

SHELLFISH MARICULTURE (AQUACULTURE) PERMITTING UPDATE

October 10, 2023
Virtual Outreach Event

Webinar Etiquette:

- Please place your audio on MUTE
- Please turn OFF your video (to reduce bandwidth lag)
- Please add any questions via the Chat feature (please note we may not have time to answer all questions)
- **To protect your commercial and financial confidentiality, we are not able to address case-specific permit issues in this public forum**



US Army Corps
of Engineers®



OBJECTIVES



- Inform interested parties on shellfish mariculture permitting authorities, permitting status, and the shellfish mariculture permitting plan for the future.





PRESENTATION OUTLINE



- Permit Authorities
- Brief History of Shellfish Mariculture
- Current Status
 - Contract
- Future Management of Shellfish Mariculture
 - Compliance and enforcement
 - Projecting the future
- 401 Water Quality Certifications/Coastal Zone Management Concurrence



PERMIT AUTHORITIES



- Corps Authorities
 - Section 10 of Rivers and Harbors Act of 1899
 - Section 404 of Clean Water Act

Both authorities require compliance with other federal laws such as the Endangered Species Act, Section 401 of the Clean Water Act, Coastal Zone Management Act, National Historic Preservation Act, the Corps Public Interest Review factors and upholding our tribal trust responsibilities



SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899



- To protect and preserve the navigability of navigable waters
- Requires that you obtain a permit from the Regulatory Branch for any **structure** or **work** in (over or below) a **navigable** water of the U.S.





SECTION 404 OF THE CLEAN WATER ACT



- To restore and maintain the chemical, physical and biological integrity of the waters of the U.S.
- Requires you obtain a Department of the Army permit from the U.S. Army Corps of Engineers for ...The discharge of dredged or fill material in any water of the U.S.





PERMIT PATHWAYS



- Permit Types
 - Individual Permits (IPs)
 - Standard Individual Permits (SIPs)
 - Letters of Permission (LOPs)
 - General Permit (GP)
 - Nationwide Permits (NWP)



STANDARD INDIVIDUAL PERMIT (SP)



- May be used for Section 404 and/or Section 10 activities
- Requires a public notice
- NEPA environmental documentation
- Evaluation of the Corps public interest review and compliance with the 404(b)(1) Guidelines
- Evaluation of alternatives and cumulative impacts
- Consideration of mitigation
- Compliance with ESA, EFH, Historic Properties, Tribal Trust Responsibilities, Section 401 WQC and Coastal Zone Management



LETTERS OF PERMISSION (LOP)



- Section 10 only activities
- Categorically excluded from NEPA
- Notification to state and federal agencies
- Evaluation of the Corps public interest review, including cumulative effects
- Consideration of mitigation
- Compliance with ESA, EFH, Historic Properties, Tribal Trust Responsibilities, Section 401 WQC and Coastal Zone Management



GENERAL PERMITS – NATIONWIDE PERMITS



- Authorize activities that are similar in nature and cause only minimal individual and cumulative environmental impacts.
- May be used for Section 404 and/or Section 10 activities.
- 2021 NWPs became effective on 15 March 2021



HISTORY OF AQUACULTURE IN SEATTLE DISTRICT



- 2007 NWP 48; Only for existing operations.
 - Programmatic Section 7 consultation (PC) completed for actions covered by 2007 NWP 48.
- 2012 NWP 48; Authorizes existing, new, or expansions.
 - ½ acre threshold for new
 - PC determined to only cover 2007 NWP, and can no longer be used.
- 2016 ESA PC for Shellfish Activities in WA State Inland Marine Waters available for use.
- 2016 – early 2017; NWS reviews all pending and issued 2012 NWP 48s for compliance with new ESA PC, reissued ~900 2012 NWP 48s to provide ESA coverage.
- March 2017 – 2017 NWP 48 issued.
 - Still ½ acre threshold for new, but redefines existing operation to any area that has been in shellfish cultivation in the last 100 years.
- March 2017- 2018; NWS issues ~900 2017 NWP 48 verifications



