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Transcription is provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.

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>> All right. So my name, again, is Jocelyn Jones. And I'm the hearings officer for this hearing. Today we are here to conduct a hearing on the proposed Zostera japonica management on commercial clam beds in Willapa Bay general permit. Let the record show that it is 2:19 on October 22nd, and this hearing is being held at the Willapa Harbor Community Center on 916 West First Street, South Bend, Washington.

Legal notices of this hearing were published in The Washington Register on September 4th, 2019. And the Washington State Register number for this notice is 19-18-093. In addition, we sent noticed out via email and listserve [ph] to about 1,300 people and the information has been posted on the Ecology website since September. So those who are willing to testify, I've kind of given you a heads up of what order, but I'll keep going over that as we go.

We'll call you in the name that we signed and the order that you signed in. Go ahead leave your name and affiliation. And if you put your address on that sheet, you don't need to go through all that for the record if you don't want to. Speak clearly so we can get a good recording. This will then we transcribed, right. So that John can then actually read what folks wrote. If you have supplemental documents that you'd like to leave with us, feel free to leave those with me as well.

If you have written materials you want to submit as part of the record, go ahead and leave those with me. Then, I do want to remind you now in this moment, you're giving comments for the record. John won't be able to respond. He's going to take some notes, I'm going to take some notes so that we can help fill out that response to comments when it comes time to do that, but know that, you know, we're not being rude. This is part of the deal.

And then if you have questions that you want an answer to today, let's go ahead and take those after I close the hearing, and we'll be around for a while. Okay. So I think with that said, let's go ahead and get started. You're up. Say your name and affiliation for the record if you would.

>> Diantha Wylop [ph]. I'm speaking as a general member of the public.

>> Great. Welcome.

>> I live at 724 East Water Street in South Bend, Washington. And my concerns is strictly on the way that we're treating the environment. That we can dump poisons how often as we'd like and not suffer a consequence. We had round up saying -- they said it was okay to use. We find out now that it is in the environment, and it lasts there. It's a dangerous drug -- dangerous chemical. And I fear that we are not tested the current drug -- current chemical you're talking about.

There should be other ways, I think, to handle this problem of the Zostera japonica. I've seen animals adjust to our [inaudible] brought in. I've seen geese eating grass that isn't made of grass. I realize that people see this Zostera japonica as a plant that is danger out to their commercial interests. However, I do not think enough testing has been done to see if there is native -- some organic way of handling it without putting chemicals into our bay. I don't think this chemical has been tested enough.

I want to know more about how expensive it is, who tested it, how long they tested it for. I'd like to know how much the growers spend to buy this stuff. How much it costs to apply. And does it -- is there a long-term actually effect on people. The bay flushes out, but it doesn't flush out evenly. They've done some water testing that shows that different parts of the bay flush out at different tides. And so to say it's all evenly handles all through the water system of the bay is not true.

I'd like to see more testing done before we okay it, and frankly, I think we should try to make this bay a pristine bay. The fact that we dump chemicals in it means it's not pristine. And I'd like to know

also what this does to the rest of the plants in the area. But just clear cuts the plants, we're definitely not helping the herring spawn. That's my -- there is a lot more questions that I can think but that, but I'm going to finish there.

>> Okay. Excellent. Thank you so much. I really appreciate you coming. Stop that one. So next we have Ross Barkhurst. Welcome.

>> Thank you.

>> Don't forget to state your name for the record, and your affiliation if you care to, and a location where we can send you responses from us.

>> Ross Barkhurst, South Bend, Washington. Member of the public. I will submit written comments. I can't cover all the details this time. I'll try to cover the high lights. Okay. First thing is that it relies heavily on tidal exchange and that's been disproven repeatedly. There is a new study out by Banuswheat [ph] and Ruesink [ph] that shows that it doesn't even work in the high circulation parts of the bay there. Once you get five hundred meters off the channel, you get the same water over and over again for at least five tide cycles.

A big problem, you can't rely on that for dilution. Major problem is they don't look at chem leave affects. That's a requirement. It's a requirement of the Shoreline Management Act. You make the statement in your summary to the people that chem leaves only counts outside commercial clam beds. Well, a federal court case just declared the blanket permit of the Corps of Engineers because it doesn't look at chem leave effects on shellfish beds.

So that should be obvious. I don't think we can ignore that any longer. I've never seen before chinook salmon, Coho salmon, chum salmon, waterfowl forage use days, and herring spawning beds all at historical lows, all at the same time. And you have to know the cause. If you don't look at chem leave affects, you don't have a clue.

