



US Army Corps
of Engineers
Seattle District



Shellfish ESA Programmatic Form (aka SPIF) Frequently Asked Questions (FAQ)

Date: November 17, 2016

This list of questions is intended to help you complete the Specific Project Information Form. In addition to these questions, more information and tips are provided in the Power Point presentation “SPIF Workshop 17 Oct 2016”. The power point presentation is meant to accompany these questions. This FAQ is meant to be a living document which will be updated frequently. It is also on the Seattle District webpage at <http://www.nws.usace.army.mil/>. If you have specific questions about your project, please contact us at (206) 764-6904 or at (206) 764-3495.

1. Action Area:

Q. Where do I get a map for snowy plover critical habitat?

A. For details and locations of listed species (e.g., butterflies, plants, birds) check with Western Washington Fish and Wildlife Service Office online at <https://www.fws.gov/wafwo/>.

Q. What happens if the snowy plover nesting habitat expands?

A. The Corps would coordinate with U.S. Fish and Wildlife Service (USFWS) to update/or addendum, as appropriate, the programmatic consultation.

2. Drawings and Photographs:

Q. Can we use our old drawings with a new date?

A. Yes, for an existing operation previously authorized under Nationwide Permit (NWP) 48 and which has not changed cultivation species or methods or changed the areas in cultivation, submit the drawings provided with the verification (permit) letter. Please review the drawings to make sure they have all the information requested in the SPIF and re-date them to show they are current. This only applies to previously authorized operations as a new application would not have old drawings.

Q. What if there has been changes to the work previously authorized, for example changes to the cultivation species, methods, or areas that were previously fallow and are now active?

A. Describe the changes in the SPIF (questions 10 and 11), and update the drawings provided with the verification letter to reflect the changes.

Q. How can I provide a photograph when the daytime tides are high?

A. We understand the fall/winter daytime tides can make photographs a challenge. For a project that is currently verified but needing Endangered Species Act (ESA) coverage, please submit any available site photographs. Or, submit an aerial photograph using an online web program, such

as Google Earth. If using an online web program, use the ‘+’ symbol to zoom in as close as possible and still see the area of the project. If the area is spread out or not contiguous, please submit additional photos. Include the date the photo is taken on all photos submitted. Additional information and guidance is provided on pages 21 and 22 in the SPIF workshop power point. For a new project, please provide the photographs as described in the SPIF as they are needed to show the presence or absence of vegetation and the substrate composition.

Q. Is a cross-sectional profile drawing required?

A. At the minimum a “plan view” is requested to accurately represent the existing and proposed features and activities. Elevation and/or section views (cross-sectional views) are also helpful for showing the water depths and the dimensions of structures. Seattle District’s Drawing Checklist “Section 8” has additional information for aquaculture project drawings. [http://www.nws.usace.army.mil/Portals/27/docs/regulatory/Forms/Drawing_Checklist\(4-17-12\).docx](http://www.nws.usace.army.mil/Portals/27/docs/regulatory/Forms/Drawing_Checklist(4-17-12).docx).

Q. Do we need to go on some else’s property to show a photograph of an adjacent structure?

A. No. Illustrate on the drawings and use photographs taken from the property to show adjacent structures such as piers. Another option is to use Google Earth aerial photographs to show adjacent structures. Please provide the date of the photo (this is provided on the webpage).

Q. Can we sketch over a photograph, such as an on-line Google Earth aerial photograph?

A. Yes, especially for a plan view. Another option is to use additional sheets to illustrate closer detail, such as a sketch of a structure.

Q. Does the drawing have to be to scale?

A. The Corps appreciates having drawings to scale. If you are unable to create a drawing to scale, then provide the dimensions of the cultivation area, and provide the distance/measurement from the line of the mean higher high water (MHHW) or from a fixed structure such as a bulkhead.

Q. How do I show the latitude and longitude of the four corners of my project area? What if the project area isn’t square? What if I have multiple parcels that are non-contiguous?

A. One easy way to determine the latitude and longitude of the project area is to use an on-line mapping program. One site is <https://fortress.wa.gov/ecy/coastalatlas/tools/Map.aspx>. We provide detailed instructions on using the coastal atlas site on slides 11-21 in the SPIF Workshop 17 October 2016, Power Point. If the project area is not a square/rectangle, provide the latitude and longitude for additional points. If there are multiple areas that are not contiguous within the project area, label the latitude and longitude for each area. Also, please provide the latitude and longitude as a decimal number.