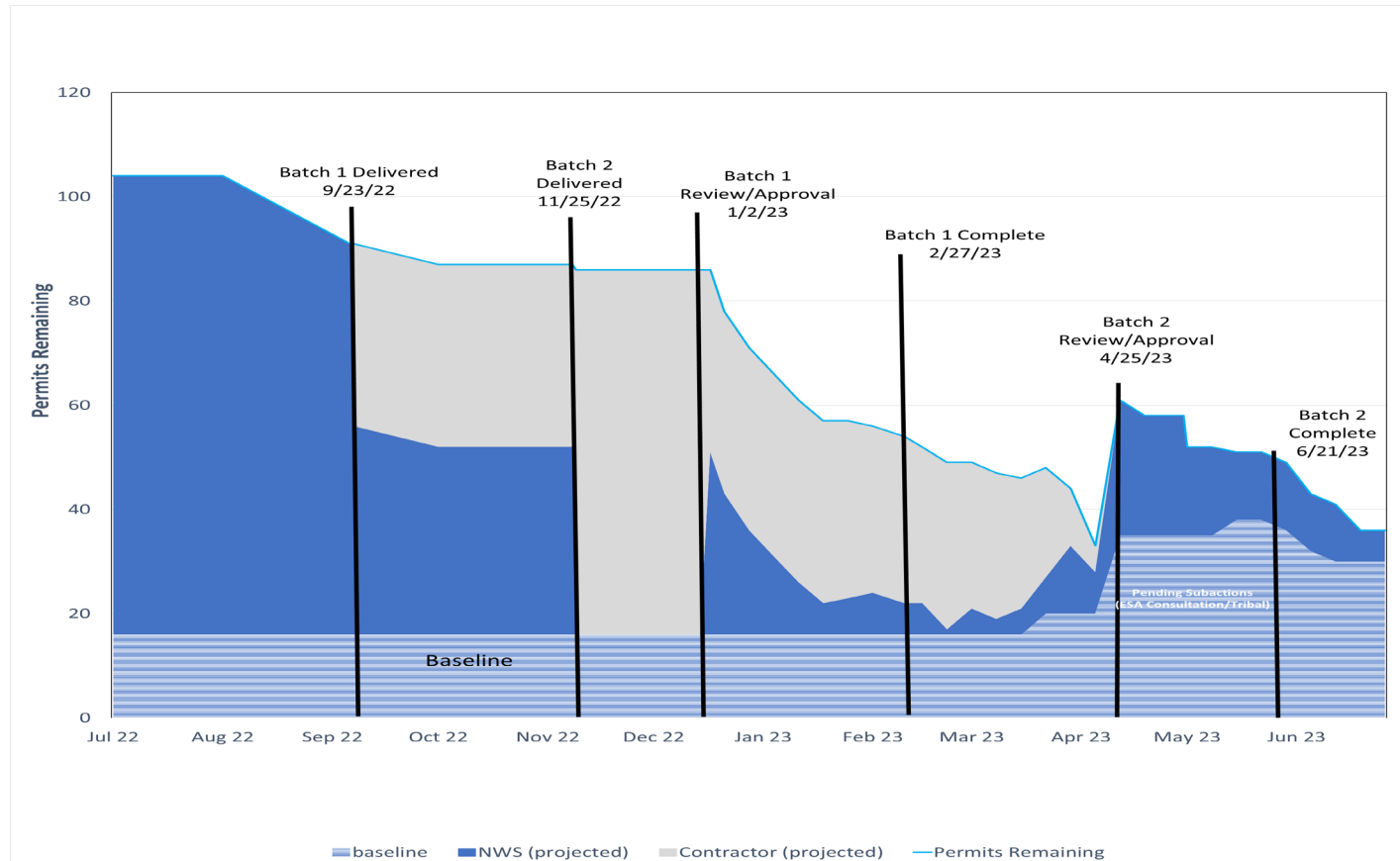
HISTORY CONTINUED



- In 2020, a federal court vacated all existing NWP 48 verifications (~900 projects) in Washington State and required permittees to apply for new authorization if they wanted to continue operating.
- USACE enterprise reinforcement team under the command and control of the Seattle District Commander completed 600 permit decisions from NOV 2020 – APR 2022. This effort included over 60 regulatory staff from 25 divisions and districts.
- March 15, 2021 NWP 48 Re-issued (out of cycle).
- Approximately 100 applications remained at the completion of the reinforcement team from ATF permit applications, new applications unaffected by the vacatur, unauthorized activities and modification requests for actions finalized by the reinforcement team. Seattle assumes responsibility for permit decisions and remaining applications.

