



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 11, 2023

Herrold Fish & Oyster Company Inc.
Attn: John Herrold
4109 State Highway 101
Ilwaco, WA 98624

Re: Water Quality Certification Order No. **21680** for Corps Reference No. **202000787**,
Herrold Fish & Oyster – Existing Aquaculture Farm, Pacific County, Washington

Dear John Herrold:

On February 22, 2023, Herrold Fish & Oyster Company Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Herrold Fish & Oyster – Existing Aquaculture Farm, located on tidelands within Willapa Bay, near Naselle, 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 (WQC Order).

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Teresa Pucylowski by e-mail at teressa.pucylowski@ecy.wa.gov. The enclosed WQC Order may be appealed by following the procedures described within the WQC Order.

Sincerely,

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

WQC Order No. 21680, Corps No. 202000787

Aquatics ID No. 140162

April 11, 2023

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Enclosure 2

By certified mail: 9489 0090 0027 6383 9288 14

Sent via e-mail: jherrold@wwest.net

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

IN THE MATTER OF GRANTING A WATER) WQC ORDER No. 21680
QUALITY CERTIFICATION TO) Corps Reference No. 202000787
Herrold Fish & Oyster Company Inc.) *Herrold Fish & Oyster – Existing Aquaculture*
pursuant to 33 U.S.C. 1341 (FWPCA) *Farm located on tidelands within Willapa Bay,*
§ 401), RCW 90.48.120, RCW 90.48.260) *near Naselle, Pacific County, Washington*
and Chapter 173-201A WAC)

Herrold Fish & Oyster Company Inc.
Attn: John Herrold
4109 State Highway 101
Ilwaco, WA 98624

On February 22, 2023, Herrold Fish & Oyster Company Inc. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Herrold Fish & Oyster – Existing Aquaculture Farm, Pacific County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on March 1, 2023.

The Project proposes to continue to commercially cultivate 130.91 acres of Pacific oysters (*Crassostrea gigas*) and Manila clams (*Venerupis philippinarum*), and to cultivate naturally occurring cockle clams on 2 acres. There will be 16.67 acres left uncultivated. Traditional bottom culture methods would be used for both types of shellfish. Oysters would be grown using both hatchery larvae and natural sets. The farms consist of all on-bottom culture. No frosting is proposed on any of the acreage. All access to the site will be by boat.

Manila clams would be scattered from a barge or naturally set on a 53.71-acre area. Maintenance of the site for manila clams would be minimal. Manila clams would be hand harvested by workers accessing the cultivation area during appropriate tide levels. The harvest would be supplemental and intermittent over a continuous period to maintain a healthy, natural population.

Oysters would either be scattered as seed or transplanted from deck at high tide. Bed prep may include harrowing. Harvest would take place either by hand at low tide or by mechanical harvester at high tide. Harvest cycles are approximately 3 to 4 years.

The project site is located on tidelands within Willapa Bay, on parcel numbers 779005000124, 79005000112, 79005000018, 79005000096, 79005000205 and DNR Lease # 20-A12364, near Naselle, Pacific County, Washington; Section 32, 31, and 26, Township 12 North, Range 10 West; WRIA 24, Willapa Watershed.

With this WQC Order, Ecology is granting Herrold Fish & Oyster Company Inc.'s request for a Section 401 Water Quality Certification for the Herrold Fish & Oyster – Existing Aquaculture Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 22, 2023.

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, Herrold Fish & Oyster Company 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 Herrold Fish & Oyster Company 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 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 Herrold Fish & Oyster Company Inc., Herrold Fish & Oyster -Existing Aquaculture Farm 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. WQC Order No. **21680** will remain valid for the duration of the associated DA permit. Herrold Fish & Oyster Company 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 Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by RCW 43.21B and WAC 371-08.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

“Date of receipt” is defined in RCW 43.21b.001(2). More information is available at <https://eluh.wa.gov/content/11>.

To appeal, you must do all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). “Filing” means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. “Notice of appeal” is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:
<https://eluh.wa.gov/content/11>

Filing by mail

Mailing Address:

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

Filing in person (or by certified mail/courier)

Street Address:

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

Filing Electronically

E-mail Address:

Pchb-shbappeals@eluh.wa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

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

Filing in person (or by certified mail/courier)

Street Address:

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

Contact Information

Please direct all questions about this WQC Order to:

Teresa 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/content/11>
- **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, HQ
Shorelands and Environmental Assistance Program
Department of Ecology

April 11, 2023
Date