



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 19, 2021

Nisqually Indian Tribe
Attn: Richard Iyall
4820 She-Nah-Num Dr. SE
Olympia, WA 98513

RE: Water Quality Certification Order No. **19780** for Corps Reference No. **200701391**,
Nisqually Tribe Shellfish Farm, Thurston County, Washington

Dear Richard Iyall:

On February 19, 2021, the Nisqually Indian Tribe submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Nisqually Tribe Shellfish Farm located on tidelands within Henderson Inlet, near Olympia, Thurston County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (JARPA) and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions about this decision, please contact Teresa Pucylowski by e-mail at teressa.pucylowski@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Enclosure

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e-cc: Benjamin Sherman, Corps of Engineers
Laura Hendricks, Coalition to Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Loree' Randall, Ecology
Teresa Pucylowski, Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 138662

IN THE MATTER OF GRANTING A) ORDER No. 19780
WATER QUALITY) Corps Reference No. 200701391
CERTIFICATION TO) Nisqually Tribe Shellfish Farm located on
Nisqually Indian Tribe) tidelands within Henderson Inlet, near Olympia,
pursuant to 33 U.S.C. 1341 (FWPCA) Thurston County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)
and Chapter 173-201A WAC)

Nisqually Indian Tribe
Attn: Richard Iyall
4820 She-Nah-Num Dr. SE
Olympia, WA 98513

On February 19, 2021, the Nisqually Indian Tribe submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Nisqually Tribe Shellfish Farm, Thurston County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on February 23, 2021.

This project proposes to continue to cultivate Manila clams, Pacific oysters and Olympia oysters on a total of 122 acres on private tidelands located between the 0.0ft and the +10ft Mean Lower Low Water (MLLW) mark. No rooted vegetation or benthic organisms are removed from the site, and there have been no documented forage fish spawning areas. A 0.3 acre storage area would be used to place and remove grow bags and tide-tumble equipment for pickup by the oyster barge during high tides.

Manila clams will be cultivated over a 9.2-acre project area. The growing beds for manila clams would be covered with gravel every year to prepare for new plantings. Graveling would include using 5 cubic yards of washed pea gravel to a depth of less than 1 inch over the project area. The manila clams would then be planted into the substrate by hand. The clams would be covered with predator exclusion nets, secured in place using metal stakes. Nets would be installed until it is time to harvest the clams by hand using a clam fork. Nets will be removed and disposed of after harvesting. The cultivation cycle for manila clams is between 3 to 5 years.

Approximately 95.3 acres of bags of oyster cultch seed will be placed in cultch areas, and then oyster seed will be spread by hand. Oysters will be harvested by hand and placed in shellfish tubs that will be picked up by an oyster barge and brought to shore. The oyster cultivation cycle for this method is between 3 to 5 years. Approximately 10.6 acres of oysters will be grown in tide-tumbled bags. Oyster seed is placed into these bags and hung with a rope suspended from PVC tubes. Buoys are attached to the bags to allow for quicker development of the oysters. When oysters reach marketable size, bags are removed by hand and oysters are sold or placed in cultch areas. Bags are reused or disposed in an approved location. The oyster cultivation cycle for this method is between 12 to 18 months. Oysters are also grown as singles on the beach over a 1.3 acre area and are harvested by hand after about 4 years.

The project site is located on tidelands within Henderson Inlet, on parcel numbers 93009800000, 93009700000, 93007900000, 09360001000, and 75400000900, adjacent to 5420 S Bay Terrace Dr. NE, near Olympia, Thurston County, Washington; Sections 29 and 20, Township 19 North, Range 1 West; WRIA 13, Deschutes Watershed.

With this Order, Ecology is granting the Nisqually Indian Tribe's request for a Section 401 Water Quality Certification for the Nisqually Tribe Shellfish Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 19, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated March 15, 2021, regarding the project's compliance with the conservation measures associated with 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). This email also includes a description of the Nisqually Indian Tribe's water quality monitoring plan, and the Nisqually Indian Tribe's commitment to follow the 2019 Puget Sound Shellfish Growers Association Environmental Codes of Practice for Shellfish Aquaculture.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, the Nisqually Indian Tribe must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize the Nisqually Indian Tribe to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited¹. If such work, conditions, or discharges occur, immediately notify² Ecology's Regional Spill Response Office at 360-407-6300 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems. You will also need to notify the Washington Emergency Management Division³ at 1-800-258-5990, for actual spills to water only. This condition is necessary to prevent

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, this WQC is granted to the Nisqually Indian Tribe, Nisqually Tribe Shellfish Farm project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues an individual Department of the Army (DA) permit for this project. Order No. **19780** will remain valid for the duration of the associated DA permit. The Nisqually Indian Tribe should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Teressa Pucylowski
Department of Ecology
PO Box 4760
Olympia, WA 98504-7600
teressa.pucylowski@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

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SIGNATURE



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program
Department of Ecology

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Date