements.

## G3. RIGHT OF ENTRY

The Permittee must allow an authorized representative of Ecology, upon the presentation of credentials and such other documents as may be required by law, at reasonable times:

A. To enter upon the premises where a discharge is located or where any records must be kept under the terms and conditions of this general permit;

B. To have access to and to copy any records that must be kept under the terms and conditions of the permit;

C. To inspect any posting, monitoring equipment, or method of monitoring required in this permit;

D. To inspect any collection, treatment, pollution management, or discharge facilities; and

E. To sample any discharge of pollutants.

## G4. PERMIT COVERAGE REVOCATION

Pursuant to chapter 43.21B RCW and chapter 173-226 WAC, the Director may require any discharger authorized by this general permit to apply for and obtain coverage under an individual permit or another more specific and appropriate general permit. Cases where revocation of coverage may be required include, but are not limited to the following:

A. Violation of any term or condition of this general permit.

B. Obtaining coverage under this general permit by misrepresentation or failure to disclose fully all relevant facts.

C. Failure or refusal of a Permittee to allow entry as required in RCW 90.48.090.

D. A determination that the permitted activity endangers human health or the environment, or significantly contributes to water quality standards violations.

E. Nonpayment of permit fees or penalties assessed pursuant to chapter 90.48.465 RCW and chapter 173-224 WAC.

F. Failure of a Permittee to satisfy the public notice requirements of WAC 173-226-120(5), when applicable; or Permittees who have their coverage revoked for cause according to WAC 173-226-240, may request temporary coverage under this permit during the time an individual permit is being developed, provided the request is made within ninety (90) days from the time of revocation and is submitted along with a complete individual permit application form.

## G5. GENERAL PERMIT MODIFICATION OR REVOCATION

This permit may be modified, revoked and reissued, or terminated in accordance with the provisions of chapter 173-226 WAC. Grounds for modification or revocation and reissuance include, but are not limited to, the following:

A. When a change that occurs in the technology or practices for control or abatement of pollutants applicable to the category of dischargers covered under this permit.

B. When effluent limitation guidelines or standards are promulgated pursuant to the Federal Water Pollution Control Act or chapter 90.48 RCW for the category of dischargers covered under this general permit.

C. When a water quality management plan containing requirements applicable to the category of dischargers covered under this general permit is approved.

D. When information is obtained which indicates that cumulative effects on the environment from dischargers covered under this general permit are unacceptable.

## G6. REPORTING A CAUSE FOR REVOCATION OF COVERAGE

A Permittee who knows, or has reason to believe, that any activity has occurred, or will occur, which would constitute cause for revocation under condition G5 above or 40 CFR 122.62, must report such information to Ecology so that a decision can be made on whether action to revoke coverage under this general permit will be required. Ecology may then require submission of a new application for coverage under this or another

general permit or an application for an individual permit. Submission of a new application does not relieve a Permittee of the duty to comply with all the terms and conditions of the existing general permit until the new application for coverage has been approved.

## G7. TOXIC POLLUTANTS

Permittees must comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

## G8. OTHER REQUIREMENTS OF TITLE 40 CODE OF FEDERAL REGULATIONS

All other applicable requirements of 40 CFR 122.41 and 122.42 are incorporated in this general permit by reference.

## G9. COMPLIANCE WITH OTHER LAWS AND STATUTES

Nothing in this permit excuses a Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

## G10. ADDITIONAL MONITORING

Ecology may establish specific monitoring requirements in addition to those contained in this general permit by administrative order or permit modification.

## G11. PAYMENT OF FEES

Permittees must submit payment of fees associated with this permit as assessed by Ecology. Ecology may revoke this permit coverage or take enforcement, collection, or other actions, if the permit fees established under chapter 173-224 WAC are not paid.

