



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 15, 2022

R&B Oyster Inc.
Attn: Josh E. Moreno
PO Box 309
Bay Center, WA 98527

Re: Water Quality Certification Order No. **21072** for Corps Reference No. **202000941**, R&B Oyster Consolidated, Pacific County, Washington

Dear Josh Moreno:

On February 9, 2022, R&B Oyster Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the R&B Oyster Consolidated 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

R&B Oyster Consolidated
Order No. 21072, Corps No. 202000941
Aquatics No. 140488
March 15, 2022
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E-cc: Rory Lee, U.S. Army Corps of Engineers (Corps)
Loree' Randall, Ecology
Marco Pinchot, Ecology
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A) **ORDER No. 21072**
WATER QUALITY CERTIFICATION TO) **Corps Reference No. 202000941**
R&B Oyster Inc.) R&B Oyster Consolidated located on
Pursuant to 33 U.S.C. 1341) tidelands within Willapa Bay, near
(FWPCA § 401), RCW 90.48.120, RCW) Bay Center, Pacific County,
90.48.260 and Chapter 173-201A WAC) Washington

R&B Oyster Inc.
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PO Box 309
Bay Center, WA 98527

On February 9, 2022, R&B Oyster Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the R&B Oyster Consolidated, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on February 17, 2022.

This project proposes to continue to cultivate 376.45 acres of previously permitted commercial on-bottom cultivation of Pacific oysters (*Crassostrea gigas*) on tidelands in Willapa Bay. Harvest will occur between 0.0 Mean Lower Low Water (MLLW) and +3.0 MLLW tidal elevations on a 2-4 year rotation. Natural set manila clams (*Venerupis philippinarum*) may be harvested by hand at low tide as a secondary crop. No gravel frosting will occur.

Pacific oysters are cultivated utilizing traditional on-bottom methods. All oyster seed is obtained either from hatcheries or from natural sets. Cultch will be set with hatchery produced larvae on washed and aged shell in upland setting tanks. On-bottom oyster seed is spread manually by shoveling from a boat onto the beds at high tide. A harrow may be used for bed prep and cleanup. On bottom oysters may be transplanted several times during the growing cycle.

Mature oysters will be harvested by either manual methods or mechanical dredge. Oysters harvested by manual methods would be hand-picked and collected into baskets at low tide, and then picked up by boat during high tide for transport to a processing facility. Mechanical dredging will use a steel mesh harvest bag which would be 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 collection bag. The bag would then be hoisted onto the boat deck and emptied. The crop cycle would be 2-3 years depending on site specific conditions and harvest would occur year-round. Turbidity resulting from oyster boat harvest shall be minimized by adjusting dredge bags to "skim" the surface of the substrate during harvest.

The project site is located on tidelands within Willapa Bay, on parcel numbers 79001000224, 79001000230, 79001000298, 79001000296, 79001000299, 79001000179c, 79001000227,

79001000054, 79001000058, 79001000055, 79001000313, 79001000332, 79001000187, 79001000255, 79001000154, 79001000070, 79001000079, 79001000080, 79001000081, 79001000177, 79001000108, 79001000109, 79001000110, 79001000336, 79001000163, 79001000326, and DNR Lease Area 20-A12538, near Bay Center, Pacific County, Washington; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting R&B Oyster's request for a Section 401 Water Quality Certification for the R&B Oyster Consolidated project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 9, 2022 and on February 11, 2022, and the following supporting documentation:

1. E-mail letter to Ecology dated February 9, 2022 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 R&B Oyster's water quality monitoring plan, and R&B Oyster'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, R&B Oyster 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 R&B Oyster 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. 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. 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 R&B Oyster Inc., R&B Oyster Consolidated 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. **21072** will remain valid for the duration of the associated DA permit. R&B Oyster 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.

Address and location information

Filing an appeal with the PCHB:

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Street address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Filing an appeal with the PCHB:

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

CONTACT INFORMATION

Please direct all questions about this Order to:

Marco Pinchot
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
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>


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March 15, 2022

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SIGNATURE



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

March 15, 2022

Date