Q. Do I need to add the North and West symbols on the latitudes and longitudes?

A. There is no need to give the N/W but please provide them as decimal numbers.

Q. Does each drawing require a title block?

A. Yes, a title block is very important. We coordinate the projects with other agencies, and have reporting requirements to the National Marine Fisheries Service (NMFS) and USFWS. A title

block ensures the drawings remain together as a set. Also, drawings become part of any verification/permit so it is important to ensure the drawings stay with the correct permit.

Q. What if I am planning on big changes to an existing farm?

A. Please provide a request to modify the permit and include the current drawings and new drawings showing the changes. Also make notes on a current aerial photograph showing what and where the changes would occur.

Q. If we correct the drawings at this time for the SPIF and there are no changes can we reuse them for the 2017 version of NWP 48?

A. We can't confirm this until the 2017 version of NWP 48 is issued; however, that is the intent.

3. Location:

Q. Under location (Question 9), do I need to fill in the latitude and longitude for all four corners?

A. No, just provide one latitude and longitude. This is to help us locate the project.

Q. Under location (Question 9) what do I fill in for tidal elevation?

A. Fill in the tidal elevation range for the shellfish activities. For example, "between the +2-ft. and -3-ft." Use the mean lower low water (MLLW) tidal datum. This is the common tidal datum used in tide tables. Also provide this information on the drawings.

Q. Under location (Question 9) what do I use as an address?

A. For a shoreline project, provide the street address to the adjacent upland property. Projects in bays probably won't have an address. However, please provide the nearest city and the county in either case.

4. Description of Work and Methodology (Questions 10 and 11):

Q. Can we combine these two questions?

A. #10 is a summarized description of the work and #11 requests more detail of the methods and timing of the work. If it is easier to describe, attach a page with the information requested in #10 and #11 and state "see attachment".

5. Mechanical Work (Question 13):

Q. How do I report the acreage I am dredging/harrowing? For example, if I harrow twice in one year, do I multiply '2' by the number of acres?

A. The acreage represent the size of the area you would dredge and/or harrow in any one year. Do not multiply the number of times you harrow in one year by the number of acres. It is just the total amount of acres you would dredge and/or harrow in the project area in one year. Note: only complete this section if you are dredging and/or harrowing.

6. Forage Fish:

Q. Do I need to do a forage fish survey for a new growing area?

A. Not if it is already documented as a forage fish spawning area. If it is a documented forage fish area, then 'new' activities shall not occur above specific tidal elevations. If not documented, then yes, you will need to have a person who has completed the Washington Department of Fish and Wildlife (WDFW) training for an "approved biologist" for the purpose of conducting forage fish surveys determine if your area is potential habitat for forage fish. For details on how to become an "approved biologist" contact, Phillip Dionne, phillip.dionne@dfw.wa.gov, 360-902-2641."

Q. Do I need to do a forage fish survey for 'new' activities in a currently authorized project area?

A. The answer above also applies to 'new' activities in currently authorized project areas. 'New activities' are the specific footprint of those activities 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 consultation. The survey is to determine if the area has potential spawning habitat for sand lance or surf smelt.

Q. Do I have to do a sand lance/surf smelt survey for areas that have been fallow for a very long time, for example 20 years, prior to resuming activities in that area?

A. The sand lance/surf spawning areas are above (landward) of the +5 ft. tidal elevation. To meet the definition of fallow, the shellfish activities must have previously occurred in that upper tidal elevation. You do not have to complete the survey for activities in 'fallow' areas. You do have to complete the survey for 'new' activities. If you have any questions about whether an area meets the definition of 'fallow' or is considered 'new' for this consultation, please contact the Seattle District prior to resuming activities in that area.

Q. For new activities, if surf smelt is documented but you're not farming above the +5 ft. tidal elevation, do you still need to do a survey?

A. No, it is already documented so no survey is necessary. However, to meet the terms and conditions of the programmatic ESA consultation you will need to keep all activities below the +5 or +7, as appropriate for your species. See conditions #6 and #7 for new activities requirements. Also, see condition #8 which applies to all activities (new or existing) in documented and potential spawning areas for Pacific herring.

Q. Do I have to take the training through WDFW?

A. Yes, at this time only WDFW is providing the approved forage fish spawning training. You do not need to be a fishery biologist to take the training. It is open to anyone who wants to learn how to conduct forage fish spawning surveys. Ecology's Coastal Training Program handles the registration and all the logistics for forage fish training at <http://www.coastaltraining-wa.org>.

Q: How do I find the work windows for activities in potential forage fish spawning areas?

