



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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April 22, 2021

Calm Cove Oyster Company, LLC
ATTN: Duane Fagergren
483 SE Fagergren Road
Shelton, WA 98594

RE: Water Quality Certification Order No. 19960 for Corps Reference No. NWS-2007-1188,
Shellfish Farming in Big Cove, Totten Inlet, near Shelton, Mason County, Washington

Dear Duane Fagergren:

On February 11, 2021, Calm Cove Oyster Company, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Shellfish Farming in Big Cove, Totten Inlet Project located on tidelands within Big Cove on the west side of Totten Inlet, near Shelton, Mason 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 Lori Kingsbury at (360) 407-6926 or by e-mail at Lori.kingsbury@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 "Perry J Lund", is written over a blue circular stamp.

Perry J Lund, Section Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

Enclosure

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ec: Kristin Hafer, Corps of Engineers
Christine Jacek, Corps of Engineers
Loree' Randall, Ecology
Lori Kingsbury, Ecology
Rebecca Rothwell, Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 139119

IN THE MATTER OF GRANTING A) ORDER No. 19960
WATER QUALITY) Corps Reference No. NWS-2007-1188-AQ
CERTIFICATION TO) Shellfish Farming in Big Cove located on
Calm Cove Oyster Company LLC) tidelands within Totten Inlet of Puget Sound,
pursuant to 33 U.S.C. 1341 (FWPCA) near Shelton, Mason County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)
and Chapter 173-201A WAC)

Calm Cove Oyster Company LLC
Attn: Duane Fagergren
483 SE Fagergren Road
Shelton, WA 98584

On February 11, 2021, Calm Cove Oyster Company, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Shellfish Farming in Big Cove, Totten Inlet Project, Mason County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on March 10, 2021.

This project proposes to continue inter-tidal farming of Pacific and Olympia oysters and manila clams on approximately 2.0 acres of intertidal area between the -4.0 ft. MLLW up to +5.5 ft MLLW.

Site preparation to grow Pacific Oysters involves removing a fine layer of mud with a chain-link "drag" pulled behind a small skiff, prior to planting Pacific oyster seed. About every three years, 7/8" washed gravel is spread in a fine layer (less than one-inch deep) to firm the beach surface. Pacific oyster seed grows in standard 20-inch by 36-inch grow bags that are clipped to longlines from mid-August until the next late winter. Longlines are secured in two rows parallel to the shoreline at about the +2.0 ft. MLLW elevation, using rebar staples at approx. 20 ft. intervals along the length. These oyster seed bags are shaken and flipped at least twice monthly to prevent seed from growing together. In the early spring, seed is removed and spread on the beach at approximately the - 1.0 ft. to+ 1.5 ft. MLLW elevation. Bags and longlines are then removed from the beach and cleaned and stacked until the next year's crop is purchased.

Olympia Oysters are raised from half-inch seed to market size in standard grow bags which are placed on short, low racks in units of five bags per rack. Racks are constructed of half-inch galvanized rebar on top, and six-inch diameter PVC 'runners' under the racks, which support the rack and bags, and allow each unit to be portable. The portable racks can be moved easily to deeper water so exposure of oysters to extreme weather can be minimized.

Clams are farmed on upper beach, from approximately the + 5.5 ft. to + 3 ft. MLLW elevation; Seed clams are grown under predator-protection nets for about two to three years until they reach market size. Seed is spread on the beach during the incoming tide, in shallow water, through the mesh of standard size predator-protection nets. Nets remain in place for one to two years and are removed to facilitate clam harvest and typically remain off the beach area for a year after harvest before the ground is re-seeded.

When market ready, clams and oysters are hand-harvested from tidelands into plastic bushel baskets and stored temporarily in a "harvest frame" anchored on the low intertidal land of the project area. Product is washed in seawater by agitation back and forth in the perforated baskets. Market-ready product in the harvest frame can be held for up to two weeks in the winter and one week in the spring/summer.

The project site is located on tidelands within Totten Inlet, on parcel number 31914-30-80850, adjacent to 481 SE Fagergren Road, near Shelton, Mason County, Washington; Section 14, Township 19 North, Range 3 West; WRIA 14, Kennedy-Goldsborough Watershed.

With this Order, Ecology is granting Calm Cove Oyster Co. LLC's request for a Section 401 Water Quality Certification for the Shellfish Farming in Big Cove, Totten Inlet project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 11, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated March 7, 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 Calm Cove Oyster Company LLC's water quality monitoring plan, and Calm Cove Oyster Company LLC's commitment to follow the 2019 Puget Sound Shellfish Growers Association Environmental Codes of Practice for Shellfish Aquaculture.
2. E-mail Letter to Ecology dated March 17, 2021 regarding the change to method of frosting to be consistent with the practices authorized in the Biological Opinions.

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, Calm Cove Oyster Company LLC 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 Calm Cove Oyster Company LLC 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.

Special Condition:

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 Calm Cove Oyster Company LLC's, Shellfish Farming in Big Cove, Totten Inlet 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. **19960** will remain valid for the duration of the associated DA permit. Calm Cove Oyster Company LLC 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:

Lori Kingsbury
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-47775
Lori.kingsbury@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



Perry J Lund, Section Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office
Department of Ecology

April 22, 2021
Date