HISTORY CONTINUED

- September 2022 contract awarded to support NWS with the remaining shellfish mariculture applications.
 - Contractor reviewed and evaluated 70 applications primarily for individual permit decisions subject to Section 404 CWA and/or Section 10 RHA.





CONTRACT MODIFICATION



September 2023 WSP is award contract modification for an additional 25 shellfish mariculture projects.

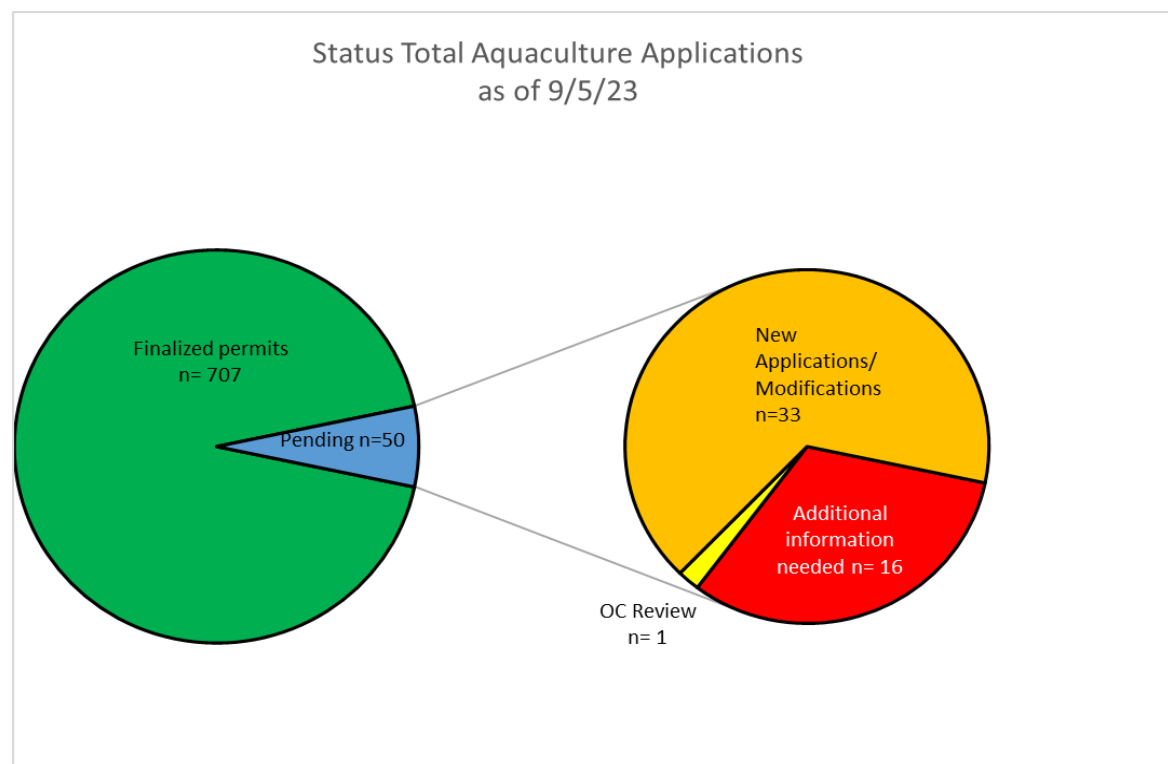
- NWS submitted initial batch of applications the week of the September 19.
- NWS will continue to submit projects to the contractor over the life of the 1-year contract modification.



