



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 4, 2021

National Fish & Oyster Nisqually Shellfish Farm
Attn: Catherine Gylys
5028 Meridian Rd NE
Olympia, WA 98516

RE: Water Quality Certification Order No. **19638** for Corps Reference No. **200701411**,
National Fish & Oyster Nisqually Shellfish Farm, Thurston County, Washington

Dear Catherine Gylys:

On December 28th, 2020, National Fish & Oyster Nisqually Shellfish Farm submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the National Fish & Oyster Nisqually Shellfish Farm located on tidelands within Niqually Reach, Puget Sound, near Olympia, Thurston 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 Adam Sant by e-mail at adam.sant@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

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

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Enclosure

e-cc: Andrew Dangler, Corps of Engineers
Ben Sherman, Corps of Engineers
Robert Smith, Consultant
Laura Hendricks – Executive Director Coalition To Protect Puget Sound Habitat
Amy van Saun, Senior Attorney – Center for Food Safety
Loree' Randall, Ecology
Adam Sant, Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 139447

IN THE MATTER OF GRANTING A)	ORDER No. 19638
WATER QUALITY)	Corps Reference No. 200701411
CERTIFICATION TO)	National Fish & Oyster Nisqually Shellfish Farm
National Fish & Oyster Nisqually)	located on tidelands within Nisqually Reach,
Shellfish Farm)	Puget Sound, near Olympia, Thurston County,
pursuant to 33 U.S.C. 1341 (FWPCA)	Washington
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

National Fish & Oyster Nisqually Shellfish Farm
 Attn: Catherine Gylys
 5028 Meridian Rd NE
 Olympia, WA 98516

On December 28th, 2020, National Fish & Oyster Nisqually Shellfish Farm submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the National Fish & Oyster Nisqually Shellfish Farm, Thurston County, Washington. The U.S. Army Corps of Engineers (Corps) issued a joint public notice on January 27, 2021.

This project proposes to continue and modify a previously authorized commercial shellfish aquaculture operation in Nisqually Reach at Olympia, Thurston County, Washington. The farm cultivates Manila Clams (*Venerupis philippinarum*), Pacific oysters (*Crassostrea gigas*), Kumamoto Oysters (*Crassostrea sikamea*), Belon Oysters (*Ostrea edulis*), and Geoduck Clams (*Panopea generosa*) on tidelands (Parcels #: 920008030000, # 21930321500). The total proposed cultivation area would be 222.2 acres which consists of 2.9 acres of single oysters on bottom and flip bag cultivation, 6.1 acres of on bottom Manila clams cultivation including frosting, 12.5 acres of nursery bed and on bottom oyster cultivation, 186.7 acres of on-bottom cultch oyster cultivation, 10 acres of geoduck cultivation, and 4 acres of longline oyster cultivation. The cultivated areas would be located in the intertidal portion of the tidelands between the -4.5 and +4.5 feet Mean Lower Low Water (MLLW) mark. As compared to the site plans previously approved by the Army Corps of Engineers, the project includes an additional 84.1 acres of on-bottom oyster culture, 5 acres of geoduck culture, and 3.1 acres of Manila clam culture, all of which would be planted in areas that were previously identified as fallow (i.e. previously cultivated but not currently in cultivation). Graveling (50 – 100 yds.) will be spread over the life of the permit-10 yrs. Gravel is spread off the cleaned deck of a barge using seawater to spread. Graveling only occurs when needed. Clam seed is planted by hand.

The project site is located on tidelands within Nisqually Reach, Puget Sound, on parcel numbers 21930321500; 21930321600, adjacent to 5040 Meridian Rd NE Olympia, WA 98516, near Olympia, Thurston County, Washington; Section 30, Township 18-19 North, Range 1E West; WRIA 13, Deschutes Watershed.

With this Order, Ecology is granting National Fish & Oyster Nisqually Farm's request for a Section 401 Water Quality Certification for the National Fish & Oyster Nisqually Shellfish Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality

Certification request and attachments Ecology received on December 28th, 2020, and the following supporting documentation:

1. E-mail letter to Ecology dated February 12, 2020, 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 National Fish & Oyster Nisqually Shellfish Farm's water quality monitoring plan, and National Fish & Oyster Nisqually Shellfish Farm'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, National Fish & Oyster Nisqually Shellfish Farm 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 National Fish & Oyster Nisqually Shellfish Farm 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.

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 National Fish & Oyster Nisqually Shellfish Farm project.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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. **19638** will remain valid for the duration of the associated permit.

National Fish & Oyster Nisqually Shellfish Farm should send a copy of the final DA permit to ecyrefednotification@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

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

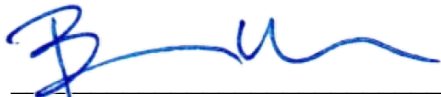
Please direct all questions about this Order to:

Adam Sant
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
adam.sant@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
Department of Ecology

March 4, 2021
Date