



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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October 6, 2021

Lytle Seafoods
Attn: Scott Lytle
1 Rockview Lane
Hoquiam, WA 98550

RE: Water Quality Certification Order No. **20712** for Corps Reference No. **200901434**,
DNR 6.21 Lease 20-089907, Grays Harbor County, Washington

Dear Scott Lytle:

On December 18, 2020, Lytle Seafoods submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the DNR 6.21 Lease 20-089907 located on tidelands within Grays Harbor, near Ocosta, Grays Harbor 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 Teresa Pucylowski by e-mail at teressa.pucylowski@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

DNR 6.21 Lease 20-089907
Order No. 20712, Corps No. 200901434
October 6, 2021
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e-cc: Thomas Sentner, Corps of Engineers (Corps)
Loree' Randall, Ecology
Teresa Pucylowski, Ecology
Aquaculture-Reinforcement-Team@usace.army.mil
ecyrefedpermits@ecy.wa.gov – Aquatics No. 139439

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|--------------------------------------|---|--|
| IN THE MATTER OF GRANTING A |) | ORDER No. 20712 |
| WATER QUALITY |) | Corps Reference No. 200901434 |
| CERTIFICATION TO |) | DNR 6.21 Lease 20-089907 located on tidelands |
| Lytle Seafoods |) | within Grays Harbor, near Ocosta, Grays Harbor |
| pursuant to 33 U.S.C. 1341 (FWPCA |) | County, Washington |
| § 401), RCW 90.48.120, RCW 90.48.260 |) | |
| and Chapter 173-201A WAC |) | |

Lytle Seafoods
Attn: Scott Lytle
1 Rockview Lane
Hoquiam, WA 98550

On December 18, 2020, Lytle Seafoods submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the DNR 6.21 Lease 20-089907, Grays Harbor County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on August 19, 2021.

This project will continue to commercially cultivate up to 6.21-acres of on-bottom Pacific oysters on state-owned tidelands from -1.0 feet to +0.5 feet Mean Lower Low Water (MLLW) tidal elevations. The proposed project is located 2150 feet waterward from the approximate Mean High Water (MHW) shoreline and extends a maximum of 2600 feet waterward of the approximate MHW shoreline. No permanent corner markers will be used. Access to the site will be by boat from the upland vessel staging area near Ocosta. No kelp is present on site. Eelgrass is present in patches and continuous beds. Coverage ranges from bare to sparse to dense.

The planting, maintenance and cultivation of on-bottom Pacific Oysters will include the following: on-bottom oysters will be evenly scattered onto the substrate at high tide from the deck of an oyster scow. After the oysters are planted they will require very little maintenance, but will be regularly surveyed by the farm manager to ensure survival following extreme weather events. The grow-out period of the oysters is 2-3 years. Harvest takes place during daylight tide hours over a period of 4-8 weeks. Oysters are harvested by hand at low tide into tubs by crews of 7-10 people. Tubs are then retrieved by dredge at high tide the same day. The duration of low tide harvest is up to 4 hours. To complete harvest on high tide is an additional 2-3 hours.

Dredge harvest of oysters takes place on a periodic basis of about every 3 years. Annual dredge acres do not exceed 2.3 acres. Dredging occurs on high-mid tide and is done by skimming the surface of the substrate to minimize turbidity. Dredge harvest lasts approximately 4 hours at a time and occurs intermittently for harvest of mature oysters.

The project site is located on tidelands within Grays Harbor, on DNR Lease #20-089907 near Ocosta, Grays Harbor County, Washington; Section 9, Township 14 North, Range 11 West; WRIA 22, Lower Chehalis Watershed.

With this Order, Ecology is granting Lytle Seafoods' request for a Section 401 Water Quality Certification for the DNR 6.21 Lease 20-089907 project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on December 18, 2020, and the following supporting documentation:

1. E-mail letter to Ecology dated August 17, 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 01EWW00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502). This email also includes a description of Lytle Seafoods' water quality monitoring plan, and Lytle Seafoods' commitment to follow the 2019 Puget Sound Shellfish Growers Association Environmental Codes of Practice for Shellfish Aquaculture and the Willapa Grays Harbor Oyster Growers Association Best Management Practices. Finally, the letter included a detailed description of farming operations.
2. E-mail letter to Ecology dated August 17, 2021, confirming the transfer of ownership of this project from FMO Aquaculture to Lytle Seafoods in March 2021.
3. E-mail letter to Ecology dated August 17, 2021, verifying that no changes were made to the scope or nature of activities described in the December 18, 2020 401 WQC submitted by FMO Aquaculture, and that all activities are consistent with previous authorizations.

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, Lytle Seafoods 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 Lytle Seafoods 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

¹ RCW 90.48

² WAC 173-303-145

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 Lytle Seafoods, DNR 6.21 Lease 20-089907 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. **20712** will remain valid for the duration of the associated DA permit. Lytle Seafoods 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 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:

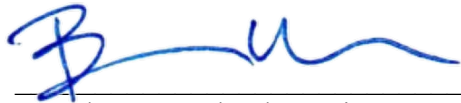
Teressa Pucylowski
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
teressa.pucylowski@ecy.wa.gov

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

October 6, 2021
Date