A. All of the work windows for forage fish, salmon and bull trout are on the Seattle District's web page at <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/> then select Work Windows - Marine Waters. We also usually provide this information in the verifications (permits) for new activities.

7. Eelgrass/Kelp:

Q. What is the definition of vegetated shallows?

A. Vegetated shallows are permanently inundated areas that under normal circumstances support communities of rooted aquatic vegetation, such as turtle grass and eelgrass in estuarine or marine systems as well as a number of fresh water species in rivers and lakes. Vegetated shallows are one type of special aquatic site, which include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges as defined in 40 CFR 230.40 through 230.45. The definition of an eelgrass bed can be found in Seattle District's reference guidance for eelgrass on our webpage at <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Forms/>

Q. Do you consider non-native Japanese eelgrass (*Zostera japonica*)?

A. Not for the purpose of this programmatic ESA consultation.

Q. If proposing to work in a new area with eelgrass in the vicinity or within the project area, do you need to wait until summer to do an eelgrass survey and to submit the SPIF?

A. If it is a new area to shellfish activities, then the survey needs to be done between June 1 and September 30. For more information, the Seattle District has a reference guidance for eelgrass on our webpage at <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Forms/>. If you have exiting activities in the project area you should submit a SPIF now for the current operation and then resubmit a SPIF for the proposed expansion after you have the survey completed. For site specific information please contact the Seattle District.

Q. What if I am proposing work in a new area with kelp?

A. The eelgrass guidance can also assist with kelp. Please contact us first for additional guidance.

Q. Do I check 'yes or no' if eelgrass has not been present in the vicinity for a long time, for example 12 years?

A. You should check 'no' if it has not been present in the vicinity for many years. If there is still a small amount of eelgrass present, check 'yes' but explain its location, distance to the project area, and density. In this example, the density would be sparse or confined to only a small area.

8. Berms and Dikes:

Q. Is this section of the SPIF (question #17) referring to man-made berms and dikes?

A. Yes.

Q. How do I get a history of a berm/dike if I am leasing the area?

A. You can ask the property owner for a history of the structure. You can also use a feature in Google Earth to look at older photographs (see power point presentation).

9. Questions of the Various Programmatic Conditions:

Q. When is it appropriate to check “will meet”, “will not meet”, or “not applicable” as a response to the programmatic condition?

A. Your response is affirming you are now meeting the programmatic condition and will continue to meet the programmatic condition until your authorization expires. If you are currently meeting the condition and will continue to meet the condition, then check “will meet.” If the condition is one that would never be applicable to your operation, for example it applies to a different waterbody, then check “not applicable.” For a condition you currently do not meet, or you are proposing a modification to your project where you would then not meet the condition, you should check “will not meet.”

Q. What happens if I checked ‘will not meet’ for a condition?

A. Please complete the last three questions on page 12 and provide the completed SPIF to the Corps. If you do not meet the terms and conditions of the programmatic ESA consultation, then an individual ESA consultation with NMFS and USFWS will be conducted for your project. We encourage you to contact us if you have questions regarding an activity that does not meet the conditions of the programmatic ESA consultation.

Q. For #1, if we cannot meet this condition because we are proposing to use a split-hull (hopper-type) barge, what information is needed?

A. Check “will not meet” for this condition and provide a detailed description of the mechanism your split-hull barge would use to apply material. Explain how the barge opens and how you are able to determine the depth of material being applied. Give the depth of the material you propose to apply including how often you would apply the material. Include specific drawings of the mechanism and photographs. Also, if applicable, include past photographs of the substrate after applying gravel with this barge. This information would be used to complete an individual ESA consultation with NMFS and USFWS for this project area.

Q. Does condition #1 apply to shell being placed for cultch? Or for natural seed propagation?

A. No, this condition is for graveling/frosting with the purpose to firm the substrate. It is for shell/gravel material not whole shells with cultch.

Q. For conditions #6, if I do not cultivate above the +7 ft. tidal elevation do I select “will meet” or do I select “not applicable?”

A. If your project area includes tidelands landward of the +7 that you do not cultivate, checking “will meet” confirms you will not expand “new” activities above the +7. This question is applicable to this project area because expanding the footprint of your activities is treated as a “new” footprint for the purposed of this ESA consultation (see footnote on page 5).

Q. For conditions #7, if I do not cultivate above the +5 ft. tidal elevation do I select “will meet” or do I select “not applicable?”

A. If your project area includes tidelands landward of the +5 that you do not cultivate, checking “will meet” confirms you will not expand “new” activities above the +5. This question is applicable to this project area because expanding the footprint of your activities is treated as a “new” footprint for the purposes of this ESA consultation (see footnote on page 5).

