



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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October 19, 2021

Long Island Oyster Company  
Attn: James L. Kemmer  
PO Box 1054  
Long Beach, WA 98631

RE: Water Quality Certification Order No. **20479** for Corps Reference No. **200901351**,  
Long Island Oyster Co. DNR Lease 20-013018, Pacific County, Washington

Dear James L. Kemmer:

On July 15, 2021, Long Island Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Long Island Oyster DNR Lease 20-013018 located on tidelands within Willapa Bay, near Nemah, 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, by

Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

Long Island Oyster Co. DNR Lease 20-013018  
Order No. 20479 Corps No. 200901351  
Aquatics No. 139306  
October 19, 2021  
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## Enclosure

e-cc: Aquaculture-Reinforcement-Team@usace.army.mil  
Joseph Rivera, Corps of Engineers (Corps)  
Kristen Hafer, Corps of Engineers (Corps)  
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

**IN THE MATTER OF GRANTING A ) ORDER No. 20479**  
**WATER QUALITY ) Corps Reference No. 200901351**  
**CERTIFICATION TO ) Long Island Oyster Co. DNR Lease 20-013018**  
Long Island Oyster Company ) located on tidelands within Willapa Bay, near  
pursuant to 33 U.S.C. 1341 (FWPCA ) Nemah, Pacific County, Washington  
§ 401), RCW 90.48.120, RCW 90.48.260 )  
and Chapter 173-201A WAC )

Long Island Oyster Company  
Attn: James L. Kemmer  
PO Box 1054  
Long Beach, WA 98631

On July 15, 2021 Long Island Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Long Island Oyster Co. DNR Lease 20-013018, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on July 20, 2021.

This project proposes to continue an existing shellfish aquaculture farm on tidelands in Pacific County, WA. The project area includes the shellfish growing areas within DNR Lease No. 20-013018, described as those tidal elevations between +2.0-foot above and -3.0-feet below Mean Lower Low Water. This parcel comprises 44.0 acres, with 44.0 acres of shellfish cultivation. Long Island Oyster Company proposes to continue their production of Pacific oyster (*Crassostrea gigas*) and Manila clam (*Venerupis philippinarum*). Additionally, secondary crops from natural set occur across cultivated areas of the Project area.

## **Pacific Oyster Culture**

### **On-Bottom culture methods**

Oysters (Pacific oysters) are grown directly on the beach substrate. Prior to planting, shellfish beds will be prepared by removing debris by hand. Seeding will occur by using oyster cultch – setting out and securing bags of washed, aged oyster shell to collect natural set on-site. This site will also be seeded with hatchery oyster seed.

### **Harvest methods (mechanical and hand)**

Harvest is typically by hand during low tide. During hand harvest, workers use hand tools or hand-pick oysters and place them into various sized containers placed on the bed. Larger containers may be equipped with ropes and buoys that can be lifted with a boom crane onto the deck of a barge at high tide. Smaller containers are placed or dumped on decks of scows for retrieval at high tide or are carried off the beach at low tide. Mechanical (dredge) harvest occurs by use of a harvest bag that is lowered from a barge or boat by boom crane or hydraulic winch at high tide and pulled along the bottom to scoop up or 'dredge' the oysters. The dredge bags have a

leading edge (blade) consisting of a steel frame with teeth and a steel mesh collection bag attached to the frame. As the dredge bags are towed across the substrate, the oysters are loosened and guided into the bags. The bag is then hoisted onto the boat deck, emptied, and then redeployed. Two dredge bags may be towed simultaneously off each side of the boat. Dredge equipment can typically be adjusted so that the correct depth is dredged as tide levels change. Harrowing may occur between the two successive dredge events in order to increase recovery of oysters.

## **Manila Clam Culture**

### **On-Bottom culture methods**

Hatchery-grown clams are seeded by hand directly onto the beach substrate. Natural spawning and setting of clams will also occur.

### **Harvest methods (hand harvest)**

Hand harvesters dig clams during low tides using a clam rake. Shovels or other hand operated tools may also be used. Market-size clams are selectively harvested, placed in buckets, bagged, tagged, and removed. Undersized clams are returned to beds for future harvests. Since a given clam bed may contain multiple year classes of clams, it may be harvested on a regular schedule to harvest individual year classes of clams.

The project site is located on tidelands within Willapa Bay on DNR Lease 20-13018, near Nemah, Pacific County, Washington; Section 9, Township 12 North, Range 10 West; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Long Island Oyster Company's request for a Section 401 Water Quality Certification for the Long Island Oyster Co. DNR Lease 20-013018 project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on July 15, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated July 15, 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 Long Island Oyster Company water quality monitoring plan.

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, Long Island Oyster Company 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 Long Island Oyster Company 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<sup>1</sup>. If such work, conditions, or discharges occur, immediately notify<sup>2</sup> 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<sup>3</sup> 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 Long Island Oyster Company, Long Island Oyster Co. DNR Lease 20-013018 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. **20479** will remain valid for the duration of the associated DA permit. Long Island Oyster Company should send a copy of the final DA permit to [fednotification@ecy.wa.gov](mailto: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:

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<sup>1</sup> RCW 90.48

<sup>2</sup> WAC 173-303-145

<sup>3</sup> RCW 90.56.280

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

Brenden McFarland, Section Manager, by



Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program  
Department of Ecology

October 19, 2021  
Date