## G12. REQUESTS TO BE EXCLUDED FROM COVERAGE UNDER A GENERAL PERMIT

Any discharger authorized by this general permit may request to be excluded from coverage under this general permit by applying for an individual permit. The discharger must submit to the Director an application as described in WAC 173-220-040 or WAC 173-216-070, whichever is applicable, with reasons supporting the request. The reasons must fully document how an individual permit will apply to the applicant in a way that the general permit cannot. The Director may either issue an individual permit or deny the request with a statement explaining the reason for the denial. When an individual permit

is issued to a discharger otherwise subject to this general permit, the applicability of this general permit to that Permittee is automatically terminated on the effective date of the individual permit.

## G13. TRANSFER OF PERMIT COVERAGE

This permit coverage may be automatically transferred to a new Permittee if:

A. The Permittee notifies Ecology at least 30 days in advance of the proposed transfer date.

B. The notice includes a written signed agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them.

C. Ecology does not notify existing Permittee and the proposed new Permittee of its intent to modify or revoke coverage.

## G14. PENALTIES FOR VIOLATING PERMIT CONDITIONS

Any person who is found guilty of willfully violating the terms and conditions of this permit is deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars ($10,000) and costs of prosecution, or by imprisonment in the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of a waste discharge permit will incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to ten thousand dollars ($10,000) for every such violation. Each and every violation is a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be deemed to be a separate and distinct violation.

## G15. SIGNATORY REQUIREMENTS

All applications, reports, or information submitted to Ecology must be signed and certified.

A. In the case of a municipal, state, or public facility, all permit applications must be signed by a principal executive officer or ranking elected official. In the case of a corporation, partnership, or sole proprietorship, all permit applications must be signed by either a principal executive officer of at least the level of vice president of a corporation, a general partner of a partnership, or the proprietor of a sole proprietorship.

B. All reports required by this permit and other information requested by Ecology shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described above and submitted to Ecology.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of a regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

C. Changes to authorization. If an authorization under paragraph B.2. above is no longer accurate because a different individual or position has responsibility for environmental matters, a new authorization satisfying the requirements of paragraph B.2. must be submitted to Ecology prior to or together with any reports, information, or applications to be signed by an authorized representative.

D. Certification. Any person signing a document under this section must make the following certification:

*I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiries of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.*

## G16. APPEALS

The terms and conditions of the *Zostera japonica* Management on Commercial Clam Beds in Willapa Bay General Permit are subject to appeal. There are two different appeal categories:

A. The permit terms and conditions as they apply to the appropriate class of dischargers are subject to appeal within thirty (30) days of issuance of this general permit in accordance with chapter 43.21(B) RCW and chapter 173-226 WAC; and

B. The applicability of the permit terms and conditions to an individual discharger are subject to appeal in accordance with chapter 43.21(B) RCW within thirty (30) days of the effective date of coverage of that discharger.

An appeal of the coverage of this permit to an individual discharger is limited to applicability or non-applicability to that same discharger. Appeal of this permit coverage of an individual discharger will not affect any other individual dischargers. If the terms and conditions of this general permit are found to be inapplicable to any discharger (s), the matter must be remanded to Ecology for consideration of issuance of an individual permit or permits.

## G17. SEVERABILITY

The provisions of this general permit are severable, and if any provision of this general permit, or application of any provision of this general permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this general permit shall not be affected thereby.

## G18. DUTY TO REAPPLY

Permittees must reapply for coverage under this general permit at least one hundred and eighty (180) days prior to the specified expiration date of this general permit. An expired general permit continues in force and effect until Ecology issues a new general permit or until Ecology cancels it. Only those Permittees that reapply for coverage are covered under the continued permit.

# APPENDIX A - DEFINITIONS

## All definitions listed below are for use in the context of this permit only.

*Action threshold*: The density of, or number of individuals in, a pest population that triggers management activities.

*All known, available, and reasonable methods of prevention, control, and treatment:* (*AKART*): A technology-based approach to limiting pollution from discharges. Described in chapters 90.48 and 90.54 RCW, and chapters 173-201A, 173-204, 173-216, and 173- 220 WAC.

*Applicant*: The aquatic licensed pesticide applicator and sponsor applying for permit coverage.

*Aquatic License*: Means as defined in WAC 16-228-1545(3)(u).

