



May 17, 2023

Via Email: Luke.Viscusi@masonco.wa.gov

Mr. Luke Viscusi
Mason County
Planning Division of Community Development
615 W Alder St, Bldg 8
Shelton, WA 98584

RE: Response to Public Comments provided to Taylor Shellfish 5/5/2023 regarding application for Development Application #SEP2023-00007 for a floating oyster farm in Oakland Bay.

Dear Mr. Viscusi,

Thank you for the opportunity to review and respond to public comments regarding Taylor Shellfish Oakland Bay Floating Farm #SEP2023-00007. As stated in the JARPA and supporting materials, this project is for the development of a 9.1 acre floating system within a 50 acre boundary for oyster seed and possible grow out to market size oysters for human consumption, on the fully subtidal lands owned by DNR and leased to Taylor Shellfish under Lease# 20-104436.

Shellfish aquaculture in Washington State is subject to numerous regulatory programs and reviews by federal, state, and local authorities. At the state and local level, shoreline permits under the SMA are required for most new farms requiring the installation of gear, and the Washington Shorelines Hearings Board (“SHB”) has considered several appeals of shoreline permits for shellfish aquaculture over the last several years. Those decisions have confirmed shellfish aquaculture is a preferred use that, when appropriately sited and conditioned, has insignificant environmental impacts.¹

At the federal level, shellfish cultivation activities in Washington State have been exhaustively analyzed in a recent programmatic Endangered Species Act/Essential Fish Habitat consultation (“Programmatic Consultation”).² The Programmatic Consultation was conducted between the Seattle District U.S. Army Corps of Engineers, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, and it

¹ E.g., *Marnin v. Mason County*, SHB No. 07-21, Modified Findings of Fact, Conclusions of Law and Order at COL 14 (Feb. 6, 2008); *Taylor Shellfish Farms v. Pierce County*, Findings of Fact, Conclusions of Law, and Order, SHB Nos. 06-039, 07-003, 07-005 (Jan. 23, 2009); *Coalition to Protect Puget Sound Habitat v. Pierce County*, SHB No. 11-019 (July 13, 2012); *Coalition to Protect Puget Sound Habitat v. Thurston County*, SHB No. 13-006c (October 11, 2013); *Coalition to Protect Puget Sound Habitat v. Pierce County*, SHB No. 13-016c (January 22, 2014); and *Coalition to Protect Puget Sound Habitat v. Pierce County*, SHB No. 14-024 (May 15, 2015).

² Programmatic Biological Assessment, Shellfish Activities in Washington State Inland Marine Waters, U.S. Army Corps of Engineers Regulatory Program, October 2015; Programmatic Biological Opinion, National Marine Fisheries Service, September 2016. Programmatic Biological Opinion for Shellfish Activities in Washington State Marine Waters, U.S. Fish and Wildlife Service, August 2016.



was completed in 2016. This consultation carefully analyzed potential impacts of shellfish aquaculture activities throughout Washington State, including on a cumulative basis, to ESA-listed species, designated critical habitat, and essential habitat for over 80 species of fish. The Programmatic Consultation documented that shellfish aquaculture can provide multiple benefits to sensitive species and habitat, including through water quality improvements and provision of structured habitat. It determined shellfish aquaculture activities across the entire state—including floating oyster bag cultivation in South Puget Sound—would result in limited, incidental take and would neither jeopardize the existence of listed species or destroy or adversely modify critical habitat. The Programmatic Consultation identified approximately 30 conservation measures that shellfish farmers could follow to avoid and minimize impacts to listed species, critical habitat, and essential fish habitat.

This proposed Project will full comply with all of the measures from the Programmatic Consultation, including siting activities outside of sand lance and surf smelt spawning locations, monitoring for herring spawn and suspending activities while spawn is present, using appropriate marine-grade cultivation gear, securing gear, and regulatory monitoring farm areas. Moreover, the Project application was supported by a professional habitat management plan that considers site-specific conditions and includes additional conditions to address local circumstances. As such, the Project contains appropriate, effective conditions to avoid and minimize potential impacts to aquatic specific and habitat, and it is expected to provide important benefits including protecting and promoting water quality within Oakland Bay. Accordingly, Taylor Shellfish respectfully requests that the County issue the requested shoreline permit for the farm.