CURRENT STATUS OF PERMITTING AND THE WAY-AHEAD



- Since the vacatur of the 2017 NWP 48, the Corps has made 707 permit decisions and verifications. There is currently **41 pending** permit applications.

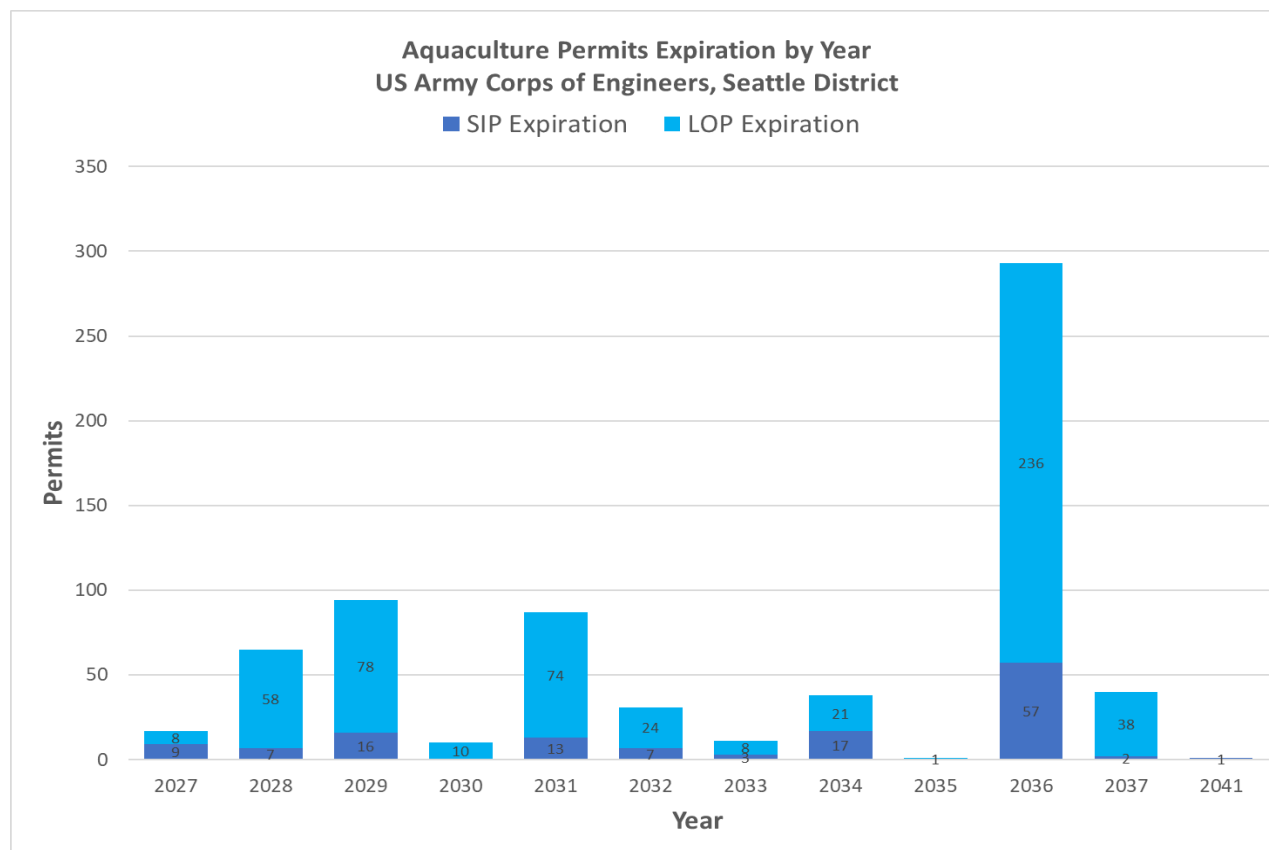




CURRENT STATUS OF PERMITTING AND THE WAY-AHEAD



- Majority of permits are expiring with programmatic
- Corps is in early coordination with Services to discuss modifying programmatic prior to expiration (2036)
- The Corps will pro-actively plan for spikes in permit expirations and coordinate w/ permittee's in advance of the expiration date





PERMIT COMPLIANCE AND ENFORCEMENT

Part 4



PERMIT COMPLIANCE



Corps' Responsibility

- To inspect permitted activities for compliance with all permit conditions (construction, complete project, and mitigation)

Procedures

- As-builts
- Site inspections
- Permit drawings



PERMIT NON-COMPLIANCE

If a project does not comply with the terms and conditions of its permit, specific corrective measures will be issued to bring the permit back in compliance.

