



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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March 10, 2021

Markham Oyster Co.  
Attn: David Hollingsworth & Gary Ruggles  
20 Old Westport Rd.  
Aberdeen, WA 98520

RE: Water Quality Certification Order No. **19640** for Corps Reference No. **202000915**,  
Markham Oyster Ongoing Aquaculture and Markham Oyster Ongoing Stewardship,  
Grays Harbor County, Washington

Dear David Hollingsworth & Gary Ruggles:

On January 27, 2021, Markham Oyster Co. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for Markham Oyster Ongoing Aquaculture and Markham Oyster Ongoing Stewardship located on tidelands within Grays Harbor, near Westport, Grays Harbor 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](mailto:teressa.pucylowski@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 "B. McFarland", is written over a light blue rectangular background.

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

Enclosure

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e-cc: Jade Metzler, Corps of Engineers  
Loree' Randall, Ecology  
Laura Hendricks, Coalition to Protect Puget Sound Habitat  
Amy van Saun, Center for Food Safety  
Teresa Pucylowski, Ecology  
[ECYREFEDPERMITS@ecy.wa.gov](mailto:ECYREFEDPERMITS@ecy.wa.gov) –Aquatics# 139460

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 19640</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 202000915</b>
<b>CERTIFICATION TO</b>	)	Markham Oyster Ongoing Aquaculture and
Markham Oyster Co.	)	Markham Oyster Ongoing Stewardship located
pursuant to 33 U.S.C. 1341 (FWPCA	)	on tidelands within Grays Harbor, near Westport,
§ 401), RCW 90.48.120, RCW 90.48.260	)	Grays Harbor County, Washington
and Chapter 173-201A WAC	)	

Markham Oyster Co.  
 Attn: David Hollingsworth & Gary Ruggles  
 20 Old Westport Rd.  
 Aberdeen, WA 98520

On January 27, 2021, Markham Oyster Co. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for Markham Oyster Ongoing Aquaculture and Markham Oyster Ongoing Stewardship, Grays Harbor County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on February 11, 2021.

This project proposes to continue ongoing aquaculture activities, specifically the cultivation of Pacific oysters and harvest of natural set cockles. The total project area is 610.44 acres, with 225.45 acres of cultivation and 385 fallow acres. The project area consists of 5 project areas. Site 1 is 97.5 acres (50 cultivation acres) and lies at 0.0' MLLW tidal elevation. Site 2 is 206 acres (125 cultivation acres) and lies at 0.0' MLLW tidal elevation. Site 3 is 67.45 (50.45 cultivation acres) and lies between -0.5' and +1.0' MLLW tidal elevations. Site 4 is entirely fallow and is 173.67 acres at 0.0' MLLW. Site 5 is fallow and 67.62 acres at 0.0' MLLW tidal elevation.

Sites are accessed exclusively by boat. Patches of native eelgrass are found throughout the project site. The eelgrass in fallow areas, which make up the majority of the project, is never disturbed by harvest activities. Any eelgrass impacted by dredging is observed to fully recover by the next dredging cycle which is an average of 2.5 years. Annual dredge acres do not exceed 63.5 acres, which is approximately 10% of the total project area. Baseline eelgrass in hand harvest and longline areas appears to experience little disturbance from harvest activities.

Oysters are grown by both longline and on-bottom culture methods. For on bottom cultivation, seeded cultch is scattered by hand from boats at high tide. Oysters are harvested every 2-3 years either by hand into baskets that are retrieved by dredge at high tide, or by mechanical dredge harvest from boat. The dredge method involves skimming the substrate on which the oysters rest with dredge baskets attached to dredge arms on the vessel at slow speeds. The oysters collected in the baskets are then dumped onto the deck of the vessel for transport. Dredge harvest occurs on high tide and is done intermittently year-round depending on demand and availability of mature oysters. Longlines are pre-seeded and run between PVC pipe grounded in the sediment, which suspends the seeded lines about one foot above the ground. PVC pipes are spaced approximately 3 ft apart. Due to sloughs intersecting the property where longline cultivation takes place, longlines are variable lengths to ranging from 30-300 ft. The majority of lines are

spaced 3 ft apart with 6 ft in between sets of two lines, with some longline arrays spaced 5 ft. Longline structures are repaired and replaced at regular inspection levels which occur on an average of every 2-3 months and also following large storm events. Inspections ensure that the lines are in proper working order. If damage is observed, any precarious gear is immediately removed from the site or held to the substrate by rebar until the next workable tide where the damage can be corrected. Harvest from longlines occurs by hand into baskets that are retrieved by dredge. Cockle harvest occurs exclusively by hand. Small crews access the site by boat and dig the cockles with small rakes, harvesting them into baskets.

The project site is located on tidelands within Grays Harbor, on parcel numbers 616110754351, 616110754352, and 616110754353, near Westport, Grays Harbor County, Washington; Section 8, Township 16 North, Range 11 West; WRIA 22 - Lower Chehalis Watershed.

With this Order, Ecology is granting Markham Oyster Co.'s request for a Section 401 Water Quality Certification for the Markham Oyster Ongoing Aquaculture and Markham Oyster Ongoing Stewardship project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request Ecology received on January 27, 2021.

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, Markham Oyster Co. 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 Markham Oyster Co. 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 prohibited<sup>1</sup>. If such work, conditions, or discharges occur, immediately notify<sup>2</sup> 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<sup>3</sup> 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.

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<sup>1</sup> RCW 90.48

<sup>2</sup> WAC 173-303-145

<sup>3</sup> RCW 90.56.280

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 Markham Oyster Co., Markham Oyster Ongoing Aquaculture and Markham Oyster Ongoing Stewardship 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. **19640** will remain valid for the duration of the associated DA permit. Markham Oyster Co., should send a copy of the final DA permit to [fednotification@ecy.wa.gov](mailto: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

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

### CONTACT INFORMATION

Please direct all questions about this Order to:

Teressa Pucylowski  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
[teressa.pucylowski@ecy.wa.gov](mailto: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  
Department of Ecology

March 10, 2021  
Date