



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

April 5, 2021

Northern Oyster Company, Inc.
Attn: Brian Sheldon
PO Box 1039
Ocean Park, WA 98640

RE: Water Quality Certification Order No. **19777** for Corps Reference No. **202000745**,
Reauthorization for Northern Oyster Company, Pacific County, Washington

Dear Brian Sheldon:

On February 19, 2021, Northern Oyster Company, Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Reauthorization for Northern Oyster Company located on tidelands within Willapa Bay, near Ocean Park, Pacific 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 Marco Pinchot by e-mail at marco.pinchot@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

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

Enclosure

Northern Oyster Company, Inc.
Order No. 19777, Corps No. 202000745
April 5, 2021
Page 2

e-cc: Mary Romero, Corps of Engineers
Chris Cziesla, Confluence Environmental Company
Laura Hendricks, Coalition to Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
Loree' Randall, Ecology
Marco Pinchot, Ecology
ecyrefedpermits@ecy.wa.gov – Aquatics No. 140004

IN THE MATTER OF GRANTING A)	ORDER No. 19777
WATER QUALITY)	Corps Reference No. 202000745
CERTIFICATION TO)	Reauthorization for Northern Oyster Company
Northern Oyster Company, Inc.)	located on tidelands within Willapa Bay, near
pursuant to 33 U.S.C. 1341 (FWPCA)	Ocean Park, Pacific County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

Northern Oyster Company, Inc.
 Attn: Brian Sheldon
 PO Box 1039
 Ocean Park, WA 98640

On February 19, 2021, Northern Oyster Company, Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Reauthorization for Northern Oyster Company, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on February 26, 2021.

This project proposes to continue ongoing operations on 1,536-acre shellfish aquaculture operation made up of multiple farm areas. Farming by Northern Oyster Company has had on-going operations for approximately 100 years within intertidal and subtidal locations throughout Willapa Bay. The farms are predominantly located on private tidelands in Pacific County; two state-owned tidelands leased from Washington Department of Natural Resources are also farmed. Within a calendar year, approximately 900 acres of Pacific oysters (*Crassostrea gigas*) and Kumamoto oysters (*Crassostrea sikamea*) are cultivated and approximately 750 acres of Manila clams (*Venerupis philippinarum*) are cultivated. Other general Washington state commercial species may be cultivated as allowed by RCW 15.85.020, including mussels, cockles, or other species used as either a primary or secondary (natural set) crop. Some portions of the shellfish aquaculture operation may lie fallow at any time as part of normal crop rotation.

No permanent construction is proposed. On-going farm activities for the Willapa Bay shellfish aquaculture operation over the last 100 years have included many culture methods. The primary cultivation method is bottom culture for both clams and oysters. Off-bottom culture methods including longlines, bags, racks, floats, and other necessary methods to meet market needs and specific area cultivation characteristics have been implemented, as necessary. Beach preparation, culture methods, and harvest activities follow methods described in the Programmatic Consultation for Shellfish Activities in Washington State Inland Marine Waters (Corps 2015).

Shellfish may be held and cultivated on property leased from the Port of Peninsula (portion of parcel 12112723042; JARPA Sheet 4) at a facility permitted by Northern Oyster Company under permit NWS2009-462. Shellfish may be cultivated, or stored in floats seasonally anchored on various farm properties. Floats may be secured at general Port of Peninsula leased moorage locations within the Port (parcel 79005000180; JARPA Sheet 4). Floats are constructed of metal-wood-flotation and are approximately 40' X 10' in size.

Other primary and secondary commercial shellfish species may be naturally present and/or cultivated, and then harvested using standard industry methods. Methods may include stakes for mussel collection; bottom culture cockles, softshell clams, horse clam; baskets secured to the bottom, etc.

Project is located on 51 different parcels and 2 DNR lease areas, all located within Willapa Bay.

The project site is located on tidelands within Willapa Bay, on parcel numbers 79005000073, 79005000148, 79001000291, 79005000002, 79001000234, 79005000109, 79005000115, 79005000199, 79005000090, 79005000133, 79005000132, 79005000104, 79005000082, 79005000103, 79005000130, 79005000113, 79005001176, 79005000215, 79005001011, 79005000005, 79005000176, 79005000005, 12110355053, 79005000069, 79003000045, 79003000052, 79003000045, 79003000045, 79003000104, 79003000045, 79003000060, 79003000168, 79003001088, 79005000180, 12112723042, 79005000180, 79003000125, 79003000073, 79003000098, 79004000094, 79004000099, 11110355045, 11110355394, 79004000090, 12112255530, 12112255620, 79005000194, 12112755618, 11111555375, 13113755153, 12113455476 and DNR leases 20-077332 and 20-A10013 near Ocean Park, Pacific County, Washington; Section 3, 4, 15, 16, 21, 22, 25, 27, 29, 34, 38, Township 11N, 12N, 13N, Range 10W, 11W; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Northern Oyster Company, Inc.'s request for a Section 401 Water Quality Certification for the Reauthorization for Northern Oyster Company project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on January 19, 2021 and the following supporting documentation:

1. E-mail letter to Ecology dated February 19, 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 Northern Oyster Company, Inc. water quality monitoring plan.

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, Northern Oyster Company, Inc. 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 Northern Oyster Company, Inc. 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 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 Northern Oyster Company, Inc., Reauthorization for Northern Oyster Company 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. **19777** will remain valid for the duration of the associated DA permit. Northern Oyster Company, Inc. 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.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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:

Marco Pinchot
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
marco.pinchot@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>

SIGNATURE



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

April 5, 2021
Date