If projects fail to comply:

- Permit suspension
- Modify/revoke the permit
- Administrative penalties
- Legal action





ENFORCEMENT



Corps' Responsibility

- To investigate complaints about potential violations

Standard Procedures

- Receive Complaint
- Site inspection & investigation
- Determine if work is a violation
- Cease & desist order
- Evaluate information
- Resolution





ENFORCEMENT



Resolution Options

- Initial corrective measures
- Voluntary removal/restoration
- After-the-fact permit application
- Legal action, fines, or prosecution
- Referral to the Environmental Protection Agency (EPA)





UNAUTHORIZED ACTIVITIES



An unauthorized activity is an activity undertaken without Department of the Army (DA) authorization where an aspect of that activity falls under the authorities of Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act

Examples of unauthorized activities include implementing a new commercial shellfish aquaculture operation without first obtaining DA authorization, expanding an existing operation outside of what was previously permitted, or changes in methodologies or species at the existing operation not addressed under the previous authorization.

Whether to take enforcement action and how to resolve those actions is an exercise of Agency discretion. Resolution options include no action, direct to remove and restore, accept an after-the-fact permit, and others. All unauthorized activities need to be resolved prior to the issuance of a DA authorization. We will take these decisions on a case-by-case basis.



401 WATER QUALITY CERTIFICATION



Place holder



401 WATER QUALITY CERTIFICATION



Place holder



SHELLFISH MARICULTURE POCS



Evaluating and managing shellfish mariculture permit evaluation in the Seattle District

POC for Aquaculture Related Questions	Agency	Phone Number	Email
Matt Bennett	USACE	(206) 446-8067	Matthew.J.Bennett@usace.army.mil
Danette Guy	USACE	(206) 316-3048	Danette.L.Guy@usace.army.mil
Kelsey Blubaugh	USACE	(251) 376-0113	Kelsey.N.Blubaugh@usace.army.mil
Loree' Randall	Ecology	360-485-2796	lora461@ECY.WA.GOV
Teressa Pucylowski	Ecology	(360) 764-0546	tpuc461@ECY.WA.GOV



SEATTLE DISTRICT WEBSITE



For information, Special Public Notice's, and regularly updated Frequently Asked Questions (FAQs)

<https://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Shellfish-Aquaculture/>

Shellfish Interagency Permitting team

<https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Aquaculture/Shellfish-Interagency-Permitting-Team>



QUESTIONS





TYPICAL ADDITIONAL INFORMATION REQUESTED

What is the purpose of requesting additional information or revised information?

- Project Drawings (resource the Drawing Checklist on NWS website)
 - Accurate vicinity map & GPS coordinates, Plan View(s), and Cross-section view(s)
- Description of Activity and Existing Conditions
 - Potential questions with drawings matching narrative descriptions
 - Information on operational procedures including proposed project expansions or changes from previous verifications
 - Additional detail to identify methods, maintenance, timing, and materials
 - Clarification or background on permitting history or changes in applicants
- Information to determine compliance with ESA or the 401 WQC process



AQUACULTURE PROJECT DRAWINGS



Drawing Sets should include:

- Vicinity Map
- Plan View (Project Area/ Cultivation)
- Section View



AQUACULTURE VICINITY MAP

- Vicinity Maps should include:
 - Title block information
 - Scale
 - GPS coordinates
 - North arrow
 - Waterbody
 - Nearest town
 - Formatted for 8 ½" by 11-inch