*Commercial clam beds*: Marine or estuarine areas where clams (excluding geoduck) are raised and harvested for commercial sale under a current Washington State business license. Commercial clam beds may also include other shellfish as a secondary crop, so long as clams are the primary crop on the bed.

*Direct Supervision*: Means as defined in RCW 17.21.020(13).

*Discharge*: The addition of any pollutant to a water of the state.

*Discharge: Management Plan*: A plan that documents intended pest management strategies based on action thresholds using the principles of ***integrated pest management***.

*Drainage:* A depression or channel in the inter-tidal surface topography that moves water down-slope as the water recedes off of the tide flat as the tide ebbs.

*Federal Insecticide, Fungicide, and Rodenticide Act* (*FIFRA*)**:** A set of EPA regulations that establishes uniform pesticide product labeling, use restrictions, and review and labeling of new pesticides.

*Herbicide*: Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant (see chapter 17.21.020 RCW).

*Integrated Pest Management*: A pest management strategy that incorporates pest population monitoring, multiple control methodologies including the possibility of no control, and setting action thresholds to determine when pest control will be most effective.

*Marker dyes*: Colorants sprayed onto the targeted weed along with the herbicide to mark the areas already treated.

*Notice of Intent* (*NOI*): The application form that Ecology specifies the applicant must use to apply for permit coverage.

*Permittee*: Any aquatic licensed pesticide applicator with coverage under this permit.

*Pesticide*: Means as defined in RCW's 15.58.030(31) and 17.21.020(36)

*Pesticide Applicator*: An individual licensed by Washington State Department of Agriculture under chapters 17.21 RCW and chapter 16-228 WAC to apply pesticides.

*Sensitive, threatened, or endangered*:

> *Sensitive:* Any species that is vulnerable or declining and could become endangered or threatened in the state without active management or removal of threats.
>
> *Threatened:* Any species likely to become endangered in Washington within the foreseeable future if factors contributing to its population decline or habitat degradation or loss continue.
>
> *Endangered:* Any species in danger of becoming extinct or extirpated from Washington within the foreseeable future if factors contributing to its decline continue. Populations of these species are at critically low levels or their habitats have been degraded or depleted to a significant degree.

*Sponsor*: An individual entity in the business of commercial production and sale of clams that has the legal authority to make the decision to apply herbicide to it's owned or leased clam beds.

*State Environmental Policy Act (SEPA)*: Chapter 43.21C RCW and Chapter 197-11 WAC.

*State experimental use permit*: A permit issued by WSDA that allows the use of pesticides that are not registered or labeled for a particular use pattern for the purposes of research and development.

*Surface waters of the state of Washington*: All waters within the geographic boundaries of the State of Washington defined as "waters of the United States" in 40 CFR 122.2, and all waters defined as "waters of the state" in RCW 90.48.020 excluding underground waters. These include lakes, rivers, ponds, streams, inland waters, wetlands, marine waters, estuaries, and all other fresh or brackish waters and water courses, within the jurisdiction of the State of Washington, plus drainages to those surface waters.

*Treatment*: Applying an herbicide to a plant or plant population.

*Washington Pesticide Application Act*: Chapter 17.21 RCW.

*Washington Pesticide Control Act*: Chapter 15.58 RCW.

*Zostera japonica*: A seagrass species in the family Zosteraceae that is listed as a Class C noxious weed in Washington.

**In the absence of other definitions set forth herein, the definitions set forth in 40 CFR Part 403.3 or in chapter 90.48 RCW apply.**

# APPENDIX B - PUBLIC NOTICE

**PUBLIC NOTICE TEMPLATE FOR NEW APPLICANTS**

The applicant (applicator and sponsor) must publish a public notice at least once each week for two consecutive weeks, in a single local or regional newspaper of general circulation. The applicant may add additional project information to this template, but must not remove or change any bolded language (other than changing fonts or removing bolding). Applicants may also publish a combined legal notice so long as the legal notice includes the contact information and the treatment location(s) for each applicant.

