

U.S. Army Corps of Engineers – Seattle District
Programmatic Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation Specific Project Information Form for Shellfish Activities in Washington State Inland Marine Waters
Version: September 2016

Eligibility for Programmatic Consultation - to be filled out by Corps

This application:

_____ meets all of the requirements of this programmatic consultation

_____ does not meet all of the requirements of this programmatic consultation

If this application does not meet all of the requirements of this programmatic, the Corps may require a biological assessment be prepared or may use this form to constitute a reference biological evaluation in association with:

NMFS¹ reference: *ESA Section 7 Formal Biological Programmatic Biological Opinion and MSA Essential Fish Habitat Consultation for Shellfish Activities in Washington State*, dated September 2, 2016 (WCR-2014-1502) and Revised Incidental Take Statement (ITS) and Biological Opinion Errata, dated September 30, 2016.

USFWS² reference: *ESA Section 7 Formal Biological Opinion for Programmatic Consultation for Shellfish Activities in Washington State Inland Marine Waters*, dated August 26, 2016 (01EWF00-2016-F-0121)

1. **Programmatic Activity:** Shellfish Activities in Washington State Inland Marine Waters.

2. **Action Area:** This programmatic covers specific shellfish activities between the tidal elevations of mean higher high water (MHHW) and -70 ft. mean lower low water (MLLW) in Willapa Bay, Grays Harbor, Puget Sound, Hood Canal, and the Straits of Juan de Fuca and Georgia excluding the specific areas listed below:

- all areas within 0.25 miles of snowy plover ESA designated foraging or nesting habitat, including but not limited to Leadbetter Point in Pacific County and Copalis Spit in Grays Harbor County
- all areas within 200 ft. of any critical habitat for bird, land mammal, insect, or plant as either designated or proposed under the ESA (e.g., Taylor's checkerspot butterfly habitat, streaked horn lark habitat).

3. **Drawings and Photographs:** *Drawings and photographs must be submitted.*

Drawings must include a vicinity map; and plan, profile, and cross-section drawings of the proposed activities and structures; and over- and in-water structures on adjacent properties. One sheet must show (1) the boundaries of the project area (area of ownership/lease) with latitude and longitude coordinates for each corner of the project area (see appendix A for directions on establishing the latitude and longitude), (2) the name(s) of the cultivated species and cultivation methodology(s), and (3) where any canopy predator nets are being used. Also, include the acreage of the project area and acreage of the actual shellfish area and show the area(s) within the project area where specific shellfish activities would occur and area(s) where shellfish activities would not occur. The tidal elevations where shellfish activities would occur should also be shown. (For assistance with the preparation of the drawings, please refer to our *Drawing Checklist* located on our website at www.nws.usace.army.mil Select Regulatory – Regulatory/Permits – Forms.)

Include photographs showing the entire project area, including the shoreline, current overwater structures, and location of the proposed project. The photographs should be taken at ground level and at low tide and should show a panoramic view of the entire project area in the dry.

¹ National Marine Fisheries Service

² U.S. Fish and Wildlife Service

Photographs should clearly show the presence or absence of vegetation and the substrate composition. Close up photographs of the substrate and/or vegetation should be included if there are any areas of particular interest. To most accurately reflect vegetation distribution, photos should be taken at low tide during June 1 through September 30.

4. **Date:** _____

5. **Corps Reference #:** _____

6. **Applicant name:** _____

Mailing address: _____

Phone: _____ Email: _____

7. **Authorized agent name:** _____

Mailing address: _____

Phone: _____ Email: _____

8. **Shellfish grower name (if different from applicant):** _____

Mailing address: _____

Phone: _____ Email: _____

9. **Location where proposed work will occur:**

Address (street address, city, and county): _____

Waterbody: _____

¼ Section: _____ Section _____ Township _____ Range: _____

Latitude: _____ Longitude: _____

Tidal elevation: _____

10. **Description of Work:** Describe in detail what is being installed (e.g. shellfish species/structures). Include cultivation area/dimensions and materials being used. Describe cultivation, maintenance and harvest methods for each species. **If using nets, provide description, including mesh size, length of time installed, and acreage of coverage.** Describe any fill material being placed (e.g., gravel or shell material). Describe use of any nursery/grow-out structures. Attach additional pages as necessary.

11. **Methodology:** Describe methods and timing of work in more detail. Include site preparation, maintenance, detailed description of the types of equipment and types of materials (e.g., PVC tubes, mesh tubes) being used, and harvest techniques.