Q. For condition #8, does this apply to both new and ongoing (existing) areas?

A. Yes, this condition applies to both new areas and areas currently in cultivation. Within a documented or potential spawning area for Pacific herring, prior to conducting any of the listed activities outside the approved work window, the area must first be surveyed for the presence of herring spawn. To determine if your area has potential for spawning of Pacific herring, check the WDFW forage fish website for spawning in the waterbody at:
http://wdfw.wa.gov/conservation/research/projects/marine_beach_spawning/.

For information on conducting Pacific herring spawning surveys, refer to the section above under forage fish.

Q. For condition #8, what is the approved work window for herring?

A. All of the work windows for forage fish, salmon and bull trout are on the Seattle District’s web page at <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/> then select Work Windows-Marine Waters. We provided the work windows in previous verifications and intend to continue to provide the work windows in future verification letters.

Q. For conditions #8 and #9, who do we notify if we see spawning/eggs?

A. Notify the Corps, NMFS, and USFWS if spawn is detected during a survey; otherwise, just maintain a record of your surveys. We will post all of the contact information, including any updates, on the Seattle District’s aquaculture web page.

Q. For condition #8, how do we perform a herring survey and how close to the working date should they be performed?

A. You can find information on conducting herring surveys on WDFW’s website at http://wdfw.wa.gov/conservation/research/projects/marine_beach_spawning/ or find their contact information if you have site specific questions.

Q. For condition #10, can all of my gear only be there for seven days?

A. This condition refers to the storage of gear, such as when someone is planting an area. This condition does not apply to gear actively being used for cultivation. Gear that is not being immediately used or cannot be firmly secured to the substrate cannot be left waterward of MHHW. It should be moved out of the water at the end of the day. Gear that can be firmly secured may remain for a seven-day period. This does not apply to the wet storage of harvested shellfish.

Q. For condition #11, does the screening apply to FLUPSYs?

A. Yes, the screening is to keep juvenile fish from being sucked into the intake. This does not apply to boat motor intakes (jet pumps) or through-hull intakes. NMFS has their screen criteria

online at

http://www.westcoast.fisheries.noaa.gov/publications/hydropower/fish_screen_criteria_for_pumped_water_intakes.pdf

Q. Do conditions #12-#15 reflect concern for oil getting into the water? Can I clean off other material or shell from my vehicles?

A. Yes, there is concern about oils and fuels getting into the water. However, other types of waste materials are also of concern. NWP 48 does not authorize the deposition of shell as waste material into waters of the U.S. There may also be local/state requirements regarding the transport of material/shell between water areas.

Q. For condition #14, what about transporting fuel to large barges?

A. If operating under the state conditions for transporting larger quantities of fuel/oil over marine waters, check “not applicable” and note you are working under other laws and regulations for the transport of oil/fuels.

Q. For condition #14, does this apply to the portable fuel containers/portable tanks connected to motors? Typically, these are 6 gallon containers.

A. No, this condition applies to the portable fuel containers used to refill the tanks attached to the motors. The 5-gallon container is typical for the container used to transport fuel to the tanks. Also, note there is a typographical error in this condition. The second sentence should read, “A polypropylene pad or other appropriate spill protection and a funnel or spill-proof spout shall be used during refueling.”

Q. For condition #16, can I use a shellfish rack composed of creosote?

A. No, as creosote is a toxic compound.

Q. For condition #17, does this apply to mesh bags?

A. Yes, this applies to tubes, mesh bags, and area nets. An exception is when oyster cultch bags are stacked and the stack firmly bound and secured, such as by ropes. Previously verified operations have already had this condition, but please contact us if you have questions or need time to implement the condition.

Q. For condition #19, can foam material (Styrofoam) be encapsulated in wood? Does un-encapsulated materials need to be replaced?

A. Yes, wood can be used to encapsulate the foam material. Yes, the un-encapsulated materials need to be removed or replaced.

Q. For condition #20, does this apply to my piers or vessels?

A. No, this condition applies to all structures included in this programmatic consultation. Piers and barges are not covered in the programmatic and new floats and rafts will have an individual ESA consultation. The condition applies to current rafts, floats, and in other cases where tires are being used in the project area, for example, to secure equipment.

Q. For condition #22, do we need to report every fish entrapped?

A. Yes, all fish, birds, or mammals found entangled or stranded need to be reported as described

in this section. You will be asked to provide a photograph and may also be asked to keep a specimen so that it can be identified by an expert.