I don't want this chemical on my beds. I don't want my eelgrass killed. You don't look at current vectors in the plant. There are current vectors in the plant. You sign off on permits that go into a current vector that's pointed right at the heart of the Neema [ph] flats. Both species of eelgrass are protected and the japonica relies a lot on seeds to propagate. And so in your spray, wide April 15th to June 15th is not equivalent to an established hey field on dry land. It's not equivalent, but that's what your statement is.

If that's okay, then this is okay too. It's not. These beds are establishing. Their rhizomes have been lost, and so more and more of the reproduction is due to seeds. Their reestablishing every year, and they're being hit by more than one part per billion. And even the product label now says, you only use 50 parts -- up to 50 parts per billion on established hey fields. Not on unestablished eelgrass beds.

The tidal exchange is invalid. Herring feed chinook salmon. Chinook salmon feed orcas, we keep planting fish and they don't come back. The state -- WFW does for casts of returns of salmons. They've been doing that for decades. They have quite a bit of experience. They’re for casts are no good anymore. It appears that all the fish aren't surviving to get out the door let alone come back.

If you looked accumulative effects, you would know. You don't look. So it's just not acceptable. In your summary you sent to the public, you didn't mention that the Department of Natural Resources said your buffer validation test failed. It failed, and they said it failed. And it did. The stuff got off-site because it was sprayed into a drainage. The two independent scientists who were supposed to review the impacts of that test, they said we need to come back band look and see how fast that eelgrass regrows.

They were thrown off the site by the property owner which is against the permit. And they brought in Mr. Patton who is been found to have a conflict of interest and violate the state ethics code and he said everything was fine and it grew back. Not a reliable way to go. I could go on, but I think that's sufficient. The rest of it will be in my written comments. Thank you.

>> Wonderful. Thank you so much for your time. I appreciate you coming today. So next we

have Tim Hamilton. Welcome.

>> Welcome. For the record, my name is Tim Hamilton. I'm a resident of McCleary. I'm here today as head of the Twin Harbors Fish and Wild Life Advocacy. My father was born on North River, and I was born across the hill Cosmopolis. Lived in Twin Harbors my whole life. Spent 35, 40 years as a business advocate on a state, federal, and local level. Some of the most highly regulated industries in the world. Local gasoline dealers, okay. I also served on three advisory committees for DOE, two for the Department of Agriculture, and on and on. And today I'm a member of the Willapa WDFW Salmon Advisory Committee.

You guys have got a ridiculous thing going here. I'm sorry, I'm just going to say it as it is. Can you imagine going into DOE in front of Rocket or any of these guys and saying, "oh, we got an application here for someone to build somewhere between five and five hundred and houses, and we don't know how many ease going to build, and we'll leave it to him, and by the way, there will be no compliance inspection or anything else."

This is pure default any way you cut. Now, I can understand the need for the spraying to help, if it does. But you don't go spraying someone else's property, okay. And you can't morally approve that. And that's what you're doing. It does migrate. It does travel. And as long as they're using their property rights, fine. But don't take away someone else's.

And the other thing is we got $14 million on its way in and out of the state treasury to go to rebuilding a hatchery in the south. And, guess what, we can't get the fish out of there properly. Why? Because they rely as juveniles on that bay. And all the studies on the oysters and shellfish show you what the problem is. It's a lack of nutrients in the south end of the bay. So if you continue to do this, use up -- it's called -- in the farming business it's called overgrazing. We're overgrazing the south end of the bay. It is monumentally dedicated as a public resource to shellfishing and commercial interest with crab.

It's not like they don't have enough to get where they want to go. They've got to adapt. Just like I had to when I had to full-serve gasoline station in Central Park. You adapt or you die. It is a way of life. You cannot prop this up. They've got to figure it out. Figure out how to do this in a proper fashion, and by the way, we went through the wreak of the Valdez. And all these Exxon distributors and distributors got the hell kicked out of them because of an adverse public reaction.

They didn't have anything to do with the wreck, but they got did right between the eyes. That's called brand value. Willapa Bay, when I grew up, had a brand value as a pristine bay. I don't believe that's in anybody in county best interest to grant this permit again. We've gone through it before, we'll go through it again. Willapa where they spray the seafood. We can't afford that. Whatever game we're going to go get out of this spray, we're going to lose. We're going to lose.