12. **Description of how the area will be accessed (e.g., by shore or by vessel):**

13. **Mechanical Work:** If you mechanically work (e.g., dredging, harrowing) please provide the following information for the appropriate area covered by this SPIF:

a. Willapa Bay - how many acres will be mechanically worked per year? _____

b. Grays Harbor - how many acres will be mechanically worked per year? _____

c. North Puget Sound - how many acres will be mechanically worked per year? _____

d. Hood Canal - how many acres will be mechanically worked per year? _____

14. **Forage Fish Habitat:** Go to the Washington Department of Fish and Wildlife (WDFW) website for the location of documented marine beach spawning habitat:

http://wdfw.wa.gov/conservation/research/projects/marine_beach_spawning/

Check box if WDFW documented habitat is present for these species at your site.

Surf Smelt: _____ Pacific Herring: _____ Sand Lance: _____

For **NEW³** activities:

Attach a report from a qualified biologist⁴ determining if the area has potential spawning habitat for sand lance or surf smelt. The report should include (1) a description of the type of substrate present at the tidal elevations where spawning typically occurs, (2) photos of the substrate, and (3) provide a determination of the suitability of the substrate for spawning. Information on spawning requirements for these species is available at WDFW's marine beach spawning website.

³ New activities are the specific footprint of those activities that were undertaken after March 18, 2007. Expansion of activities into a new geographic footprint that had not previously been in commercial aquaculture is treated as a new footprint for the purpose of this programmatic ESA consultation.

⁴ For information on how to become an "approved biologist" for the purpose of conducting forage fish surveys, please contact WDFW.

Check box if potential habitat is present for these species.

Surf Smelt: _____ Pacific Herring: _____ Sand Lance: _____

15. **Vegetation:** Are vegetated shallows (e.g., native eelgrass⁵ or kelp⁶) present in the vicinity?

Yes: _____ No: _____

If yes, please briefly describe the location, distance to the project area, and approximate density in or adjacent to the project area.

If native eelgrass is present within an area new to shellfish activities, the eelgrass will be delineated and a map or sketch prepared and submitted with this form. Surveys to determine presence and location of eelgrass will be done during times of peak above-ground biomass: June-September. The following information must be included to scale: parcel boundaries, eelgrass locations, and on-site dimensions, shellfish activity locations and dimensions. Guidance on delineating eelgrass is available in the *Seattle District's Components of a Complete Eelgrass Delineation and Characterization Report* (May 2016)⁷.

If **kelp** is present within an area new to shellfish activities, please contact the Corps prior to conducting the delineation for recommended kelp delineation methodology. Guidance is also provided in the *Seattle District's Components of a Complete Eelgrass Delineation and Characterization Report* (May 2016).

Check box if an eelgrass/kelp delineation is attached: _____

16. **Fallow⁸ Areas with Eelgrass in Puget Sound and Hood Canal:** In fallow areas that have been colonized by eelgrass in Puget Sound and Hood Canal, no shellfish activities meet the requirements for this programmatic consultation except for the use of oyster long lines (including lines with flip bags) spaced laterally at 10 ft. intervals. See programmatic condition '30' below for additional details.

a. How many fallow acres with eelgrass are proposed to return to shellfish activities? _____

17. **Berms and Dikes:** New berms or dikes or the expansion or maintenance of current, authorized berms or dikes are not covered under this programmatic. However, if you currently have berms or dikes, please illustrate them on your drawings and provide the following information (attach more pages if necessary):

a. When were the dike(s) or berm(s) installed?

b. Describe the ongoing use of the dike(s) or berm(s):

c. Provide the position, length, and current condition of the berm(s) or dikes (s)

⁵ Native eelgrass is *Zostera marina*.

⁶ Kelp is defined as rooted/attached brown algae in the order *Laminariales*.

⁷ <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Forms/>

⁸ Fallow refers to areas that are periodically allowed to lie fallow as part of normal operations.

18. **Programmatic Conditions:** In order to meet all ESA requirements for this programmatic consultation, all programmatic conditions listed below **must be met**. Check each condition that you will meet. Check each item “not applicable” if they do not apply to your project. If you checked “will not meet” for any of the conditions, you must complete the “Will Not Meet” section at the end of this document.