*Applicant name(s) and contact information (e.g., phone number, email address, website-if applicable) – if applicants cooperate, list the name and contact information for each applicant* **is seeking coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for the Management of *Zostera japonica* on Commercial Clam Beds in Willapa Bay. Commercial clam beds may be treated with the aquatic herbicide imazamox**. **The proposed coverage applies to** *(provide the location(s) within Willapa Bay and the number of acres proposed for treatment for each applicant).*

**Ecology has made a SEPA determination of significance with the adoption of an existing environmental document for this proposal.**

**Any person desiring to present their views to the Department of Ecology regarding this application must do so in writing within 30 days of the last date of publication of this notice.**

**Comments must be submitted to the Department of Ecology. Any person interested in Ecology's action on the application may notify Ecology of their interest within 30 days of the last date of publication of this notice.**

**Submit comments to:**
**Department of Ecology**
**PO Box 47696**
**Olympia, WA 98504-7696**
**Attn: Water Quality Program, Aquatic Pesticide Permit Manager**
**Email: nathan.lubliner@ecy.wa.gov**
**Telephone: 360-407-6563**

**Copies of the application are available by contacting the Aquatic Pesticide Permit Manager.**

# APPENDIX C - POSTING TEMPLATE

# CAUTION

Imazamox will be applied under permit on _____ to control the noxious weed *Zostera japonica* on commercial clam beds.

There are no swimming, recreation, or water use restrictions.

For more information about this treatment, contact:
_____ (Permittee to list a phone number for a contact that can explain the treatment and treatment location(s) to the caller).

Phone number: ___ - _____

Or the permitting agency Department of Ecology at ___ - _____

# APPENDIX D: - DISCHARGE MANAGEMENT PLAN FOR *ZOSTERA JAPONICA* CONTROL ON COMMERCIAL CLAM BEDS

The following elements are minimum requirements for a Discharge Management Plan (DMP). The applicant must prepare a DMP and submit it to Ecology along with the Notice of Intent (NOI) for review and approval. The Permittee must revise the DMP whenever there are changes in the quantity of chemicals discharged or if it adds additional treatment sites. Changes to the DMP must be made prior to the discharge or as soon as possible thereafter. The Permittee must follow its DMP. Multiple Permittees may combine efforts to produce a single DMP that covers discharge of imazamox on all areas the Permittees plan to treat. Elements from other documents such as Environmental Impact Statements (EIS) may substitute for equivalent elements of the DMP.

**A. Discharge Management Plan Team**

The DMP must identify the people (including name and contact information) as well as each person's individual responsibilities, including the person(s) responsible for:

1. Managing the *Z. japonica* control project.
2. Developing and revising the DMP.
3. Developing, revising, and implementing corrective actions and other permit requirements.
4. Applying the herbicide (licensed applicators with license numbers and license expiration dates).

When changes to the DMP team occur, the Permittee must provide updated contact information to Ecology.

**B. Problem Identification**

1. Discuss the problems caused by the growth of *Z. japonica* on commercial clam beds.
2. Identify the commercial clam beds affected by Z. japonica and characterize the extent of the problem.
3. Include a general location map or maps that identify the geographic boundaries of the area to which the plan applies and the locations of the commercial beds.
4. Establish action thresholds that trigger the need to remove Z. japonica. Include the data used in developing the action thresholds and the methods to determine when the action threshold is met.

**C. *Zostera japonica* Management Options**

The DMP must provide an evaluation of the following management options, including a combination of these management options, considering impacts to water quality, impacts to non-target organisms (particularly in relation to native eelgrass and associated organisms), feasibility of implementation, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Herbicides

**D. Herbicide Use**

The DMP must detail the surveillance procedures that the Permittee will use to determine:

1. When the action threshold is met.
2. Treatment efficacy on *Z. japonica*.
3. Non-target impacts to native eelgrass.

**E. Response Procedures**

The DMP must detail procedures that the Permittee will use to determine:

1. Compliance with labeled rates (equipment calibration and maintenance).
2. The schedule and procedures for preventing spills and leaks of chemicals or petroleum products (oil, gasoline, and hydraulic fluid) associated with the chemical application.