A. Response to Specific Comments

1. Shaun Dinublio, obo Squaxin Island Indian Tribe

- a. Cultural Resources: We appreciate the review of the application by Mr. Dinublio. Taylor complies with all laws surrounding Inadvertent Discovery of Archaeological Resources and Human Burials. Any evidence of resources our remains found during aquaculture activities will require immediate suspension of crew work and notification to appropriate authorities for further investigation.

2. WA Dept of Ecology

- a. Solid Waste Management: There is no solid waste associated with this project. All gear will be monitored for wear and removed for repair or recycling when damaged or at the end of its serviceable life.
- b. Toxics Cleanup: Noted. Any unexpected contamination that is found will be reported to Ecology per the instructions provided.
- c. Water Quality: Noted. No clearing, grading, or construction is proposed.

3. David and Virginia Douglas

- a. Aesthetics: Oakland Bay has a long and rich history of supporting local natural resource industries. The location of the proposed floating bag project was previously occupied by a log boom until the late 1980's. Prior to that, Bayshore was lined with floating houses.



The Mason County SMP recognizes all projects have aesthetic impacts and therefore does not prohibit projects that will result in aesthetic changes. Specific to aquaculture, MCC 17.50.21(b)(1)(J) states: "To the maximum extent practicable, floating aquaculture structures shall not substantially detract from the aesthetic qualities of the surrounding area, provided methods are allowed by federal and state regulations and follow best management practices." Similarly, MCC17.50.120(b)(1)(L) states: "Aquaculture development shall be designed and constructed with best management practices to minimize visual impacts and shall be maintained in a neat and orderly manner. Aquaculture facilities, except navigation aids, shall use colors and materials that blend into the surrounding environment where practicable." As shown in the attached rendering, the Project will have minimal aesthetic impacts and therefore comply with this standard. It will not block any views. The project proposed has been designed for low profile and will be lower on the horizon than existing structures already present, including a mussel farm and Taylor's near bottom containers presently in Chapman's Cove. This proposal's maximum boundary extent is also set over 1,000' away from the nearest home and outside of Chapman's Cove, minimizing visibility. It will utilize gear that has neutral or dark colors, helping it to blend in with the existing environment. And, Taylor Shellfish will comply with best management practice and measures from the Programmatic Consultation requiring farms to be properly maintained and monitored. Property value impacts is not a permit review standard, and regardless, no adverse reductions are documented. Approval of the Project would in no way impact allowable uses or development of the commenter's property and would not result in the taking of private property requiring governmental compensation.

- b. Scale: The boundary of the project is 50 acres. However, the project itself, once fully built-out is 9.1 acres. The larger boundary is necessary to fully contain the system as it moves with the tides. The system will be maintained by a crew of 2-5 people, with a dedicated shift during daylight hours. One boat will be manufactured to mechanize most of the operations, and is therefore not expected to cause disruption to the area. This operation will bring jobs to region, improve economic development for the County, and advances the vision of the Mason County Community Plan.
- c. Recreation and Navigation: The system has been designed with 30' spacing between the double lines for the specific purpose of allowing marine vessel access to pass through for maintenance operations. Taylor is not requesting restricted access through the 9.1 acre worksite. The farm is located away from adjacent shorelines by at least 1,000 feet, and the farm footprint occupies a minor portion of Oakland Bay (9.1 out of 2,127.6 acres within Oakland Bay³). Accordingly, the project is "suitably sized and marked, so as to

³ Oakland Bay acreage information obtained from Washington State Department of Health; this figure does not include Hammersley Inlet.



minimize interference with navigation,” in compliance with the SMP. MCC 17.50.210(b)(1)(K).