REFERENCE: <i>(USACE will provide)</i>	LOCATION: _____ <i>(address/intersection/ parcel number)</i>	PROPOSED PROJECT: _____ <i>(short description)</i>
APPLICANT: _____	LAT/LONG: _____	IN: <i>(waterbody)</i>
ADJACENT PROPERTY OWNERS: 1. <i>(include name/parcel on plan view)</i>	Parcel#’s	NEAR/AT: <i>(closest city or town)</i>
2. <i>(include name/parcel on plan view)</i>	PAGE # OF # DATE: <i>(last revised)</i>	COUNTY: <i>(county)</i>
		STATE: <u>WA</u>

Reference Number:	
Applicant Name:	
Proposed Project:	
Location:	
Sheet # of #	Date:



Parcel: 26.6 Acres
Total Project Area: 8.0 Acres

Parcel 2020

North Bay

0 420 840 1,680 Feet
Datum: D.M.W.

184 186
MASON
PIERCE

REFERENCE: _____	Location: _____	PROJECT: _____
APPLICANT: Taylor Shellfish	Lat/Long: _____	IN: Bay
ADJACENT PROPERTY OWNERS:		NEAR/AT: _____
Please refer to Table of Property Owners	Page: 1 of 3	County: Mason
	DATE: _____	State: WA

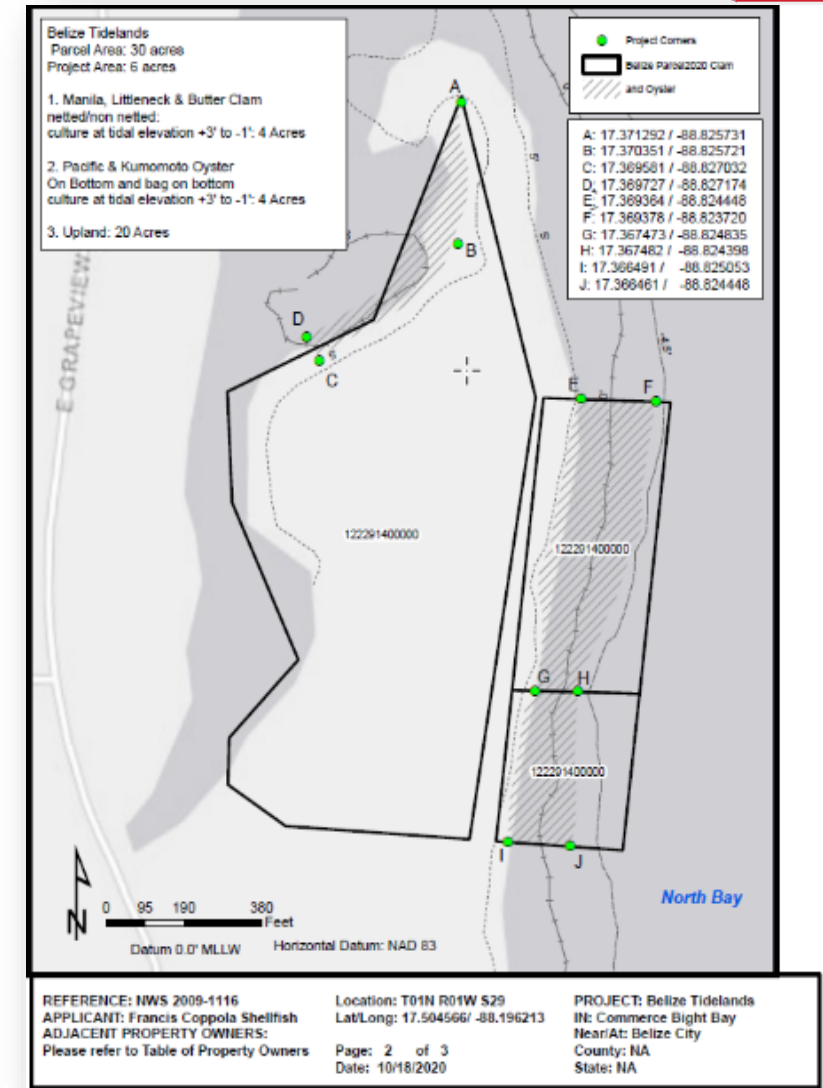


AQUACULTURE PLAN VIEW MAP



• Plan View Maps should include:

