



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 14, 2023

Puget Sound Restoration Fund
Attn: Brian Allen
8001 NE Day Road West
Bainbridge Island, WA 98110

Re: Water Quality Certification Order No. **21756** (Corps No. **NWS-2022-0943**), 2022 Dyes Inlet Olympia Oyster Habitat Enhancement Project, Kitsap County, Washington

Dear Brian Allen:

On April 4, 2023, the Puget Sound Restoration Fund submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the 2022 Dyes Inlet Olympia Oyster Habitat Enhancement Project, Kitsap County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental documents 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 enclosed Water Quality Certification 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 at (360) 764-0546. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Loree' Randall, Section Manager
Federal Permitting Section
Shorelands and Environmental Assistance Program

WQC Order No. 21756, Corps No. NWS-2022-0943

Aquatics ID No. 142361

July 14, 2023

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Enclosure (1)

By certified mail: 9489 0090 0027 6383 6850 83

Sent via e-mail: brian@restorationfund.org

E-cc: Sarah Albright, U.S. Army Corps of Engineers
Teressa Pucylowski, Ecology
ECYREFEDPERMITS@ecy.wa.gov

In The Matter of Granting a Water Quality
Certification to Puget Sound Restoration Fund
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

Puget Sound Restoration Fund
Attn: Brian Allen
8001 NE Day Road West
Bainbridge Island, WA 98110

WQC Order No.	21756
Corps Reference No.	NWS-2022-0943
Site Location	2022 Dyes Inlet Olympia Oyster Habitat Enhancement located within Dyes Inlet, near Silverdale, Kitsap County, Washington.

Puget Sound Restoration Fund submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the 2022 Dyes Inlet Olympia Oyster Habitat Enhancement, Kitsap County, Washington. The following required processing dates are referenced below:

- On 2/10/2023, the Puget Sound Restoration Fund submitted a pre-filing meeting request.
- On 4/4/2023, Department of Ecology (Ecology) received a request for Clean Water Section 401 Water Quality Certification.
- On 4/6/2023, the Puget Sound Restoration Fund submitted additional information, and the Ecology considered the Request valid on this date.
- On 1/27/2023 the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under Nationwide Permit No. 27 and requires an individual Section 401.
- On 4/7/2023, Ecology issued a public notice for the project.

This native oyster restoration project proposes to conduct substrate amendments on up to 20 acres of tidelands within the Clear Creek (Site #1), Lagoon (Site #2), and Barker Creek (Site #3) project areas between +1 ft and -3 ft Mean Lower Low Water on both privately and publicly owned tidelands. The purpose of the project is to rebuild the Olympia oyster population per the Washington Department of Fish & Wildlife's (WDFW) recommendations. The Olympia oyster is identified as a Species of Greatest Conservation Need under the State Wildlife Action Plan and as a Priority Species under WDFW's Priority Habitat and Species Program. This project will

increase the available settlement structure for larval oysters. There are no eelgrass beds or other sensitive marine vegetation within or adjacent to the project areas.

The proposal includes initial testing (shell and oyster assays) throughout the project areas and the Puget Sound Restoration Fund will adaptively manage project development based on empirical monitoring of iterative actions. The following proposed actions are intended to cover the entire scope of project actions throughout the project areas:

Shell Assays

A series of test plots composed of Pacific oyster shell (cultch) will be initially implemented across a variety of gradients. All shell sources would be inspected and approved for transfer to waters of the state by WDFW. Once transferred to the project area, the cultch can be distributed into the test plots immediately. Test plots would be 100ft² spaces on the tideland where 5-10 bushels of shell would be spread out over the ground by hand. Each test plot would be arranged in a standard, regular geometry (square or rectangle) with wooden stakes placed at the corners. The shell would be spread to accomplish a 100 percent cover of the ground within the plot. The test plots would be distributed across the tideland in a manner to evaluate the various reaches and elevations, utilizing up to 10 test plots within the project areas. The test plots are intended to evaluate the spatial fidelity of the shell within the plot and shell emergence above the benthic surface.

Shell Amendments

A bulk shell amendment of the tideland will distribute preferred oyster settlement material to tidelands where it is limited, and where monitoring of the test plots (assays) indicate sufficient emergent shell fidelity. When the shell amendment becomes a project action, the bulk Pacific oyster shell will be distributed as an amendment to the existing intertidal benthic surface within the proposed project area. The shell material used for this purpose would be seasoned Pacific oyster shell, which will be sourced from WDFW-inspected and authorized suppliers in Washington State. The transport and placement of the shell would be conducted with a transfer authorization from WDFW. Shell amendment may occur once or over multiple efforts, depending on the availability of bulk shell and funding support. A contracted barge (e.g., 200 ft deck barge) would transport the oyster shell from a loading site in Tacoma to the project area. The intention is to create a single and variable layer of complex emergent oyster settlement substrate by sluicing the shell material from a moving barge using pumped seawater. The amendment process typically produces a finished amendment whereby a patchwork of approximately 80 percent emergent shell and 20 percent bare substrate remains in the project area. The target application rate is 100yd³ of shell material per acre; the tideland substrate will be amended with up to 2,000yd³ of bulk oyster shell.

The project site is located within Dyes Inlet, near Silverdale, Kitsap County, Washington, Section 21, Township 25 N., Range 1 E., within Water Resource Inventory Area (WRIA) 15 Kitsap.

With this WQC Order, Ecology is granting Puget Sound Restoration Fund's request for a Section 401 Water Quality Certification for the 2022 Dyes Inlet Olympia Oyster Habitat Enhancement project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 4/4/2023, and the following supporting documentation:

1. E-mail letter to Ecology dated 4/6/2023, regarding the project's 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, Puget Sound Restoration Fund 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 Puget Sound Restoration Fund 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.

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 Puget Sound Restoration Fund for the 2022 Dyes Inlet Olympia Oyster Habitat Enhancement project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. **21756** will remain valid for the duration of the associated DA permit. Puget Sound Restoration Fund 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 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 all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of Order with the PCHB (see filing information 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 mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://eluh0.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

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

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

Teresa Pucylowski

Department of Ecology

360-764-0546

teressa.pucylowski@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov>
- **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

Dated this 14th day of July, 2023, at the Department of Ecology, Lacey, Washington.



Loree' Randall, Section Manager

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Federal Permitting Section

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