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			<p>1. Gravel and shell shall be washed prior to use for substrate enhancement (e.g. frosting, shellfish bed restoration) and applied in minimal amounts using methods that result in less than 1-inch depth on the substrate annually. Shell material shall be procured from clean sources that do not deplete the supply of shell bottom. Shells shall be cleaned or left on dry land for a minimum of one month or both before placement in the marine environment. Shells from the local area shall be used whenever possible. Shell or gravel material shall not be applied so that it piles onto the substrate. Use of a split-hull (e.g., hopper-type) barge to dump the material is prohibited.</p>
			<p>2. For ‘new’⁹ activities only, gravel or shell material shall not be applied to enhance substrate for shellfish activities where native eelgrass or kelp is present.</p>
			<p>3. Turbidity resulting from oyster dredge harvest shall be minimized by adjusting dredge bags to “skim” the surface of the substrate during harvest.</p>
			<p>4. 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 nurseries, etc.).</p>
			<p>5. For ‘new’ activities only, shellfish activities (e.g., racks, stakes, tubes, nets, bags, long-lines, on-bottom cultivation) shall not occur within 16 horizontal feet of native eelgrass or kelp. If native eelgrass or kelp is present in the vicinity of an area new to shellfish activities, the eelgrass/kelp shall be delineated¹⁰ and a map or sketch prepared and submitted to the Corps. Surveys to determine presence and location of eelgrass shall be done during times of peak above-ground biomass: June—September. The following information must be included to scale: parcel boundaries, eelgrass/kelp locations and on-site dimensions, shellfish activity locations and dimensions.</p>

⁹ New activities are the specific footprint of those activities that were undertaken after March 18, 2007. Expansion of activities into a new geographic footprint that had not previously been in commercial aquaculture is treated as a new footprint for the purpose of this programmatic ESA consultation.

¹⁰ For guidance see Corps’ *Seattle District Components of a Complete Eelgrass Delineation and Characterization Report* (May 2016).

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			6. For ‘new’ activities only, activities shall not occur above the tidal elevation of +7-ft. (MLLW) if the area is listed as documented surf smelt ¹¹ spawning habitat by WDFW. A map showing the location of documented surf smelt spawning habitat is available at the WDFW website.
			7. For ‘new’ activities only, activities shall not occur above the tidal elevation of +5-ft. (MLLW) if the area is listed as documented sand lance spawning habitat by WDFW. A map showing the location of documented sand lance ¹² spawning habitat is available at the WDFW website.
			8. If conducting 1) mechanical dredge harvesting, 2) raking, 3) harrowing, 4) tilling, leveling or other bed preparation activities, 5) frosting or applying gravel or shell on beds, or 6) removing equipment or material (net, tubes, bags) within a documented or potential spawning area for Pacific herring ¹³ outside the approved work window, the work area shall be surveyed for the presence of herring spawn prior to the activity occurring. Vegetation, substrate, and materials (nets, tubes, etc.) shall be inspected. If herring spawn is present, these activities are prohibited in the area where spawning has occurred until such time as the eggs have hatched and herring spawn is no longer present. A record shall be maintained of spawn surveys including the date and time of surveys; the area, materials, and equipment surveyed; results of the survey, etc. The Corps and the Services shall be notified if spawn is detected during a survey. The record of spawn surveys shall be made available upon request to the Corps and the Services
			9. For ‘new’ activities only, activities occurring in or adjacent to potential spawning habitat for sand lance or surf smelt shall have a spawn survey completed by an approved biologist ¹⁴ prior to undertaking bed preparation, maintenance, and harvest activities if work shall occur outside approved work windows for these species. If eggs are present, these activities are prohibited in the areas where spawning has occurred until such time as the eggs have hatched and spawn is no longer present. A record shall be maintained of spawn surveys including the date and time of surveys; the area, materials, and equipment surveyed; results of the survey, etc. The Corps and Services shall be notified if spawn is detected during a survey. The record of spawn surveys shall be made available upon request to the Corps and the Services.

¹¹ Surf smelt are *Hyomesus pretiosus*.

¹² Sand lance are *Ammodytes hexapterus*.

¹³ Pacific herring are *Culpea pallasii*

¹⁴ For information on how to become an “approved biologist” for the purpose of conducting forage fish surveys, please contact WDFW.

