



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 24, 2024

Allen Shellfish, LLC
Attn: Brian Allen
PO Box 11775
Bainbridge Island, WA 98110

Re: Amendment to 401 Water Quality Certification Order No. 20177 for U.S. Army Corps of Engineers Reference No. NWS-2021-0043-AQ, Allen Shellfish LLC Peavey Geoduck Farm project located on tidelands within Case Inlet, near Grapeview, Mason County, Washington

Dear Brian Allen:

Enclosed is an amendment to Water Quality Certification Order No. 20177, issued on July 9, 2021 (and amended on February 29, 2024), for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification Order No. 20177 remain in effect.

The purpose of this amendment is to change the 401 Water Quality Certification back to its original project description. Allen Shellfish, LLC no longer wishes to add oyster cultivation.

If you have any questions, please contact Brook Swensen at 564-999-1749. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Loree' Randall, Section Manager
Aquatics Permitting & Protection Section
Shorelands and Environmental Assistance Program

Enclosure (2)

Second Amendment to WQC Order No. 20177
Aquatics No. 140099, Corps No. NWS-2021-0043-AQ
July 24, 2024
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By certified mail: 9489 0090 0027 6381 5321 98

Sent via e-mail: allenshellfish@gmail.com

E-cc: Kelsey Blubaugh, U.S. Army Corps of Engineers
Brook Swensen, Ecology
Laura Hendricks, Coalition To Protect Puget Sound Habitat
Amy van Saun, Center for Food Safety
ecyrefedpermits@ecy.wa.gov

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

Allen Shellfish, LLC
Attn: Brian Allen
PO Box 11775
Bainbridge Island, WA 98110

WQC Order No.	20177, Second Amendment
Corps Reference No.	NWS-2021-0043-AQ
Site Location	Allen Shellfish LLC Peavey Geoduck Farm project located on tidelands within Case Inlet, near Grapeview, Mason County, Washington.

On July 9, 2021, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Allen Shellfish, LLC for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). Ecology also issued a 401 Water Quality Certification amendment on February 29, 2024, for the above referenced project.

Ecology received a request on July 8, 2024, to amend the 401 Water Quality Certification back to its original project description. Allen Shellfish, LLC no longer wishes to add oyster cultivation.

WQC Order No. 20177 dated July 9, 2021 (and amended February 29, 2024) is hereby amended as follows:

I. The second paragraph which reads:

This new project proposes to establish a commercial shellfish aquaculture farm that would cultivate geoduck clams on approximately 1.95 acres and bag-on-bottom cultivation of Pacific Oysters on approximately 0.45 acres; on privately-owned tidelands between approximately +1.0ft and -4.5ft Mean Lower Low Water elevation contours. There is no eelgrass present at this site. The site would be maintained through site visits to ensure that gear is in place. All access is via boat; no upland access.

Is replaced with:

This new project proposes to establish a commercial shellfish aquaculture farm that would cultivate geoduck clams on approximately 2.4 acres of privately-owned tidelands between approximately +1.0ft and -4.5ft Mean Lower Low Water elevation contours. There is no eelgrass present at this site. The site would be maintained through site visits to ensure that gear is in place. All access is via boat; no upland access.

II. The following paragraph is deleted after the fifth paragraph:

Oysters are cultivated in individual oyster lay-flat grow bags that are attached to groundlines that are anchored approximately on 30ft centers. The groundline anchors are made using a half-cinder block brick which is buried 18 inches in the ground. The anchors secure the ground line which secures the bags. All seeding, maintenance, and harvest is accomplished by hand.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

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 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 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

Contact Information

Please direct all questions about this Order to:

Brook Swensen
Department of Ecology
564-999-1749
Brook.Swensen@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://eluhho.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>

Second Amendment to WQC Order No. 20177
Aquatics No. 140099, Corps No. NWS-2021-0043-AQ
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Signature

Dated this 24th day of July 2024, at the Department of Ecology, Lacey, Washington.

A handwritten signature in black ink that reads "Loree' Randall". The signature is written in a cursive style with a horizontal line underneath it.