And I know it's hard for them, but it was hard for us too. It's called you got to adapt. With that in mind, I will end with one thing. This department is not wade of its responsibility to preserve and protect the resources of Willapa Bay. If it can't get the Department of Fish and Wild Life to respond to you, you are stuck. We're not going to go let you out. Saying, well, the department didn't do it, so, therefore, we don't do it because we're in our silo. Days of silo are over in Willapa Bay. We'll come with everything we've got. Thank you.

>> Thank you for your time. All right. Next, we have, make sure I'm following this across, David. David. Excellent. A quick reminder to state your name for the record. And affiliation if you care to. Reset that, reset that. And off you go.

>> Off I go. All right. I'm David Begley with the Willapa Grays Harbor Oyster Growers Association. And first I'd like to mention that I appreciate Ecology holding the meeting. I fully understand how much effort it takes to put all these together and the manpower and the resource dollars.

Zostera japonica continued to be a problem along the west coast. It continues to alter sediment creating anoxic conditions, inhospitable conditions for clams. The permit as written is working well. It can be deemed a success. The changes proposed are pretty well aligned with how the growers are

currently reporting and managing the permit. I would like to add that the fact that 1,800 acres, approximately 1,800 acres that John points out that are covered under the permit, but much less are actually treated demonstrate straights that the program is effective and working well.

And finally, the treatment buffers and monitors are effective, working well, and are providing safeguards for the native Zostera marina. That's all I have. Thank you.

>> Excellent. Thank you so much. Stop that, and next, we have Michael Lornen [ph]. Okay. And after Michael will be Ken. And after Ken will be Lee. Just to warm you guys up. Welcome.

>> I'm Mike Norton [ph] my address is 1013 Deer Gate Street, Raymond, Washington. I've lived here since 1990. I'm the manager of the Pacific and the Grays Harbor Conservation Districts. I'm also the vice-chair the Pacific County Marine Resource Committee and I'm also a member of the Willapa Bay Riot 24 lead entity for sand recovery. I'm also a member of the Washington Coast Sustainable Salmon Partnership.

While it is very appreciated that the permit for the control of the Zostera japonica was approved as a tool for the last five years and that the public may have the opportunity to comment on the renewal, I E new permit. The Grays Harbor and Pacific Conservation Districts are confused and concerned. First, we do not feel it was necessary or required to put the permit through this scrutiny for renewal. The permit, minus some insignificant changes have not changed enough to warrant this process. Second, the district is concerned that this is an attempt to cancel the permit mainly by outside forces of the agencies.

Both districts are in favor of the renewal of the permit. However, the districts find it necessary to point out that the permit does not do enough to protect the health of the two large estuaries on Washington state's coastline from this invasive. We have attached the letter submitted to Washington state noxious weed control board in 2012. In recap, it's still is not understood why for the first time, and only time, a designation or permit is issued solely on production type such as commercial clam beds and not commercial oyster beds. This should be remedied by allowing treatments on both types of operations.

As a reminder, California has an all-out war against this species. Japonica has transformed thousands of acres of highly aerobic tideland into more anaerobic muck that actually provides habitat for other instructive invasive species. The claim that fish or waterfowl eat japonica is not factual. Waterfowl will be in our area throughout time and survived fine without any japonica. Even if they did need, japonica, there are tens of thousands of acres of it with only an average of about 200 acres per year being controlled.

While fish don't need it at all, they have been -- there have been some cases where fish are found stands at low tide because they become lost or tangled in it as the tide lowers. It also holds water on tidelands at low tide. And in summer this water turns into a high-temperature putrid soup, clearly damaging the species trying to survive where japonica has invaded their habitat.

Another critical issue is that japonica out-competes our native eelgrass and is slowly pushing it out deeper to areas in the bay. Please keep vigilant. Please reissue the permit for the control of Zostera japonica. Thank you. And I will leave --

>> Wonderful. Thank you. And who did I say was next.

>> Ken.

>> Ken. All right. There we go.

>> My name is Ken Weichert [ph]. My address is 2603 U Street, Ocean Park, Washington, and I am a commercial clam farmer as well as a commercial oyster farmer. I'm here to urge DOE to reissue the permit. It has proven to be an invaluable tool in my IPM toolbox as far as japonica is concerned. I have used the permit every year for the past five years. And by doing so, it is has allowed me to maintain my ground using mechanical methods. Without this permit, mechanical methods would be useless. You wouldn't be able to keep up with the spread of the grass.

I believe DOE was very conservative in their writing of the permit. They obviously had an eye towards being cautious. The ten-meter buffer zone is more than adequate. As shown on one of your slides up there, when you treat ground it is a line as straight as the edge of this table as far as where the ground has been treated or the ground hasn't. If I'm out there treating and. I miss a strip as wide as an inch, you can come back in 30 days and that japonica will still be there.

