



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

June 23, 2022

Washington Department of Fish & Wildlife
Attn: Zach Forster
PO Box 190
Ocean Park, WA 98640

Re: Water Quality Certification Order No. **21151** for Corps Reference No. **201700250**,
Willapa Bay Oyster Reserves, Pacific County, Washington

Dear Zach Forster:

On January 26, 2022, Washington Department of Fish & Wildlife submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Willapa Bay Oyster Reserves located on tidelands within Willapa Bay, near Nahcotta, 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 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,

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

Willapa Bay Oyster Reserves
Order No. 21151, Corps No. 201700250
Aquatics No. 139443
June 23, 2022
Page 2 of 2

Enclosure

E-cc: Kelsey Blubaugh, U.S. Army Corps of Engineers (Corps)
Loree' Randall, Ecology
Teresa Pucylowski, Ecology
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A WATER) ORDER No. 21151
QUALITY CERTIFICATION TO) Corps Reference No. 201700250
Washington Department of Fish &) Willapa Bay Oyster Reserves located on
Wildlife) tidelands within Willapa Bay, near Nahcotta,
pursuant to 33 U.S.C. 1341 (FWPCA) Pacific County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)
and Chapter 173-201A WAC)

Washington Department of Fish & Wildlife
Attn: Zach Forster
PO Box 190
Ocean Park, WA 98640

On January 26, 2022, Washington Department of Fish & Wildlife submitted a request for a Section 401 Water Quality Certification (WQC) under the Federal Clean Water Act for the Willapa Bay Oyster Reserves, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on April 1, 2022.

This project proposes to continue management of the Willapa Bay Oyster Reserves. The property currently serves a variety of uses including conservation of wild populations of oysters and clams, shellfish sale and enhancement activities, research and ecosystem services. The oyster reserves were established by the legislature around 1890. Since the 1920s, Pacific oysters have spawned and set naturally on the Willapa Bay Oyster Reserves and have formed the basis of a sustainable fishery. Currently the State of Washington utilize about 1,000 of the 9,985 acres for aquaculture actives while the rest remains in a relative natural state.

Licensed shellfish aquaculture companies bid on tracts of oysters and clams and the successful bidder (or bidders) enter into contract with Washington Department of Fish and Wildlife to purchase and harvest the shellfish from the tract. Purchaser shall return to the State 40% of the gross amount of shell from oyster purchases from this sale. If purchaser is unable to return shell from oysters purchased during this sale, purchaser may supply the required amount of shell from other sources.

Mechanical harvest of on ground oysters is done using a west coast style harvest method. This method can best be described as a boat towing a bag along the bottom surface to collect oysters. The bag is designed so that as it is towed over an oyster bed the oysters hit the lip of the opening and are retained in the bag.

The Long Island Reserve consists of 5,990 total acres of that 760 acres are currently under cultivation. All oysters and clams are cultured on bottom, 735 acres of oyster/clam ground is primarily harvested by hand (up to 10 acres/year may be mechanically harvested) and 25 acres of oyster ground is designated for harvested by dredge.

Long Island Slough Reserve consist of 588 total acres of that 60 acres or ground cultured oysters are harvested by hand (Up to 10 acres/year may be mechanically harvested. Acreage not to exceed 10 when combined with the Long Island Reserve).

The Nemah Reserve consist of 2,677 total acres of that 145 acres are currently under cultivation. All oysters and clams are cultured on bottom, 125 acres of oyster ground is hand harvested and 20 acres of oyster ground is harvested by dredge.

The Willapa River Reserve consist of 476 total acres of that 40 acres are currently under cultivation. All oysters are on bottom and hand harvested.

The Bay Center Oyster Reserves comprised of 254.2 total acres. This area is almost entirely deep-water river channel and has never produced any significant populations of Pacific oysters. No records of sales of Pacific oysters from this reserve exist.

The project site is located on tidelands within Willapa Bay, on Long Island Oyster Reserve Section 1, Long Island Oyster Reserve Section 2, Long Island Oyster Reserve Section 3, Long Island Oyster Reserve Section 4, Long Island Slough Oyster Reserve, Nemah Oyster Reserve, Willapa River Oyster Reserve, Bay Center Oyster Reserve, near Nahcotta, Pacific County, Washington; Section 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, Township 11 N, 12 N, 13 N, 14 N, Range 11, 10 West ; WRIA 24, Willapa Watershed.

With this Order, Ecology is granting Washington Department of Fish & Wildlife's request for a Section 401 Water Quality Certification for the Willapa Bay Oyster Reserves project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on January 26, 2022.

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, Washington Department of Fish & Wildlife 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 Washington Department of Fish & Wildlife 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 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 Washington Department of Fish & Wildlife, Willapa Bay Oyster Reserves 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. **21151** will remain valid for the duration of the associated DA permit. Washington Department of Fish & Wildlife 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.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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

Serving a copy of the appeal on Ecology:

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:

Teresa Pucylowski
Department of Ecology
PO Box 46700
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

June 23, 2022

Date