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			10. All shellfish gear (e.g., socks, bags, racks, marker stakes, rebar, nets, and tubes) that is not immediately needed, or is not firmly secured to the substrate, will be moved to a storage area landward of MHHW prior to the next high tide. Gear that is firmly secured to the substrate may remain on the tidelands for a consecutive period of time up to 7 days. Note: This is not meant to apply to the wet storage of harvested shellfish.
			11. All pump intakes (e.g., for 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.
			12. Land vehicles (e.g., all-terrain, trucks) shall be washed in an upland area such that wash water is not allowed to enter any stream, waterbody, or wetland. Wash water shall be disposed of upland in a location where all water is infiltrated into the ground (i.e., no flow into a waterbody or wetland).
			13. Land vehicles shall be stored, fueled, and maintained in a vehicle staging area located 150 feet or more from any stream, waterbody, or wetland. Where this is not possible, <u>attach</u> (1) documentation as to why compliance is not possible, and (2) a copy of a spill-prevention plan. A clean-up kit shall be maintained and readily available on-site.
			14. For boats and other gas-powered vehicles or power equipment that cannot be fueled in a staging area 150 ft. away from a waterbody or at a fuel dock, fuels shall be transferred in Environmental Protection Agency (EPA)-compliant portable fuel containers 5 gallons or smaller at a time during refilling. A polypropylene pad or other appropriate spill protection and a funnel or spill-proof spout shall be used in the event of a spill. A spill kit shall be available and used in the event of a spill. All spills shall be reported to the Washington Emergency Management Office at (800) 258-5990. All waste oil or other clean-up materials contaminated with petroleum products shall be properly disposed of off-site.
			15. All vehicles operated within 150 feet of any stream, waterbody, or wetland shall be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected shall be repaired in the vehicle staging area before the vehicle resumes operation and documented in a record that is available for review on request by the Corps and Services.
			16. The direct or indirect contact of toxic compounds including creosote, wood preservatives, paint, etc. with the marine environment shall be prevented. <i>[This does not apply to boats.]</i>

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			17. All tubes, mesh bags and area nets 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 shall be placed with a minimum of one identification marker for each 50 feet of net.
			18. All equipment, gear, and other structures including anti-predator nets, stakes, and tubes) shall be tightly secured to prevent them from breaking free.
			19. All foam material (whether used for floatation of for any other purpose) must be encapsulated within a shell that prevents breakup or loss of foam material into the water and is not readily subject to damage by ultraviolet radiation or abrasion. Un-encapsulated foam material used for current, on-going activities shall be removed or replaced.
			20. Tires shall not be used as part of above and below structures or where tires could potentially come in contact with the water (e.g., floatation, fenders, hinges). Tires currently being used for floatation shall be replaced with inert or encapsulated materials, such as plastic or encased foam, during maintenance or repair of the structure.
			21. At least once every three months, beaches in the project vicinity shall be patrolled by crews who shall retrieve debris (e.g., anti-predator nets, bags, stakes, disks, tubes) 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. After weather events these locations shall be patrolled by crews who shall remove and dispose of shellfish-related debris appropriately. A record shall be maintained 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.
			22. When performing other activities on-site, the grower shall routinely inspect for and document any fish or wildlife found entrapped or entangled in nets or other shellfish equipment, stranded behind berms or dikes, or stranded within pools impounded by or around shellfish culturing equipment. In the event that fish, bird, or mammal are found entangled or stranded, the grower shall: 1) provide immediate notice (within 24 hours) to WDFW (all species), USFWS/NMFS (all species) or Marine Mammal Stranding Network (marine mammals), 2) attempt to release the individual(s) without harm, and 3) provide a written and photographic record of the event, including dates, species identification, number of individuals, and final disposition, to the Corps and Services. Contact USFWS Law Enforcement Office at (425) 883-8122 or the Washington USFWS Office at (360) 753-9440 with any questions about the preservation of specimens.

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			23. Report lose cover nets regardless of whether fish were entangled. If fish are observed entangled, they shall be collected and preserved in a freezer and the Central Puget Sound Branch Chief in the NMFS' Lacey Office contacted to determine steps to identify the species.
			24. Vehicles (e.g., ATV's, tractors) shall not be used within native eelgrass beds. <u>I</u> f there is no alternative for site access, attach a plan describing specific measures and/or best management practices that shall be undertaken to minimize negative effects to eelgrass from vehicle operation. The access plan shall include the following components: (a) frequency of access at each location, (b) use of only the minimum vehicles needed to conduct the work and a description of the minimum number of vehicles needed at each visit, and (c) consistency in anchoring/grounding in the same location and/or traveling on the same path to restrict eelgrass disturbance to a very small footprint.
			25. Vessels shall not ground or anchor in native eelgrass or kelp and paths through native eelgrass or kelp shall not be established. If there is no other access to the site or the special condition cannot be met due to human-safety considerations, attach a site-specific plan describing specific measures and/or best management practices that shall be undertaken to minimize negative effects to eelgrass from vessel operation and accessing the shellfish areas. The access plan shall include the following components: (a) frequency of access at each location, (b) use of only the minimum vehicles needed to conduct the work and a description of the minimum number of vehicles needed at each visit, and (c) consistency in anchoring/grounding in the same location and/or traveling on the same path to restrict eelgrass disturbance to a very small footprint.
			26. Unless prohibited by substrate or other specific site conditions, floats and rafts (includes work and dive platforms) shall use embedded anchors and midline floats to prevent dragging of anchors or lines. Floats and rafts that are not in compliance with this standard shall be upgraded to meet this standard during scheduled maintenance, repair, or replacement or before the end of the term of the next renewed authorization. <i>[Note: Any alternative to using an embedded anchor must be approved by the NMFS.]</i>
			27. Activities that are directly associated with shellfish activities (e.g., access roads, wet storage) shall not result in removal of native riparian vegetation extending landward 150 ft. horizontally from MHHW (includes both wetland and upland vegetation) and disturbance shall be limited to the minimum necessary to access or engage in shellfish activities.
			28. Native salt marsh vegetation shall not be removed and disturbance shall be limited to the minimum necessary to access or engage in shellfish activities.