- d. Wildlife: This system has been used in other marine environments that experience significantly higher volumes of marine wildlife, with no issues reported of negative interactions or decreased use of the habitat. And, as discussed above, it will effectively avoid and minimize potential negative interactions with wildlife by complying with the Programmatic Consultation and following additional farm-specific conditions.
4. Melissa Kennedy & W. Dave Boynton
 - a. Ecosystem Impacts: Despite the Commentor’s assertions that Oakland Bay is a pristine environment, Oakland Bay has a history of significant water quality impacts due to pollution from mill operations and other industrial uses. Due to the commitment of shellfish growers, the Squaxin Island Tribe and the State, this area has benefited from successful cleanup efforts which have directly contributed to the healthy and productive environment it is today. This project will complement these efforts and further the effort to filter excessive human sourced nutrients added to the bay through production of shellfish.
 - b. Aesthetics: Previously addressed.
 - c. Scale: Previously addressed.
 - d. Wildlife: Previously addressed.
 5. Dr. Andrew Willner
 - a. Navigation: Previously addressed.
 - b. Tribal Interests: Taylor has coordinated directly with the Squaxin Island Tribe with respect to this project and will follow measures to ensure it does not adversely affect the Tribe’s fishing rights.
 - c. Education: Taylor supports efforts to educate the public—and especially children—about the importance of a healthy marine environment and safety in and around the water. Taylor regularly visits schools and supports school curriculum to educate students on water quality and related marine ecosystem issues, and it hosts tours of its farms to individuals of all ages to discuss the important role that shellfish play in protecting water quality and providing nutritious food for local consumers.
 6. Bricklin & Newman, LLP (Counsel for Friends of Oakland Bay)
 - a. SEPA: SEPA only requires threshold determinations to be based on information that is reasonably sufficient to evaluate the environmental impacts of a proposal. WAC 197-11-100(2). The Project is supported by extensive information, including the JARPA, SEPA checklist, the Habitat Management Plan, and the Programmatic Consultation.
 - b. Aesthetics: Previously addressed.
 - c. Scale: Previously addressed.
 - d. Navigation: Previously addressed. Additionally, Taylor Shellfish provided information with respect to, and the County has considered, potential conflicts with other water dependent uses consistent with MCC 17.50.210(a)(13). As discussed above, the Project



occupies a minor portion of Oakland Bay and allows for unimpeded access around all portions of the project site. That installation of the farm would prevent some individuals⁴ from sailing directly over the farm site is not evidence of a significant adverse environmental impact under SEPA. While the lease area is 50 acres, the project itself would only occupy 9.1 acres, inclusive of the areas between the rows of oyster bags (the larger lease area is needed because the Project's gear will move somewhat within the lease area due to currents and waves).

- e. Tribal Interests: Previously addressed.
 - f. Ecological Impacts: Please refer to Confluence Circulation Response Memo dated 5/17/2023.
 - g. Temporary location: Should fish populations increase sufficiently for Tribal fishers to exercise their reserved treaty rights, Taylor Shellfish has designed this system to be disconnected from the anchoring points and either removed completely from the water or in whole or in part, be moved to a nearby intertidal farm currently permitted for on and near bottom gear.
 - h. EIS: Mr. Bricklin's expectation that an EIS would be required for this Project is premised on the mistaken contention that it would significantly impact species and habitat. The Project as proposed and evaluated, will not have the significant impact to recreation and navigation that require an EIS. Nor will it set a precedent for similar actions, as the commenter speculates. There is no evidence of other, similar proposals being considered, and any such proposal would require a project-specific analysis similar to that being undertaken for the current Project.
7. Christin Herinck
- a. Aesthetics: Previously addressed
 - b. Recreation and Navigation: Previously addressed
 - c. Tourism: This claim is not supported. The shellfish industry is Mason County's second largest employer and a major economic driver, bringing family wage jobs and national and international dollars into the region. Tourism to view and learn about local shellfish farms continues to be an ongoing request from local residents and visitors to the area.
 - d. Habitat: Taylor Shellfish will fully comply with the Programmatic Consultation and measures recommended in the Habitat Management Plan, which thoroughly analyze potential impacts to sensitive species and their prey resources.

⁴ The commenter suggests its client organization's members may sail through the farm site. But the commenter fails to specify any specific number of members who sail through the site, and it only identified one boat as previously located in the farm area. More importantly, it failed to identify any unique features of the Project site that would render it a particularly important area for recreational purposes. As such, the commenter's claimed significant recreational impacts are speculative and cannot provide a basis for preparation of an environmental impact statement. WAC 197-11-060(4)(a) (analysis of impacts are to be focused on those that are likely, not merely speculative); WAC 197-11-782 ("probable" impacts are those that are likely to occur, not those that are remote or speculative).