F. **Signature Requirements**

The DMP must include a signature statement and the signature of Permittee. The signature statement to read:

*I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of those persons directly responsible for gathering information, the information in the DMP is, to the best of my knowledge and belief, true, accurate, and complete and will be updated as necessary. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment of knowing violations.*

_____ _____

*Signature* *Date*

# APPENDIX E - FIGURES

Figure 1: Buffers on single parcel

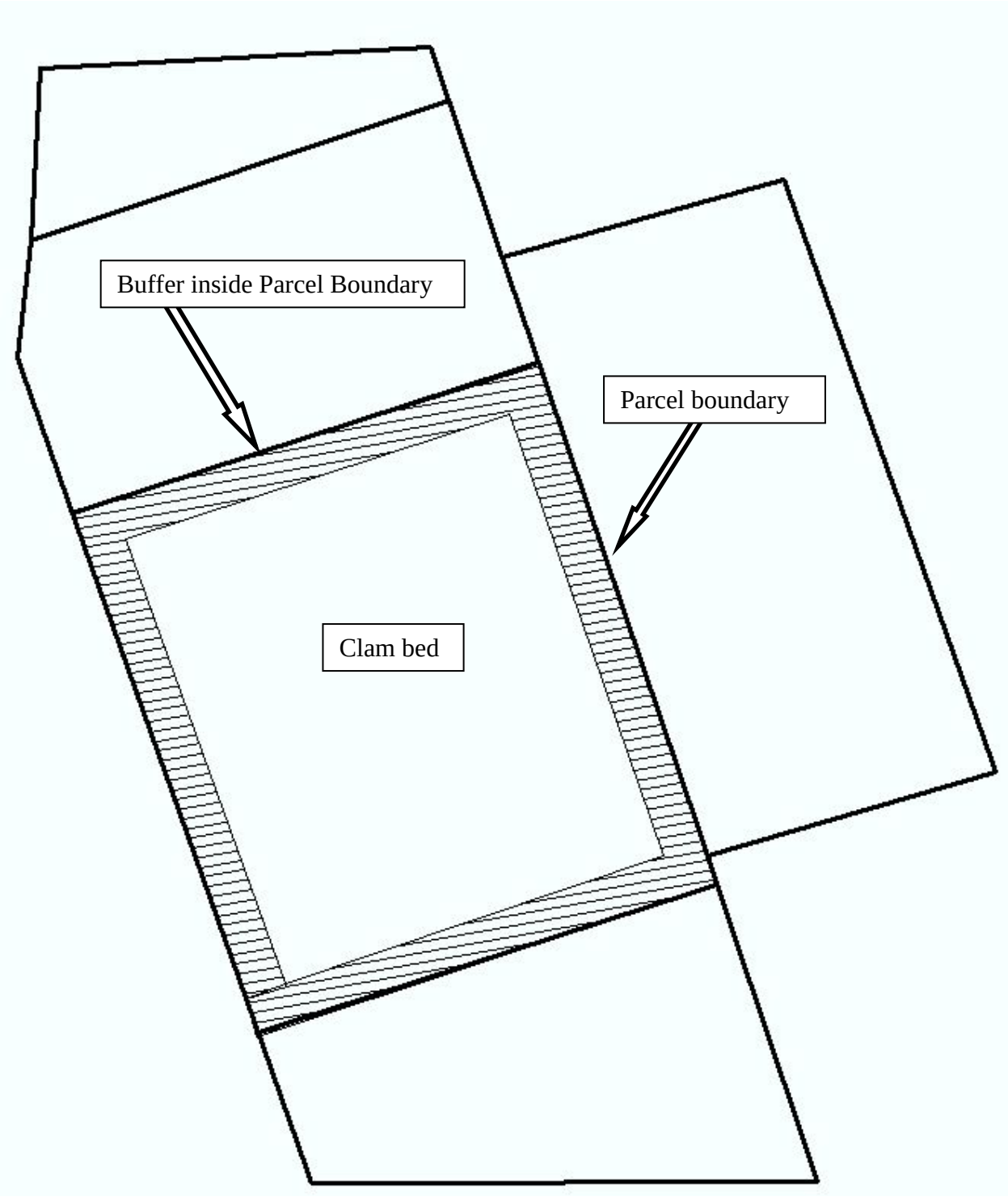

Figure 2: Buffers on Contiguous Clam Beds under same Ownership/Lease or under agreement between sponsors