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			29. Intake or outfall structures used to connect upland wet storage holding tanks shall be authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (NPDES).
			AREA-SPECIFIC PROGRAMMATIC CONDITIONS
			30. Puget Sound and Hood Canal only: For fallow ¹⁵ areas that have been colonized by eelgrass, only oyster long lines spaced laterally at 10 ft. intervals shall be used. Flip bags, if used, must be suspended above the substrate so they do not rest on substrate at low tide. No other culture method shall be used in fallow areas colonized by eelgrass. Further, with the exception of mechanized long-line harvest, no mechanized activities shall occur in fallow areas colonized by eelgrass. This does not apply to fallow areas in Willapa Bay or Grays Harbor.
			31. North Puget Sound only: Mechanical dredge harvest and harrowing shall not be conducted in between April 1 and August 31.
			32. The placement of gravel or shell directly into the water column (i.e., graveling or frosting) shall not be conducted between February 1 and March 15 in designated critical habitat¹⁶ for Hood Canal summer-run chum salmon.
			33. Hood Canal summer-run chum salmon designated critical habitat: Between February 1 and April 30, shellfish planting and harvesting shall not occur within 15 feet waterward of the waterline (tideline) to protect juvenile chum salmon. In addition, shellfish activities which increase turbidity in the nearshore water (e.g., geoduck harvest) shall not occur at all during this timeframe.
			EXCLUDED ACTIVITIES UNDER THIS PROGRAMMATIC
			34. Vertical fencing/vertical nets or drift fences (includes oyster corrals) are not covered and shall not be used.
			35. New berms or dikes or the expansion or maintenance of current, authorized berms or dikes is not covered under this programmatic. Installation, expansion, or maintenance of berms or dikes shall not occur.
			36. Installation of new piles or maintenance to piles of any kind are not covered under this programmatic and shall not occur. [<i>An additional, separate form is required for installation or maintenance to piles.</i>]

¹⁵ Fallow refers to areas that are periodically allowed to lie fallow as part of normal operations.

¹⁶ Critical habitat for Hood Canal summer-run chum salmon occur in Hood Canal and the Strait of Juan de Fuca marine areas in Clallam, Jefferson, Kitsap, and Mason Counties. Exact locations and excluded areas are described at: <http://www.westcoast.fisheries.noaa.gov/publications/frn/2005/70fr52739.pdf>

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			37. <u>Mooring</u> buoys shall not be installed or maintained. <i>[An additional, separate form is required for installation of mooring buoys.]</i>
			38. Cultivation of new species of shellfish not previously cultivated in the action area is not covered under this programmatic and shall not occur.
			39. Installation or maintenance of attendant features, such as docks, piers, boat ramps, stockpiles, or staging areas are not covered by this programmatic and shall not occur. <i>[Additional forms may be available that address attendant features, please coordinate with Corps prior to submitting.]</i>
			40. Deposition of shell material back into waters of the United States as waste is not covered and shall not occur.
			41. Dredging or creating channels so as to redirect fresh water flow is not covered under this programmatic and shall not occur.
			42. Installation of “new” rafts is not covered under this programmatic and shall not occur.
			43. Expansion of continuing rafts is not covered under this programmatic and shall not occur.
			44. Installation of “new” or the relocation or expansion of FLUPSYs or floats is not covered under this programmatic and shall not occur.
			45. The use of materials that lack structural integrity in the marine environment (e.g., plastic children’s wading pools) is not covered under this programmatic and shall not occur.
			46. The activities being authorized by this action shall not involve the use of pesticides or herbicides during the time of this authorization.