- e. Impacts to Species: Taylor Shellfish participates in multiple efforts to preserve and protect the native Olympia Oyster. Taylor maintains populations on its tidelands in Oakland Bay and other areas throughout south sound. Hatchery managers have worked with restoration advocates on maintaining genetic integrity and broodstock is collected for spawning and then returned. Seed is provided to local nonprofits for these restoration efforts.
 - f. Residential uses: The shorelines of Oakland Bay are a mix of residential, industrial forestland, aquaculture and Port lands (sand and gravel and log storage operations). Aquaculture is a preferred, water dependent use and is currently working with WA DNR on a subtidal lease for the proposed project. Like other resource leases negotiated and managed throughout the State, revenue from the project is used to support state priorities.
 - g. Public Trust Doctrine: Taylor Shellfish does not restrict access to leased tidelands for navigation or recreation. Additionally, Taylor regularly invites the public to visit some of its farms, including holding events on the farm for school children and non-profit charity events to answer questions about aquaculture.
8. Deborah Barnett:
- a. Aesthetics: Previously addressed
 - b. Impacts to Property Values: Previously addressed.
 - c. Growing alternatives: Taylor Shellfish has been growing shellfish in south Puget Sound for several decades, and it hopes continue operations for several more, supporting both the economy and environment of Mason County. Taylor must adjust its operations to meet short and long term expected demand and in consideration of changing environmental and market conditions. Floating culture allows farmers to mechanize operations, allowing a more fixed schedule not dictated by tides. It pulls animals off the ground, where invasive species and sediment changes cause mass mortality. The ability to move the system also allows the crop to be moved, should harmful bacteria or closures occur which can either kill shellfish or have human health concerns if shellfish are consumed.
9. Erin and Pat Pattillo
- a. Process: Mason County has adhered to the public notification process. County code requires neighbors within 300' of a proposed project be notified. This would have limited notifying only the State of Washington and one other tidelands parcel owner. The Project underwent expanded notification reach to all parcels within 1,000' of the property extent, as well as all parcels within Chapmans Cove, and anyone else within the viewshed. The Joint Aquatic Resource Permit Application (JARPA), as well as the County permit process, notifies public agencies of the project for comment. Taylor is currently working with the Army Corps for Section 10 Authorization. WA Dept of Ecology has issued a decision that 401 Certification is not required for this activity. RCW 43.21C.031, cited by the commenter addresses preparation of an environmental impact statement;



an EIS is not required here because the project does not have probable significant adverse environmental impacts.

- b. Aesthetics: Previously addressed.
- c. Setting: Oakland Bay is home to a variety of uses, including industrial. As stated in the shoreline inventory and characterization report prepared for the comprehensive SMP update, “[t]he only major industrial area in the County is located on Oakland Bay in the City of Shelton.”⁵ Additionally, “[a]quaculture is a significant resource and important economic driver in Mason County. . . Large commercial shellfish growers operating in Hammersley Inlet and Oakland Bay are Taylor Shellfish and Arcadia Point Seafood. In addition, many of the shellfish growers are small family businesses dating back generations. According to Assessor’s data, commercial or tribal aquaculture is present on 4 out of 7 reaches in Hammersley Inlet and Oakland Bay. For example, Reach 30 includes the Taylor Shellfish FLUPSY (Floating Upwelling System) facility.”
- d. Scale: Previously addressed.
- e. Ecological impacts: The commenter complains that the Project’s application materials do not include “technical citations of studies,” yet the Habitat Management Plan includes extensive citations to relevant literature. The commenter cites an article for the position that oyster cultivation has certain “potential impacts” but fails to demonstrate that the Project, as proposed and conditioned, would likely result in unacceptable adverse impacts.
- f. Water Circulation: Previously addressed.
- g. Fish Migration: The Commenter’s assertions that the floating bag project is similar in potential impacts to the Hood Canal Floating Bridge project are false. The floating bag project is designed to lay on the surface, extending 9” into the water column. ESA listed Chinook are not present in Oakland Bay (WDFW). The fish eating Southern Resident Killer Whale are also not visitors to Oakland Bay, and then commenter provides no basis to conclude that the Project would adversely impact transient orcas. While steelhead may be found in Oakland Bay, their presence is most likely during migration. Impacts analyzed in the Habitat Management Plan (Confluence 9/2022) were found to be minor to negligible, with possible benefits due to increased prey resource. Contrary to the commenter’s claim that the acreage would displace seabirds, floating culture tends to provide places for seabirds to rest and hunt for prey resources. Impacts to seabirds were found to be no effect or discountable.

10. Kathy Kent-Lanning

- a. Scale: Previously addressed.
- b. Recreation: Previously addressed.
- c. Aesthetics: Previously addressed.

