

## Special Conditions for Commercial Shellfish Aquaculture Activities

Corps Reference Number: **NWS-XXXX-XXXXX**

To minimize the potential for adverse effects to the aquatic environment from shellfish aquaculture activities, including effects to Endangered Species Act protected species and their critical habitat, and Magnuson-Stevens Fishery Conservation and Management Act essential fish habitat, the U.S. Army Corps of Engineers (Corps) has added the following requirements to this verification. These special conditions are the result of extensive coordination and consultation on commercial shellfish activities between the Corps, National Marine Fisheries Service (NMFS), and U.S. Fish and Wildlife Service (USFWS).

1. Washed gravel shall be used for shellfish bed preparation.
2. Unsuitable material (e.g., trash, debris, car bodies, asphalt, tires) shall not be discharged or used as fill (e.g., used to secure nets, create berms, provide nurseries).
3. A Pacific herring spawn survey shall be conducted prior to undertaking the activities listed below if any of these activities will occur outside the approved work window for the project area's **Tidal Reference Area 1, which is April 1 – January 14**. The activities requiring a spawn survey are: 1) mechanical dredge harvesting, 2) raking, 3) harrowing, 4) tilling or other bed preparation activities, 5) frosting or applying oyster shell on beds, 6) geoduck harvesting, net removal, or tube removal. Vegetation, substrate, and aquaculture materials (e.g., nets, tubes) shall be inspected for Pacific herring spawn. If Pacific herring spawn is present, these activities are prohibited in the areas where spawning has occurred until such time as the eggs have hatched and Pacific herring spawn is no longer present. The Corps encourages the permittee to complete a training class on identifying Pacific herring spawn with the Washington Department of Fish and Wildlife (WDFW). A map showing the Tidal Reference Areas and a table with the approved work windows for Pacific herring can be found at the Corps, Seattle District, Regulatory Branch website. You shall maintain a record of Pacific herring spawn surveys, including the date and time of surveys; the area, materials, and equipment surveyed; results from the survey; etc. The record of Pacific herring spawn surveys shall be made available upon request to the Corps, NMFS, and USFWS.
4. Newly positioned <sup>1</sup>shellfish culturing (e.g., culturing by rack and bag, raft, long-line, ground methods) shall not be placed within 10 horizontal feet of eelgrass (*Zostera marina*) or kelp.
5. Newly positioned shellfish culturing (e.g., culturing by rack and bag, raft, long-line, ground methods ) shall not be placed above the tidal elevation of +7 feet Mean Lower Low Water if the area is documented as surf smelt spawning habitat by the WDFW. A map showing the location of documented surf smelt spawning habitat is available at the SalmonScape interactive program on the WDFW website.
6. Newly positioned shellfish culturing (e.g., culturing by rack and bag, raft, long-line, ground methods) shall not be placed above the tidal elevation of +5 feet Mean Lower Low Water if the area is documented as Pacific sand lance spawning habitat by the WDFW. A map showing the location of documented Pacific sand lance spawning habitat is available at the SalmonScape interactive program on the WDFW website.
7. You shall not use tidelands waterward from the line of mean higher high water (MHHW) for the storage of aquaculture gear (e.g., bags, racks, marker stakes, rebar, nets, tubes) for a consecutive period of time exceeding 7 days.

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<sup>1</sup> “Newly positioned” is defined as being placed within a portion of the project area where aquaculture is not currently located and has not previously occurred.

8. All pump intakes (e.g., for geoduck harvest, washing down gear) that use seawater shall be screened in accordance with NMFS and WDFW criteria. Note: This does not apply to work boat motor intakes (jet pumps) or through-hull intakes.

9. Land vehicles (e.g., all-terrain, trucks) and equipment shall not be washed within 150 feet of any stream, waterbody, or wetland. All wash water shall be treated before being discharged to any stream, waterbody, or wetland.

10. Land vehicles shall be stored, fueled, and maintained in a vehicle staging area placed 150 feet or more from any stream, waterbody, or wetland. Where this is not possible, documentation must be provided to the Corps as to why compliance is not possible, written approval from the Corps must be obtained, and the operators shall have a spill prevention plan and maintain a readily-available spill prevention and clean-up kit.

11. Inspect all vehicles operated within 150 feet of any stream, waterbody, or wetland daily for fluid leaks before leaving the vehicle staging area. Repair any leaks detected in the vehicle staging area before the vehicle resumes operation.

12. All tubes, mesh bags, and area nets used on the tidelands below the line of mean higher high water shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address, mailing address). On the nets, identification markers will be placed with a minimum of one identification marker for each 50 feet of net.

Note: You will have 180 days from verification to implement this condition. If this special condition cannot be met, you shall submit a plan to the Corps for written approval describing specific measures and/or best management practices that will be undertaken to prevent the inadvertent release of aquaculture equipment into waters of the U. S.

13. At least once every three months beaches in the project vicinity shall be patrolled by crews who will retrieve aquaculture debris (e.g., anti-predator nets, tubes, tube caps, stakes) that escapes from the project area. Within the project vicinity, locations shall be identified where debris tends to accumulate due to wave, current, or wind action, and after weather events these locations shall be patrolled by crews who will remove and dispose of aquaculture debris appropriately. You shall maintain a record with the following information and the record shall be made available upon request to the Corps, NMFS, and USFWS: date of patrol, location of areas patrolled, description of the type and amount of retrieved debris, other pertinent information.

14. You shall ensure area nets (e.g., anti-predator nets) are tightly secured to prevent them from escaping from the project area.

15. You must submit a request for permit modification to the Corps if there is an increase in the reported amount of gravel that is being applied to “frost” (i.e., to harden) the substrate at a mudflat or vegetated shallow, which are special aquatic sites. Mudflat is defined at 40 CFR 230.42(a) and vegetated shallow is defined at 40 CFR 203.43(a).

16. Vessels used for shellfish culturing at the project area shall not ground in eelgrass (*Zostera marina*) beds. If this special condition cannot be met, within 90 days of verification, you shall submit a plan to the Corps describing specific measures and/or best management practices that will be undertaken to minimize negative effects to eelgrass from vessel operation and receive Corps written approval.