

Nichols Brothers Boat Builders penalized for un-permitted launch structure

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SEATTLE--Federal, state, and county agencies and representatives of Nichols Brothers Boat Builders, Inc., have agreed on a permit violation resolution, including mitigation and fines.

On May 27, the Army Corps of Engineers hand delivered a letter to Nichols Brothers Boat Builders, Inc., (NBBBI) and issued a stop work order for unauthorized installation of a marine rail structure in Holmes Harbor in Island County, Wash.

NBBBI failed to obtain a shoreline permit from Island County, Hydraulic Project Approval from the Washington Department of Fish & Wildlife (WDFW), and authorization from the Corps under the federal Clean Water Act and the Rivers and Harbors Act. The work occurred during a WDFW "fish window," when in-water construction is prohibited to avoid impacts to migrating salmon.

Nichols Brothers subsequently relayed to the Corps the substantial economic consequences of delaying the June launch date of the vessel "Empress of the North," for which the marine rail launch structure was required.

The Corps temporarily removed the stop work order June 3 pending signature of an agreement.

The terms of the Settlement Agreement signed June 6, 2003, require NBBBI to:

- a. Post a bond or letter of credit by June 6 for \$150,000 to fund mitigation work. NBBBI must identify and/or develop mitigation activities or projects, and the Corps, in coordination with the Washington Departments of Ecology and Fish and Wildlife, and Island County, must approve the work.
- b. Pay a penalty of \$50,000 no later than June 11, 2003, for construction of a structure in a navigable water without the appropriate Department of the Army permit.
- c. Remove the unauthorized marine rail system, in its entirety, within 10 days after the launch of the Empress of the North."

"It is the Corps' opinion that Nichols Brothers should have known a Department of the Army permit was required for the installation of the marine rail structure. Had NBBBI coordinated with the Corps when planning for this structure six to nine months ago, the appropriate permit processes could have been completed in advance of the proposed launch date," wrote Col. Ralph Graves, Seattle District Engineer, in a letter to NBBBI.

In a separately-issued penalty and order, Island County and Ecology fined NBBBI \$47,000 for building the launch structure without obtaining a shoreline permit.

The county and Ecology have allowed completion of the structure, subject to NBBBI's compliance with all requirements of WDFW and the Corps, but are withholding a go-ahead to launch the ship, pending further negotiations.

The County/Ecology order also directs NBBBI to comply with WDFW's and the Corps' mitigation and bonding requirements. NBBBI must also apply, within one year, for a new shoreline permit to address all existing and proposed future uses and activities associated with the boatyard. Ecology is requiring

unannounced inspections and quarterly meetings with NBBBI to ensure compliance

WDFW issued a Hydraulic Project Approval permit June 3 that allows Nichols Brothers Boat Builders to complete construction of the rail launch system, launch the Empress of the North, then remove the railway system immediately.

As part of the permit approval, NBBBI will be required to perform mitigation work for fish and wildlife habitat adversely impacted by the railway system construction. The mitigation could occur both on- and off-site.

WDFW enforcement officers are continuing to investigate NBBBI work prior to June 3.

WDFW continues to work with other regulatory agencies and NBBBI on a coordinated permitting process that will allow future boat launches from the Holmes Harbor site.