Another thing, imazamox is federally registered for use of up to 32 ounces for acre. This permit allows the use of 12 ounces per acre. As I mentioned, very conservatively written. With that said, I ask that you do reissue the permit. It has been invaluable. Thank you.

>> Wonderful. Thanks for coming today. Okay. Stopping that one. Next, we have Lee. Lee First. Wonderful. Thank you so much.

>> You bet.

>> And now I reset. There we go.

>> My name is Lee First and the new Twin Harbors Water Keeper for Willapa Bay, and Grays Harbor and the Chehalis River, and I live Cosmopolis. I'm very concerned that this permit was issued with no changes. And especially that the fact sheet for the permit had no assessment of permit compliance. I've looked at a lot of these fact sheets, and there is always an assessment of past compliance. And I think that's only fair to the public to have that done.

For the past permit cycle, did Ecology receive a review, a discharge management plan for each of the permit holders? Did Ecology confirm that the agency thresholds for spraying japonica were listed -- that were listed were met? Was the spray period of April 15th to June 30th complied with? Did ecology confirm that no chemical was applied to Zostera marina? Was the ten-foot buffer adhered to? Were the photos useful and did they show evidence of compliance? Did all of the permit holders file the pretreatment plans an annual reports?

In this next permit, please require that the discharge management plans be available for public review. Please specify what spray equipment is allowed to perform the spraying, and what equipment is not allowed. The permit states to not apply imazamox into any drainage that contains marina and is moving water off the treatment site. Who will determine this and how?

With regard to the tidal regimes, where is only one hour of dry time required as a condition of application? Please consider increasing the amount of try time required after application. With regard to the application dates, please shorten the application windows so that the application is allowed between late April and early June. Not the end of June. I noticed in the article written by Kim Patton that he recommends that the most effective time to apply the chemical is late April to early June, not late June.

With regard to the permit buffers. It's difficult to be confident that there are enough conditions in this section. Please consider requiring the use of food-grade dye to mark the buffer areas. And or the use of temporary flagging to mark the boundaries. How else will applicators know where the application limits are? With regard to the monitoring requirements. In order to understand whether the buffer requirements are protective of adjacent vegetation, please require exact requirements such as vegetation plots in the buffer.

If vegetation plots are taken in the buffer, we might be able to see whether vegetation that was not intended to be killed is indeed being killed. Please require vegetation plots to measure for both species what plants are killed, both species, at least 250 feet in the buffer one week after the herbicide was applied and for the results of these vegetation plotted to be a required component of the annual report. Thank you.

>> Thank you. Appreciate you coming today.

>> You're welcome.

>> All right. Next up, it looks like we are down to Dick Sheldon.

>> My name is Dick Sheldon. I operate now as Willapa Resources. Dealing with environmental

issues in Willapa and the preservation of the bay. Previously, my wife and I had taken over her father's oyster operation, Northern Oyster Company which is now being run by our son and daughter-in-law out of Nahcotta. It started in 1932.

I have spent over 70 years on the bay. I've watched the changes, and in the last ten years, 20 years, I guess maybe even locker than that including Spartina, I've watched the bay slowly be taken over by things that are changing its historic uses. The animals that are able to use it and survive in it and prosper in it. I've seen a general degradation.

And this goes back, I put my first foot opt oyster beds in 1939. So I've been there for a while. I hear testimony against the use of a chemical, and I think their honest people. I'm not too hot on chemicals, but there is a time and place that these things they can't be substituted. We have a situation where the shrimp. We had a situation with the spartina.

I was one of the first ones to bring this to the attention of the state. It took them several years to get going. A lot of foot-dragging. People in this room fought the irradiation of spartina like they're against this. And it costs about three times as much to get rid of it. It went from -- when we first started to take a look at it at probably 25 acres, make a 100 it went to 20,000, and a chemical was the only thing that did the job. The state approach to it was weed eaters with kits. Maybe do ten kids and ten weed eaters do an acre a day. By the time we got through, it was 20,000.

And it's the only time this thing has ever been whipped. And we had to do it with a chemical. That's too bad, but that's the way it is. The situation with this -- with japonica was brought over with the oyster seed there I'm assuming. In the 30s. It stays along the shoreline forever until about 20 years ago. And it really took a foothold.