Loree' Randall, Section Manager
Aquatics Permitting & Protection Section
Shorelands and Environmental Assistance Program

This document shows the activities that have been amended since the original Order was issued. Therefore, it is not the official certification and should be used for information purposes only.

IN THE MATTER OF GRANTING A) ORDER No. 20177, First Amendment, Second
WATER QUALITY) Amendment
CERTIFICATION TO) Corps Reference No. 202100043
Allen Shellfish, LLC) Allen Shellfish LLC Peavey Geoduck Farm
pursuant to 33 U.S.C. 1341 (FWPCA) located on tidelands within Case Inlet, near
§ 401), RCW 90.48.120, RCW 90.48.260) Grapeview, Mason County, Washington
and Chapter 173-201A WAC)

Allen Shellfish, LLC
Attn: Brian Allen
PO Box 11775
Bainbridge Island, WA 98110

On June 10, 2021, Allen Shellfish, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Allen Shellfish LLC Peavey Geoduck Farm, Mason County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on June 11, 2021.

This new project proposes to establish a commercial shellfish aquaculture farm that would cultivate geoduck clams on approximately ~~2.4~~ ~~1.95~~ 2.4 acres ~~and bag-on-bottom cultivation of Pacific Oysters on approximately 0.45 acres; of on~~ of privately-owned tidelands between approximately +1.0ft and -4.5ft Mean Lower Low Water elevation contours. There is no eelgrass present at this site. The site would be maintained through site visits to ensure that gear is in place. All access is via boat; no upland access.

Geoduck-Planting will occur when juvenile geoduck seed are placed in flexible high-density polyethylene (HDPE) mesh sleeves (4 x 13 inches) which are pushed into the substrate to a depth of 6-7 inches (leaving 6-7 inches emergent) by using a low-pressure pumped seawater that prepares the substrate for installation. The top of the mesh sleeve will be left open. These mesh sleeves stay in place for the first 24-30 months after planting for predator deterrence and exclusion.

The mesh sleeves are UV-stable; designed and manufactured for marine application. Typically, the sleeves will be installed at a density of one tube per 1-1.3 square feet and planted with 3-4 seed clams in each tube. The mesh sleeves will be removed once the geoducks are large enough and they will be left to grow unprotected until harvest (2-5 years). Polyvinyl chloride (or PVC) tubes and predator exclusion nets will not be used. The farm will be developed with multiple crops, on discrete timelines which will be planted on a rotational basis.

Geoduck clams will be harvested using either dry (i.e., during low tide exposure) or wet (i.e., diving) harvest methods. Dive harvest will be the majority harvest activity. Market size clams will be harvested individually using a low-pressure water pump. Once harvested, a new crop will be planted and the aforementioned process repeated. Total growing time will be approximately 4-7 years.

~~Oysters are cultivated in individual oyster lay flat grow bags that are attached to groundlines that are anchored approximately on 30ft centers. The groundline anchors are made using a half cinder block brick which is buried 18 inches in the ground. The anchors secure the ground line which secures the bags. All seeding, maintenance, and harvest is accomplished by hand.~~

The project site is located on tidelands within Case Inlet, on parcel numbers 12108-41-90061, 12108-41-90060, and 12108-41-90112, adjacent to 393 and 395 E Stretch Island Road, near Grapeview, Mason County, Washington; Section 8, Township 21 North, Range 1 West; WRIA 14, Deschutes Watershed.

With this Order, Ecology is granting Allen Shellfish, LLC's request for a Section 401 Water Quality Certification for the Allen Shellfish LLC Peavey Geoduck Farm project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on June 10, 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, Allen Shellfish, LLC 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 Allen Shellfish, LLC 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.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

First Amendment February 29, 2024, Second Amendment July 24, 2024

Order No. 20177, Corps No. 202100043

Aquatics No. 140099

July 9, 2021

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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 Allen Shellfish, LLC, Allen Shellfish LLC Peavey Geoduck 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. **20177** will remain valid for the duration of the associated DA permit. Allen Shellfish, LLC should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

Not Official Copy