



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 18, 2021

Ernie's Oysters Co., LLC
Attn: Jeanette Adams
9605 Steamboat Island Rd. NW
Olympia, WA 98502

RE: Water Quality Certification Order No. **19752** for Corps Reference No. **201100724**,
Ernie's Oysters Aquaculture Farm, Thurston County, Washington

Dear Jeanette Adams:

On February 18, 2021, Ernie's Oysters Co. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Ernie's Oysters Aquaculture Farm located on tidelands within Totten Inlet, 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 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

Enclosure

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e-cc: Benjamin Sherman, 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 – Aquatics No. 139532

IN THE MATTER OF GRANTING A) ORDER No. 19752
WATER QUALITY) Corps Reference No. 201100724
CERTIFICATION TO) Ernie's Oysters Aquaculture Farm located on
Ernie's Oysters Co., LLC) tidelands within Totten Inlet, near Olympia,
pursuant to 33 U.S.C. 1341 (FWPCA) Thurston County, Washington
§ 401), RCW 90.48.120, RCW 90.48.260)
and Chapter 173-201A WAC)

Ernie's Oysters Co., LLC
Attn: Jeanette Adams
9605 Steamboat Island Rd. NW
Olympia, WA 98502

On February 18, 2021, Ernie's Oysters Co. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Ernie's Oysters Aquaculture Farm, Thurston County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on February 23, 2021.

This project will continue to farm 5 acres of Pacific oysters and geoduck clams on 10.5 acres of privately-owned tidelands: 1.75 acres of geoduck clams, 1.5 acres of oysters grown in flip bags, and 1.75 acres of oysters grown on bottom. No eelgrass has been observed at the farm site. The farm area is accessed from the upland by foot.

For oysters grown on bottom, seed is spread directly onto the beach as cultch. As the oysters grow they will develop into clusters, and after the first year they are broken apart with a hammer as a way to improve growth. As an additional maintenance measure, the oysters will also be periodically raked out of the sand where they may have become buried in order to prevent suffocation. Oysters reach maturity in about 3 years, and are harvested by hand at low tide, breaking apart the oysters into singles and putting them into mesh bags which hold about 5 dozen oysters each. Buoys are then tied to these bags and then picked up at high tide by boat. For oysters grown as singles in flip bags, seed is placed in 2'x3' mesh bags which are connected to a rope line secured with rebar at each end. Bags will be periodically flipped to prevent oysters being buried during grow-out. Thirty days before harvest, oysters are emptied from the bag onto the beach and then harvested using the same method as the bottom-grown oysters.

To prepare the beach for geoduck planting, multiple 6"x9" PVC tubes are pushed into the sediment with about 1½" of the PVC tube left exposed. About 4-5 individual geoduck seed are placed within each tube. Each individual tube is then covered by a 7"x7" net that is tightly secured with a rubber band. A large canopy net is then placed over all of the tubes and secured to the sediment with rebar stakes. After a year, all materials are removed from the beach including area nets, individual nets, and tubes. The geoduck are harvested by a third party at high tide using a low pressure, high volume water hose attached to a boat, which is used to extract the geoduck from the sand. Harvest geoduck are then collected in totes and loaded onto the boat.

The project site is located on tidelands within Totten Inlet, on parcel numbers 93010500000, and 39000000100, 39000000200, and 39000000300, adjacent to 9605 Steamboat Island Rd. NW, near Olympia, Thurston County, Washington; Section 4 and 33, Township 19 and 20 North, Range 2 West; WRIA 14, Kennedy-Goldsborough Watershed.

With this Order, Ecology is granting Ernie's Oysters Co.'s request for a Section 401 Water Quality Certification for the Ernie's Oysters 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 18, 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, Ernie's Oysters 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 Ernie's Oysters 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 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. 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 Ernie's Oysters Co., Ernie's Oysters 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. Order No. **19752** will remain

¹ RCW 90.48

² Chapter 173-303-145

³ RCW 90.56.280

valid for the duration of the associated permit. Ernie's Oysters Co. 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.

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:

Teressa Pucylowski
Department of Ecology
P.O. Box 47600
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
Department of Ecology

March 18, 2021

Date