Now, if you go out on the oyster beds where there was nothing but sand and a natural system that's been in this bay for the last 10,000 years, now you're seeing a situation where you have a four-inch gasket sitting over the old beds over the sand by the time is the summer is over. It's basically a monoculture. Nothing can go through it. Nothing using it to any extent. All it is is an exotic grass.

I think it's a big mistake, personally for the state not to acknowledge what that grass is actually going to go do to the Puget Sound and a lot of the rest the places. Other states have outlawed it. Down in California, you can't have it there. They've understood this thing ahead of time. It's a bad weed.

Now, I've heard some people question whether this should cause a problem for prey species, for the herring spawn, this stuff really comes off in the late summer and started to disappear. The plants are gone by the next following spring. And it starts all over again. I guess you call that an annual. I don't know. But anyway, the roots are still there.

The spawning period for Willapa herring is in the mid-winter. December and January, up in February. And there is no set place that the herring spawn. They can spawn at Nahcotta dock, they can spawn at stack bowl, they could go over to North River. There is no such designated thing. But one thing this stuff does, if forms a gasket which makes impossible for sand lance which is one of the major prey species for salmon in Willapa. Impossible. They can't penetrate it. And I've seen baby salmon, I'm talking about in the springtime when their molting on top of this stuff. They get trapped in it.

I've seen not a lot of them, but one or two or three in the time that I'm walking over these beds. I think the DOE should start looking at Willapa in a holistic way. The idea that you got a piecemeal this stuff and what not is going to allow something to get ahead one way or another and just basically take it out of the ecosystem. It almost happened with the spartina. If we hand stopped spartina in Willapa with a chemical, we'd have lost pretty much of the flyway. All the way through Canada and inside passage. That's where the seed transport coming out of Willapa with the thousands, and thousands of wrap that was breaking off in Willapa.

>> That's time.

>> But anyway. I'll just, I'll finish it. I think you should have holistic approach for DOE. Willapa regulation to address protection of Willapa historic ecosystem. These exotics and imbalance are killing

Willapa's capacity so sustain a historic population. Birds, fish, crab, shellfish, and people.

>> Thank you. Okay. Folks that take care of everybody who signed in and said that they wanted to testify. I want to make sure I give an opportunity to anyone who might have changed their minds. Something you heard. Something you thought of. Anyone? Going once, going twice, sold. No one else. Okay. So I have some more to read in the record.

Help everybody understand what comes next. So let me find that sheet of paper. And where did I put that sheet of paper? There we go. Okay. So a reminder. Anybody who wishes to submit comments still have until November 4th, at 11:59 p.m. to submit comments either online, and I'm going to read this address because I need to for the record. It's on, we can make sure you get it, you don't have to write it down. But it's HTTP://WS.ecology.commentinput.com/?IG=GAE9X. Helpful, I know.

If you'd like to mail those comments into John, you can mail them to Department of Ecology's Water Quality program. That's P O box 47696 Olympia, Washington 98504-7696. And that's attention, Jonathan Jennings. So all testimony received at this hearing along with written comments received no later than November 4th will be part of the official record for this proposal. We will send notice about the response to comments to anybody who provided their address, who signed up for the listserve, or who stopped us after and makes sure we have your contact information, right. So just let us know you're contact information, and we'll make sure you get the response to comments.

So the response to comments among other things will contain the agency's responses to questions an issues that were submitted during the online comment period or during the comment period. If you -- oh, and again, I've said that already. Sign up for the listserve if you want to be notified. This is the last of the two public hearings. The same presentation was given at both hearings. Once the public comment period is over, the next step is to review the comments and make a determination on whether or not to go forward with the issuance of the general permit. Our program manager, Heather Bartlett [ph], from the water quality program will consider the documentation, staff recommendations, and then we'll make a determination on whether to issue or not. Which currently issuance is currently scheduled for early 2020. If the proposed general permit is issued at that time, it would go into effect 30 days later.

Okay. I think I have covered all of my pages. Does anyone have anything else or any questions about what I've just read into the record? Any concerns? Yeah.

>> [inaudible].

>> So I'm going to go have us hold this one since it's specific to the permit until after -- if you want a response from Ecology today, anyway.

>> Okay.

>> We have to do that. If you want to come up and give note -- and provide testimony and ask that, we'll respond to that officially. Which do you prefer?

>> [inaudible].

>> Okay. I just want to make sure that we keep them square. Okay. So if there is nothing else, and no one has any questions I'm going to go let the record show that it is 2:55 on October 22nd and this hearing is officially closed. Thank so much, everybody, for coming. And again, questions, Ecology folks are scattered all over the place, we'll be here for a while putting everything away. Thank you so much for coming.