⁵ <https://masoncountywa.gov/community-services/smp-update/2017/inventory-characterization-report-102012.pdf>



11. Laurie Elder

- a. Impacts to Ecosystem: Taylor appreciates the concern regarding water circulation within Chapman's Cove. As the company also cultivates a large crop of high value oysters on its own tidelands within the cove, the priority in designing and developing the system was in not restricting flow and nutrients around it. With the flow through design of the containers, distance between the lines, and use of the top few inches of the water column, this system has not shown to have an impact on the surrounding systems in other areas where it has been installed. In addition, the positioning of the proposed farm is on the north portion of the cove, affording no restriction of the ebb and flow of currents in and out of Chapman's Cove. ***Please refer to Circulation Response memo from Confluence Environmental dated 5/17/2023 for more detail.***

12. Nancy Willner

- a. Recreation and Aesthetics: Previously addressed
- b. Navigation: Previously addressed.
- c. Community Input: Taylor is working through the permitting process for this project, which requires notifying agencies and the public and soliciting comments. Aquaculture is identified as a statewide interest and preferred, water dependent use in both the Washington State and Mason County's Shoreline Management Plans (17.50.210), as well as priority within the Mason County 2036 Community Plan.
- d. Alternative Locations Considered: There are no areas in South Puget Sound that would meet the needs of the proposal yet not also be within the same proximity or closer to neighboring residences. Taylor Shellfish proposed this farm due to its proximity to the existing Shelton floating upwell system (FLUPSY), staffing, and resource availability. Moving to a remote location would not be feasible, as the ability to staff, manage equipment, and mobilize other resources would not be feasible.

13. Peter Wooding

- a. Recreation and Aesthetics: Previously addressed.
- b. Scale: Previously addressed.

14. Roger (Bill) Fierst

- a. Aesthetics: Previously addressed
- b. Navigation: Previously addressed.
- c. Expansion: Taylor is not proposing to expand this operation. Any future proposal would be required to go through a separate permitting process, including additional public comment and review.
- d. Property values and taxation: Previously addressed.

15. Roger and Carrie Wilson

- a. Aesthetics: Previously addressed.
- b. Impacts to species: Previously addressed.
- c. Property value: Previously addressed.

16. William Lanning



- a. Scale: Previously addressed.
 - b. Aesthetics: Previously addressed.
 - c. Property values: Previously addressed.
17. Susan Gonzales
- a. Aesthetics: Previously addressed.
 - b. Property values: Previously addressed.
18. Mark Herinckx
- a. Scale: Previously addressed.
 - b. Tourism: Previously addressed.
 - c. Adherence to State and Local priorities: The Proposal will directly advance the highest use preference for shorelines of statewide significance—recognizing and protecting the statewide interest over local interests. WAC 173-26-241(3)(b)(i)(A). It will also advance multiple additional high-priority preferences, including providing long-term benefits and protecting the resources and ecology of the shoreline. *Id.* It is also sited and designed to avoid and minimize potential impacts to the natural character of the shoreline, public access to publicly owned areas, and recreational interests. And it will advance local use preferences, including promoting and diversifying the local economy.
 - d. Property Rights: Previously addressed
 - e. Public Trust Doctrine: Previously addressed
 - f. Navigation: Previously addressed
 - g. Aesthetics: Previously addressed
19. Lisa Perry, obo Sierra Pacific Industries
- a. Taylor appreciates the comments of support from Ms. Perry regarding the proposed project. We agree that this project compliments efforts to improve water quality. Taylor will continue to work together with Sierra Pacific, DNR and other partners to contribute to the local economy by producing sustainably grown shellfish.

Conclusion

Taylor Shellfish appreciates the input that commenters have provided on the Project. It is normal for members of the public to raise questions and concerns on new, proposed projects in the shoreline environment. Many of the concerns with this Project appear to be based on misconceptions regarding its size and scale, and Taylor is hopeful that these responses will help provide clarity as to the scope of the Project and resolve some of these concerns. Yet Taylor also knows from experience that some concerns may remain unresolved, and there may ultimately be competing visions regarding the appropriate utilization of the Project site. It is in this context that the goals, policies, and use preferences within Shoreline Management Act, implementing regulations, and SMP serve their greatest function. These laws recognize aquaculture as a preferred, water-dependent use that is of statewide interest, can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. RCW 90.58.020; WAC 173-26-241(3)(b)(i)(A); MCC 17.50.210(a)(1). The Project is carefully designed to



avoid and minimize potential impacts to the natural and built environment, and it warrants approval even if some individuals continue to express concerns regarding aesthetic, property value, and other impacts.

I hope these additional details address the concerns listed. Please contact me with any comments or questions at erine@taylorshellfish.com, or (360) 432-3348.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin Ewald". The signature is fluid and cursive, with the first name "Erin" being more prominent than the last name "Ewald".

Erin Ewald
Taylor Shellfish
Shelton, WA 98584