

DEPARTMENT OF THE ARMY PERMIT

Permittee: Jamestown S'Klallam Tribe

1033 Old Blyn Highway
Sequim, Washington 98382

Permit No: NWS-2007-1213

Issuing Office: Seattle District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To cultivate 34 acres of Pacific oyster (*Crassostrea gigass*) using two on-bottom methods: 1) mesh bag culture and 2) loose culture. Up to 5 acres would be the on-bottom mesh bag culture method and the remaining acreage would be the on-bottom loose culture method. Work would occur within a 50-acre tideland parcel leased from Washington State Department of Natural Resources (DNR) within the Dungeness National Wildlife Refuge. The contiguous 5-acre area for on-bottom bag culture would be located near the northeastern boundary of the lease. Work would occur in accordance with the plans and drawings dated April 9, 2020, attached hereto which are incorporated in and made a part of this permit. The purpose of the project is to install a commercial shellfish aquaculture operation for cultivation of oysters within the Jamestown S'Klallam Tribe's cultural lands and historic shellfish harvesting areas, which include Dungeness and Sequim Bays.

Project Location: In Dungeness Bay, near Sequim, Clallam County, Washington.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on JULY 27, 2031. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your

permit.

7. After a detailed and careful review of all the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

Special Conditions:

- a. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.
- b. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- c. The authorized work shall not interfere with the public's right to free navigation on navigable waters of the U.S.
- d. Permittee shall comply with the conditions specified in the Washington State Department of Ecology Coastal Zone Management Consistency Determination dated February 18, 2021.
- e. You shall provide the Dungeness National Wildlife Refuge management and Washington State Department of Natural Resources a copy of the U.S. Army Corps of Engineers permit transmittal letter, permit form, and permit drawings.
- f. You shall provide a copy of your Department of Natural Resources lease agreement with the Jamestown S'Klallam Tribe to the U.S. Corps of Engineers, Seattle District, Regulatory Branch, prior to work activities starting.
- g. You shall provide a copy of your Washington State Department of Fish and Wildlife shellfish transfer permit specific to this site to prevent the introduction or spread of disease or harmful species such as the invasive European green crabs (*Carcinus maenas*) to other water bodies to the U.S. Corps of Engineers, Seattle District, Regulatory Branch, prior to work activities starting.
- h. You shall implement and abide by the mitigation plan, *Avian Monitoring Plan for Jamestown's Dungeness Bay Oyster Farm*, dated June 9, 2021, and the *Monitoring Plan for Long-Shore Transport of Sediment in Area of Jamestown S'Klallam Tribe's Shellfish Farm in Dungeness Bay*, dated April 23, 2021.
- i. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion with non-discretionary "incidental take" provisions with which you must comply). The Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters (BOs) - the National Marine Fisheries Service (NMFS) and Errata, dated September 2, 2016 and September 30, 2016, respectively (NMFS Reference Number WCR-2014-1502), and the U.S. Fish and Wildlife Service (USFWS), dated August 26, 2016 (USFWS Reference Number 01EWF00-2016-F-0121), contain mandatory terms and conditions to implement the reasonable and prudent measures associated with the specified "incidental take". The authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with

incidental take of the BOs. These terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The USFWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of its BO and with the ESA.

j. In order to meet the requirements of the Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA), you must comply with the conservation measures in the *Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters* (BOs) - the National Marine Fisheries Service (NMFS) and Errata, dated September 2, 2016 and September 30, 2016, respectively (NMFS Reference Number WCR-2014-1502), and the U.S. Fish and Wildlife Service (USFWS), dated August 26, 2016 (USFWS Reference Number 01EWF00-2016-F-0121), as modified below. These conservation measures are included in the enclosed document, Enclosure 1, Conservation Measures for Activities Covered under the Shellfish Activities Programmatic Consultation Biological Opinions. If you cannot comply with these conservation measures, you must, prior to commencing construction, contact the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch for individual ESA/MSA consultation. The USFWS and NMFS are the appropriate authorities to determine compliance with the ESA.

k. The conservation measures in the *Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters* (BOs) - the National Marine Fisheries Service (NMFS) and Errata, dated September 2, 2016 and September 30, 2016, respectively (NMFS Reference Number WCR-2014-1502), and the U.S. Fish and Wildlife Service (USFWS), dated August 26, 2016 (USFWS Reference Number 01EWF00-2016-F-0121), are hereby modified as follows:

1. Due to the location of the proposed project within the vicinity of areas in the Dungeness National Wildlife Refuge (Refuge) closed to access to protect Refuge wildlife and vegetation communities, the following conservation measure from the *Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters* (U.S. Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502) shall not occur within the boundaries of the Refuge: "At least once every three months, beaches in the project vicinity will be patrolled by crews who will retrieve debris (e.g., anti-predator nets, bags, stakes, disks, tubes) that escape from the project area. Within the project vicinity, locations will be identified where debris tends to accumulate due to wave, current, or wind action, and after weather events these locations shall be patrolled by crews who will remove and dispose of shellfish related debris appropriately. A record shall be maintained with the following information and the record will be made available upon request to the Corps, NMFS, and USFWS: date of patrol, location of areas patrolled, description of the type and amount of retrieved debris, other pertinent information."

2. You shall implement the *Jamestown S'Klallam Tribe Gear Monitoring and Retrieval Plan to Satisfy Conservation Measure #22* dated August 28, 2020, within the boundaries of the Dungeness National Wildlife Refuge.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

- Section 10 of the Rivers and Harbor Act of 1899 (33 United States Code (U.S.C.) 403).
- Section 404 of the Clean Water Act (33 U.S.C. 1344).
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of the permit.
- b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 Code of Federal Regulations (CFR), Part 325.7 or enforcement procedures such as those contained in 33 CFR, Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR, Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an

extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

W. Ron Allen

7/27/2021

Chairman Ron Allen

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Alexander L. Bullock

27 July 21

Alexander L. Bullock
Colonel, Corps of Engineers
District Engineer

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE)

(DATE)