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*

June 30, 2021

Pacific Shellfish, Nahcotta LLC
Attn: Tim Morris
1200 Robert Bush Drive
South Bend, WA 98586

RE: Water Quality Certification Order No**. 20134** for Corps Reference No. **202000832**, Nemah, Pacific County, Washington

Dear Tim Morris:

On April 30, 2021, Pacific Shellfish, Nahcotta LLC. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Nemah 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,

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

Enclosure

e-cc: Colin Greenan, Corps of Engineers
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. 140063
Aquaculture-Reinforcement-Team@usace.army.mil

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|---|---|---|
| **IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO** Pacific Shellfish, Nahcotta LLC pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC | ) ) ) ) ) ) ) | **ORDER No. 20134** **Corps Reference No. 202000832** Nemah located on tidelands within Willapa Bay, near Ocean Park, Pacific County, Washington |

Pacific Shellfish, Nahcotta LLC
Attn: Tim Morris
1200 Robert Bush Drive
South Bend, WA 98586

On April 30, 2021, Pacific Shellfish, Nahcotta LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Nemah, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on May 5, 2021.

This project proposes to continue existing operations on 676.43 acres between +5.0 foot (ft.) and -1.0 ft. Mean Lower Low Water (MLLW) tidal elevations. The company is currently growing Pacific Oyster (Crassostrea gigas) in one (1) way. Access to tidelands is by boat from nearest public boat launch.

(1) Oysters Natural Catch: Oysters are grown on the ground using standard industry practices. The cleaned oyster shell is placed on an oyster bed by boat at high tide before the spawning season and are harvested at high tide by boat or at low tide into tubs which are pulled at high tide by boat.

Bed Prep: Oysters are harvested or transplanted from the bed using harvest methods outlined below. Onsite inspections by farm management will be performed prior for any bed cleanup prior to planting.

Planting: The oysters shell is placed on an area by boat or scow at high tide prior to spawning season.

Maintenance: Beds are inspected by the farm managers for the substrate conditions that are most often influenced by sediment deposition or burrowing shrimp densities. No maintenance is performed.

Harvest: Oysters are harvested by hand at low tide or using mechanical harvest method (not hydraulic harvester). The crop cycle is 2-3 years depending on site specific conditions. Harvest will occur year-round.

The project site is located on tidelands within Willapa Bay, on parcel numbers 79003001039, 79003000099, 79003000020, 79003000031, 79006000019, 79006000022, 79006000036,

79006000056, 79006000065, 79006000049, 79006000030, 79003000062, 79003000076, 79003000063, 79003000131, 79003000126, and 79003000080, near Ocean Park, Pacific County, Washington; Section 5, 8, 9, 16, 17, 20, 21, 22, 28, 29, 30 and 31, Township 12 North, Range 10 West; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Pacific Shellfish, Nahcotta LLC's request for a Section 401 Water Quality Certification for the Nemah project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on April 30, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated March 30, 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 Pacific Shellfish, Nahcotta LLC water quality monitoring plan, and Pacific Shellfish, Nahcotta LLC 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, Pacific Shellfish, Nahcotta 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 Pacific Shellfish, Nahcotta 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 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

[1] RCW 90.48
[2] WAC 173-303-145

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 Pacific Shellfish, Nahcotta LLC, Nemah 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. **20134** will remain valid for the duration of the associated DA permit. Pacific Shellfish, Nahcotta 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.

[3] RCW 90.56.280

## ADDRESS AND LOCATION INFORMATION

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

## CONTACT INFORMATION

Please direct all questions about this Order to:

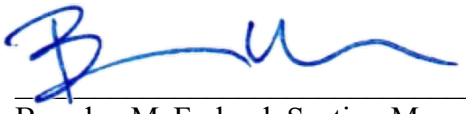
Marco Pinchot
Department of Ecology
PO Box 47600,
Olympia, WA 98504-7600
marco.pinchot@ecy.wa.gov

## 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



June 30, 2021
Date

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