Q. For condition #26, is the intent to prevent scouring?

A. Yes, that is the intent. Embedded anchors and midline floats should be used unless prohibited by substrate (e.g., rock) or other site-specific conditions.

Q. For condition #29, do hatchery and/or wet storage intakes/outfalls require authorization under the National Pollutant Discharge Elimination Program (NPDES)?

A. If you are unsure about whether your site is compliant with the NPDES, contact Washington Department of Ecology at <http://www.ecy.wa.gov/programs/wq/permits/forms.html>.

Q. For condition #30, do I have to change my cultivation to oyster long lines with 10-foot spacing if eelgrass colonizes an area during the course of cultivation?

A. No, you would not need to change your cultivation methods. If eelgrass colonizes during the course of cultivation, then the area is not fallow. For example, if eelgrass colonizes an area planted in geoduck during the grow-out period when the gear is removed, the area is not fallow, it is in cultivation.

Q. For condition #30, if cultivation stops in an area because of the grower's management decisions, such as to change cultivation practices, control predators, renew leases, or if the case of water quality closures, is the area considered fallow?

A. Yes, it would generally be considered fallow as these events are part of normal operations. We recommend you contact the Seattle District prior to returning into areas where cultivation has stopped if you have questions specific to your situation. Note: condition 30 only applies to fallow areas in Puget Sound and Hood Canal.

Q. For condition #33, what is the definition of tideline?

A. The tideline or waterline is the line on the shoreline where the tide is hitting at any one point in time.

Q. For the conditions #34-46, how do I determine if I check 'will meet' or 'will not meet'?

A. Conditions described in #34-46 are for activities not included under this programmatic. Each condition states the activity is not covered and/or shall not occur. If you agree to not conduct the activity, then check 'will meet'. If you check 'will not meet' an individual ESA consultation with NMFS and USFWS will occur or, in some cases, a different activity programmatic may apply. The selection 'not applicable' should not be used in this section.

Q. For condition #38, what is the action area?

A. The action area is the inland waters of the State of Washington (see explanation of action area at the beginning of the SPIF). The action area was the area included in the programmatic ESA consultation. This differs from NWP 48, which refers to new species of shellfish in the waterbody.

Q. What about condition #46 for pesticides?

A. The Corps does not have the authority to regulate the use of pesticides or herbicides. A

notification is being prepared explaining how the Corps will authorize project areas where the application of pesticides or herbicides is occurring or expected to occur during the life of the project's authorization. This Q&A will be updated when the notification is released.

10. Triggers for a New Application:

Q. What if there are changes to my project?

A. If there are minor changes to your project, you may be able to just make those changes on your drawings and in the SPIF. What triggers a requirement for a new application will depend on the type and amount of the change. Please contact us for a more specific response to your circumstance.

11. Other Questions:

Q. Do I provide a SPIF for each project area?

A. Yes, please provide a SPIF for each project area. For existing operations, each of your project areas received a reference number. Please provide a SPIF for each of those reference numbers. For a new operation, if you have questions please contact us to determine if the proposed project is within a single project area.

Q. What if you are the new owner or new lessee of a permitted operation? Do we keep the same reference number?

A. The reference number will probably remain the same. We have a form for you to use to transfer the previous verification/permit to you. Please contact us and we will send you the form.

Q. Does the SPIF cover aquaculture activities managed by WDFW under the Washington State oyster reserves?

A. Not at this time. The Seattle District is coordinating this question with WDFW and will provide this information in a future update.

Q. What happens if a new species is listed under ESA?

A. The Corps will coordinate with USFWS and NMFS to revise the programmatic consultation as appropriate to include any new listed species or critical habitat.

Q. How much of the information we are submitting is subject to availability under the Freedom of Information Act (FOIA)? Can certain information be redacted?

A. The Seattle District's Office of Counsel determines what information is required to be released under a FOIA request and what information can be redacted (held back). If you have a concern, please contact us with a specific example and we can coordinate your question with our Office of Counsel.

Q. For the ESA programmatic, what constitutes a new activity?

A. For the ESA programmatic, new activities are the specific footprint of those activities 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 the programmatic ESA consultation.

Q. Is it a new farm if the activity has changed or if the species being farmed has changed?

A. The shellfish ESA programmatic definition of ‘new’ is different than NWP 48. For ESA, if you are expanding the geographic footprint of where you are currently undertaking shellfish activities or adding a geographic footprint, then you are doing a ‘new’ activity. This is explained further in the SPIF.