



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300
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June 10, 2021

The Honorable Ron Allen
Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, WA 98382

RE: First Amendment to 401 Water Quality Certification Order No. **19591** for U.S. Army Corps of Engineers Reference No. NWS-2007-1213, Jamestown S'Klallam Tribe
Dungeness Bay Oyster Farm, Dungeness Spit, Sequim, Clallam County, Washington

Dear Chairperson Allen:

Enclosed is the First Amendment to Water Quality Certification Order No. 19591 issued on February 4, 2021, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 19591 remain in effect.

The purpose of this amendment is to change the timeframe duration of the 401 Water Quality Certification to be in alignment with duration of the associated Corps of Engineers' authorization.

If you have any questions, please contact Lori Kingsbury at (360) 407-6926 or by e-mail at Lori.kingsbury@ecy.wa.gov. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Perry J Lund", written over a circular stamp.

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

ec: Pam Sanguinetti, Corps of Engineers
Elizabeth Tobin, Jamestown S'Klallam Tribe
Hansi Hals, Jamestown S'Klallam Tribe
Jennifer Brown-Scott, USFWS
Linda Storm, EPA
Amy Jensen, EPA
Sean Carlson, WADNR
Loree' Randall, Ecology
Lori Kingsbury, Ecology
Rick Mraz, ECY, Ecology
Rebecca Rothwell, Ecology
ECYREFEDPERMITS@ecy.wa.gov

cc: Susan Chamberlin
Fisse Davis

IN THE MATTER OF GRANTING) ORDER No. 19591
A WATER QUALITY) First Amendment
CERTIFICATION TO) Corps Reference No. 2007-1213
Jamestown S’Klallam Tribe)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

Jamestown S’Klallam Tribe
Attention: Honorable Ron Allen
1033 Old Blyn Highway
Sequim, WA 98382

On February 4, 2021, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification (WQC) to the Jamestown S’Klallam Tribe for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on May 19, 2021, to amend the duration of the 401 WQC to allow a longer timeframe.

Order No. 19591, dated February 4, 2021 is hereby amended as follows:

- The following condition which reads:

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a permit for this project. Order No. 19591 will remain in effect for a period of five (5) years from the date of issuance of the Corps Permit

Is replaced with:

This Certification is not effective until the U.S. Army Corps of Engineers (Corps) Seattle District issues a permit for this project. Order No. 19591 will remain valid for the duration of the associated Corps Department of the Army (DA) permit. The Jamestown S’Klallam Tribe should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

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 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:

Lori Kingsbury
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
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>

SIGNATURE



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

June 10, 2021
Date

This document shows the activities and conditions that have been amended since the original Order was issued. Therefore it is not the official Certification and should be used only for informational purposes.

First Amendment changes are reflected in RED.

IN THE MATTER OF GRANTING A)	ORDER No. 19591
WATER QUALITY)	Corps Reference No. NWS-2007-1213
CERTIFICATION TO)	Dungeness Bay Oyster Farm within Dungeness
Jamestown S’Klallam Tribe)	Bay, near Sequim, Clallam County, Washington
pursuant to 33 U.S.C. 1341 (FWPCA)	
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

Jamestown S’Klallam Tribe
Attention: Honorable Ron Allen
1033 Old Blyn Highway
Sequim, WA 98382

On April 10, 2020, the Jamestown S’Klallam Tribe submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Dungeness Bay Oyster Farm, Clallam County, Washington. The U.S. Army Corps of Engineers (Corps) issued a joint public notice erratum on April 30, 2020.

The proposed work is to cultivate 34 acres of Pacific oysters using two on-bottom methods: mesh bag culture and loose culture. Up to five (5) acres will use on-bottom bag culture, and the remaining acreage will use on-bottom loose culture methods. The contiguous 5-acre area for on-bottom bag culture would be located near the northeastern boundary of a 50-acre lease parcel, in proximity to the boat access sites.

On-bottom bag culture will grow oysters in 2 ft. x 3 ft. x 3 in. mesh bags. The bags are secured to a line, and the line is anchored to the substrate using 3 ft. x 3 in. screw anchors or metal posts. Oysters typically grow out for approximately 14-15 months in the bags, and are then spread out onto the beach after reaching a larger size.

The loose beach method entails spreading the oysters directly onto the substrate. Harvest is done by hand by collecting and placing the oysters into oyster harvest bags. The bags are then lifted onto a marine vessel. Loose culture cultivation would occur between the +3-foot and -2-foot tidal elevations (MLLW).

Work is proposed to avoid native eelgrass by establishing a minimum 25-foot buffer setback for all cultivation activities. Access to the project site would be by vessel. There are two boat access areas that have been located to avoid eelgrass; all work from vessels would occur within the leased area.

The project site is located within Dungeness Bay on tidelands along the Dungeness Spit, near Sequim, Clallam County, Washington; NE Quarter, Section 23; Township 31 North; Range 4 West; WRIA 18, Elwha-Dungeness Watershed.

This document shows the activities and conditions that have been amended since the original Order was issued. Therefore it is not the official Certification and should be used only for informational purposes.

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With this Order, Ecology is granting the Jamestown S’Klallam Tribe’s request for a Section 401 Water Quality Certification for the Dungeness Bay Oyster Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request Ecology received on April 10, 2020, and the following supporting documentation contained in an e-mail letter from the Jamestown S’Klallam Tribe to Ecology dated January 26, 2021:

1. Regarding water quality monitoring, and
2. Compliance with the programmatic consultation for shellfish farming activities in Washington State inland marine waters between the Seattle District Corps of Engineers and the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, including all applicable limits on discharges and survey and/or monitoring requirements:
 - a. Programmatic Biological Assessment, Shellfish Activities in Washington State Inland Marine Waters, U.S. Army Corps of Engineers Regulatory Program, October 2015;
 - b. Programmatic Biological Opinion, National Marine Fisheries Service, September 2016. Programmatic Biological Opinion for Shellfish Activities in Washington State Marine Waters, U.S. Fish and Wildlife Service, August 2016.

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 Jamestown S’Klallam 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 Jamestown S’Klallam 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 Jamestown S’Klallam Tribe 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 prohibited. If such work, conditions, or discharges occur, immediately notify 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 at 1-800-258-5990, for actual spills to water only.

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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 Jamestown S’Klallam Tribe Dungeness Bay Oyster Farm project.

~~This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a permit for this project. Order No. 19591 will remain in effect for a period of five (5) years from the date of issuance of the Corps Permit.~~

This Certification is not effective until the U.S. Army Corps of Engineers (Corps) Seattle District issues a permit for this project. Order No. 19591 will remain valid for the duration of the associated Corps Department of the Army (DA) permit. The Jamestown S’Klallam Tribe should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

Not Official Document