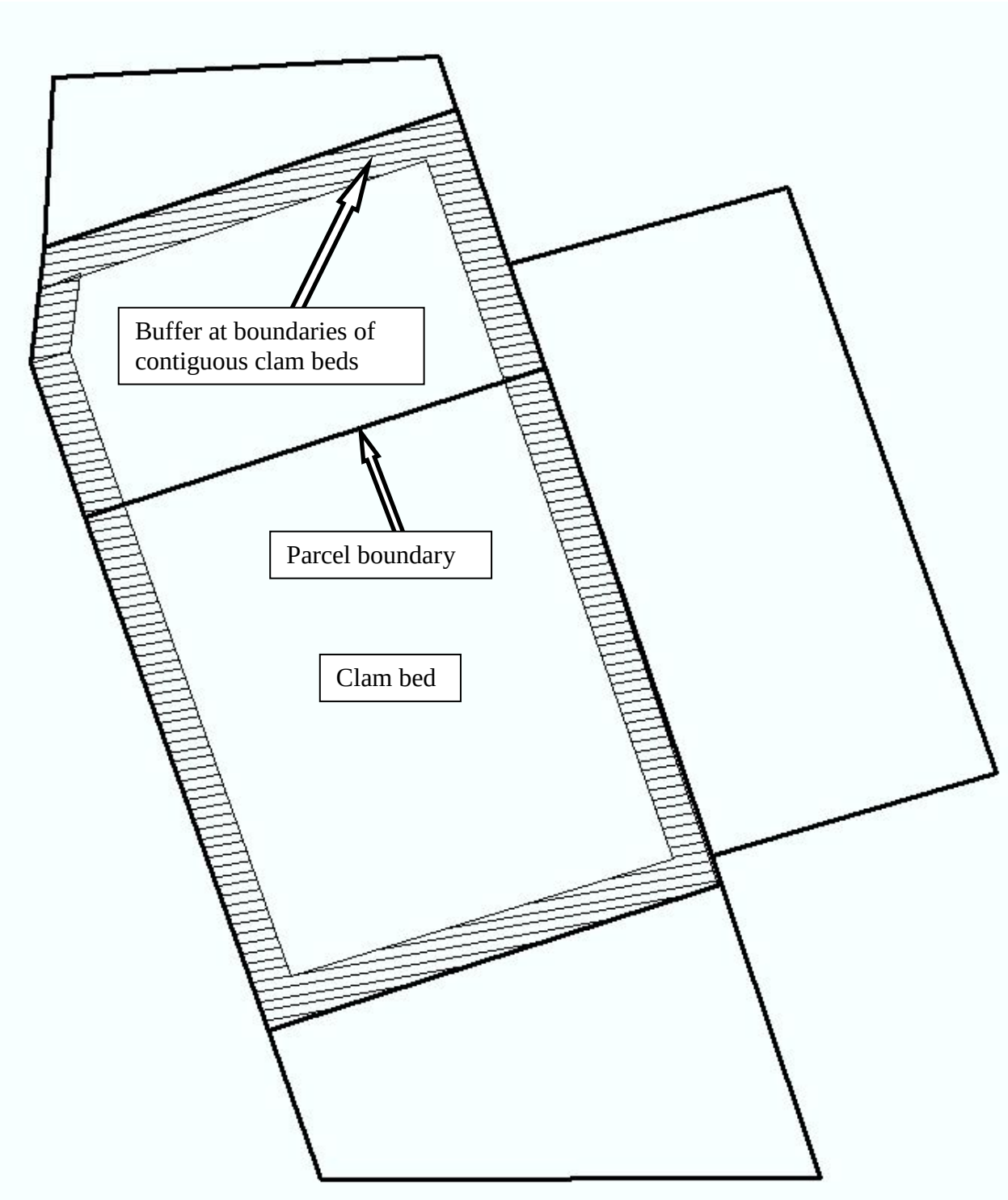
