STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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May 27, 2021

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

RE: Water Quality Certification Order No. **20089** for Corps Reference No. **200701469**, Northern Oyster Co. Bay Center, Pacific County, Washington

Dear Brian Sheldon:

On May 10, 2021, Northern Oyster Company, Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Northern Oyster Co. Bay Center located on tidelands within Willapa Bay, near Bay Center, 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,

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

Enclosure

e-cc: Mary Romero, Corps of Engineers (Corps)
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. 140547
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Northern Oyster Company, Inc. pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))	**ORDER No. 20089** **Corps Reference No. 200701469** Northern Oyster Co. Bay Center located on tidelands within Willapa Bay, near Bay Center, Pacific County, Washington

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

On May 10, 2021, Northern Oyster Company, Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Northern Oyster Co. Bay Center, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice on February 26, 2021 that covered this project.

This project proposes to continue an ongoing commercial shellfish farming operation that may cultivate up to 71.9 acres of on bottom and suspended cultivation of Pacific oysters (Crassostrea gigas) and Manila clam (Venerupis philippinarum), the following species may also be cultivated on oyster beds as a secondary crop: Horse Clams (Tresus nuttallii and Tresus capax), Cockles (Cerastoderma edule), Butter Clams (Saxidomus), Little Neck Clams (Protothaca staminea), Eastern Softshell Clams (Mya arenaria), Mussels (Mytilus edulis), or even Manila Clams (Venerupis philippinarum). On a Manila Clam bed secondary crops may include Eastern Softshell Clams (Mya arenaria), Oyster seed, Cockles (Cerastoderma edule), or Mussels (Mytilus edulis) in Willapa Bay between the -6.0’ to +5.0 Mean Lower Low Water (MLLW) tidal elevations.

Oyster farming activities:

- Bottom culture: Oysters within an area of up to approximately 15 acres at any one time are grown directly on the beach substrate. Prior to planting, shellfish beds may be prepared by removing debris either by hand or mechanically by dragging a chain or net bag. Seeding occurs primarily from the deck of a barge. For bottom culture harvest, mechanical harvest bags are lowered from a barge or boat by boom crane or hydraulic winch at high tide and pulled along the bottom to scoop up the oysters. Workers may also hand-pick oysters at low tide. Crop cycle ranges between 3 year and 6 years.

- Rack and bag culture: Oysters may be grown in bags or on wire strings supported by a rack to keep them off the bottom in an area of up to 2 acres. Plastic mesh bags are approximately 3’ x 2’ x 6” and are filled with juvenile shellfish to protect them from predators and allow them to grow to harvest size. Seed may be planted directly on the beds to “Beach Harden” them prior to harvest. Racks may extend up to 16” above the substrate, and are metal or wood and anchored to the bottom with metal legs, or poles

pushed into the substrate. Bags are secured to the racks using heavy clips. The rows of bags will range from 50' to 100' long. There are approximately 40 bags per row, with rows spaced 6' apart, and 15' between groups of 4 rows. If oysters are placed on the ground to "Beach Harden", they are then hand harvested into baskets and later retrieved by a boat after the tide comes in. Harvest cycle for this type of crop is approximately 1 to 2 years. The operation is checked regularly during low tides to ensure that the bags remain secure, and to remove fouling organisms.

- Suspended culture: Within a 10-acre area, 150' long suspended Culture rows may be placed in groups of 25 rows with a spacing of 6' between groups of rows. Groups of 25 rows are placed at least 50 feet apart. The Lines are anchored at the ends using either metal rebar staples, or a small flat piece of plastic driven into the substrate. Lines are supported off the bottom between the anchors using 1.25" PVC pipe pushed into the ground and extending 1' to 4' above the ground. Oysters may be grown directly on the shells woven into the lines, or in mesh Vexar bags suspended from the lines using zip ties and/or clips. Lines are made of ¼" high-tensile rope. Bags are approximately 3' x 2' in size with a float attached to rotate the bag as the tide rises. 10" diameter SEPA type bags approximately 3' long may also hang on the lines. The area is visited regularly to monitor the crop and gear for security. Harvest of suspended bags is done by removing the bags as the shellfish mature into a harvestable condition. For suspended culture of oysters woven into the lines, harvest occurs either at low tide by hand, or at high tide using a barge. Harvest cycle is normally between 1 to 2 years. Harvest may occur during low or high tide.

- Seed Cultivation Oyster seed is cultivated either through natural set or remote set methods. For natural seeding, shells are placed on the seed bed during a natural larva recruitment event over an average of 5 acres each 3 to 6 years and are set upon by larva during the event. Live oysters from remote set may also be placed directly on the bed for grow out.

Clam farming activities:

- Frosting methods: Clams are grown as a direct bottom culture crop in a 24.5-acre area. Clam beds are prepared by applying a thin 1" layer of washed gravel mixed with shell fragments directly to the substrate over an approximate 5-acre area in any one year. This activity occurs after a crop is harvested normally every 3 to 6 years when the tide is high enough to float a barge carrying the frosting material.

- Culture methods: Clams are seeded by hand directly onto the frosted beach substrate. Natural spawning and setting of clams also occur at some locations on the farm. After seeding, ¼" mesh predator exclusion nets may be used to cover the clam bed, with edges

anchored using rebar or buried in the substrate. Nets may be up to 10' x 50' in size but may also be rolls of 4' x 100' mesh. Nets remain in place until harvest. Nets are regularly monitored to assure they remain in place and are in good condition. Damaged nets are removed and replaced as needed during the crop cycle.

- Harvest methods: Clams are normally harvested by hand, but mechanical harvesting may occur using equipment that excavates the substrate to a depth of about 4-6 inches to extract the clams.

The project site is located on tidelands within Willapa Bay, on parcel numbers 79001000291 and 79001000234 near Bay Center, Pacific County, Washington; 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 Northern Oyster Co. Bay Center project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on May 10, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated May 10, 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 01EWFW00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502). This email also includes a description of Northern Oyster Company, Inc.'s water quality monitoring plan and Northern Oyster Company, Inc.'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, 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.

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 prohibited[1]. If such work, conditions, or discharges occur, immediately notify[2] 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 Division[3] 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., Northern Oyster Co. Bay Center.

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. **20089** 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 **Pollution Control Hearings Board** 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

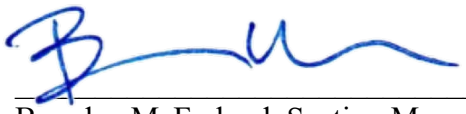
Marco Pinchot
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
marco.pinchot@ecy.wa.gov

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



May 27, 2021
Date

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