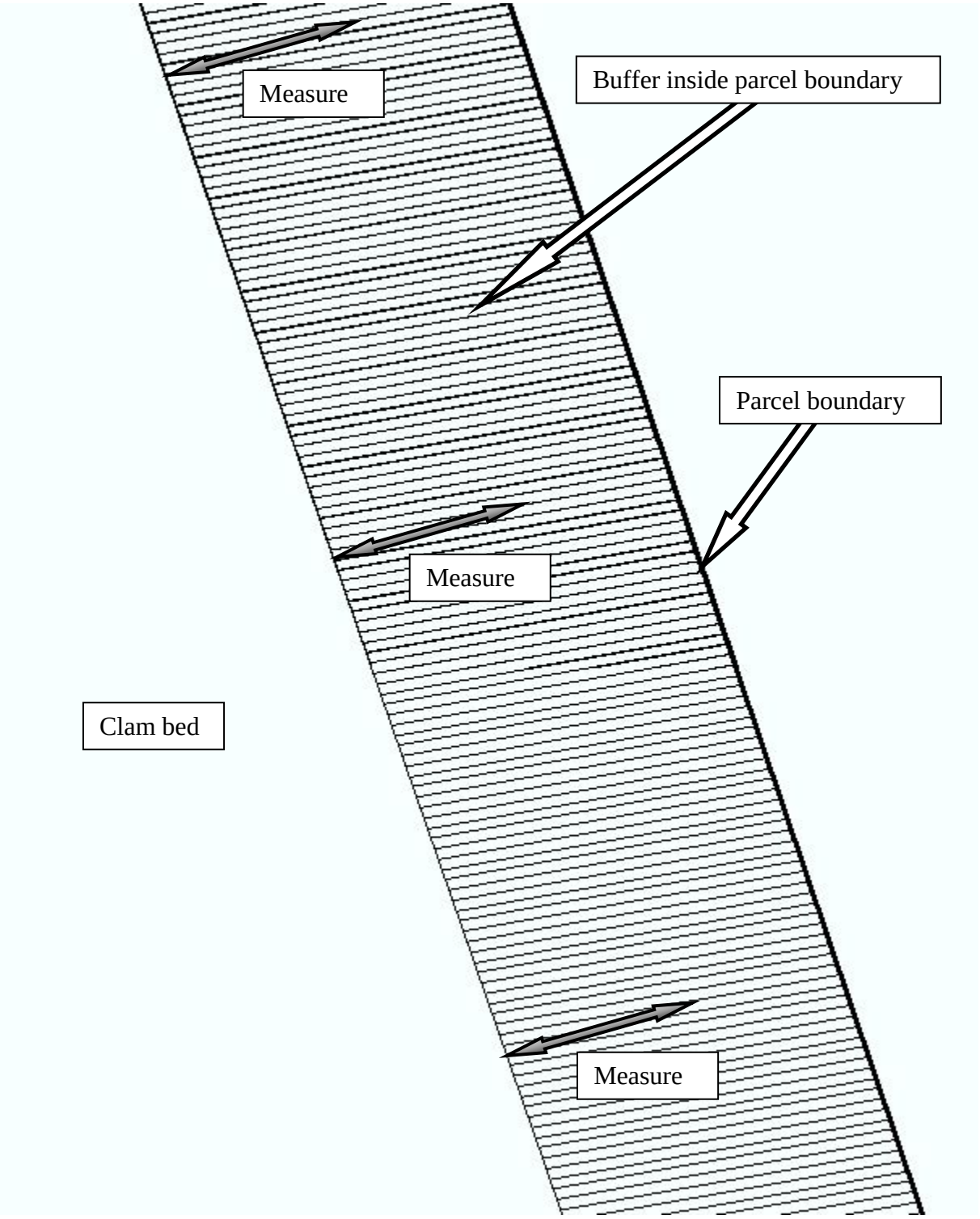
Figure 3: Buffer Location and Monitoring