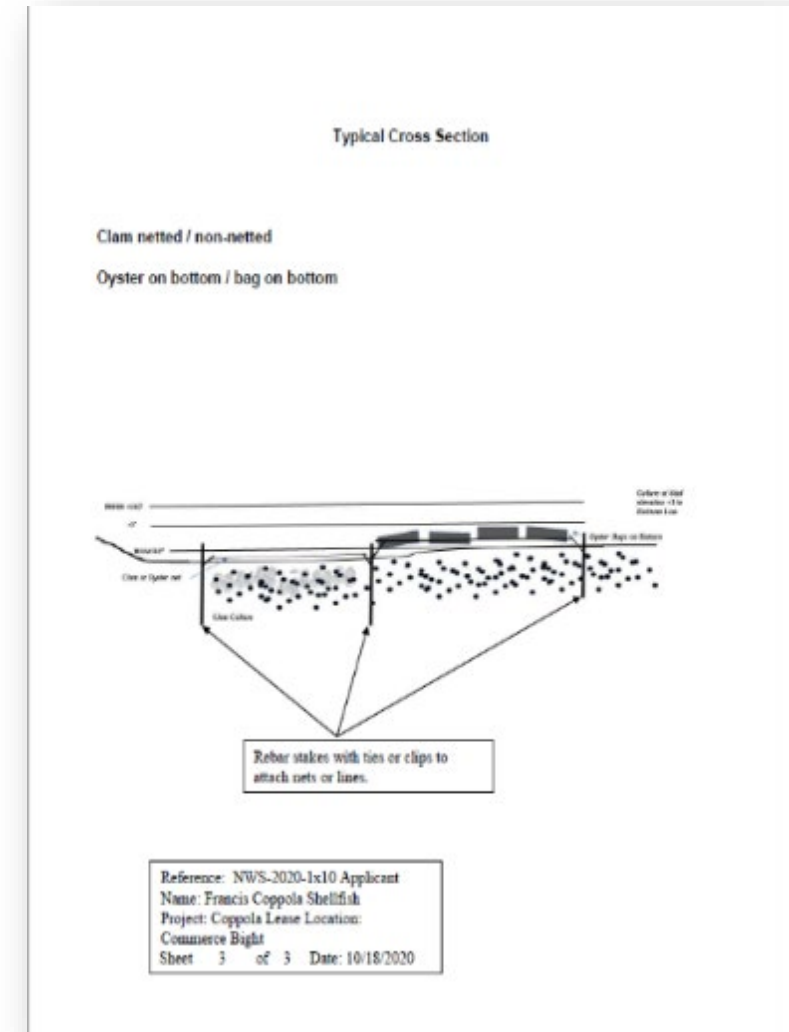
- Title block information
- Scale
- Identify areas of canopy predator nets
- GPS coordinates for corner points (parcel & cultivation)
- North arrow
- Acreages of cultivation type, species grown
- Acreages of parcel and fallow areas
- New, expansion, kelp, and eel grass areas labeled
- Tidal elevations upper and lower limits of work
- Parcel numbers and identify leased/owned areas
- Formatted for 8 ½" by 11-inch
- Corps Jurisdictional Line(s): Mean High Water (MHW) and/or High Tide Line (HTL)



AQUACULTURE CROSS-SECTION VIEW



- Section View Drawings should include:
 - Title block information
 - Tidal elevations upper and lower limits of work
 - Depict structures, fills and species cultivated
 - Dimensions of cultivation area
 - Formatted for 8 ½" by 11-inch





AQUACULTURE PROJECT DRAWINGS



- You can use the drawing checklist as a framework



US Army Corps
of Engineers
Seattle District

Drawing Checklist



The ultimate objective of a set of drawings is to allow someone who is unfamiliar with the project to quickly obtain a clear understanding of what is proposed and how the impacted waterbody and/or wetlands will be affected. Drawings should be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) should be drawn to scale.

Page 1 should be a vicinity map, Page 2 should provide a top-down plan view, Page 3 should show a cross-sectional view; additional pages should be used if needed. Every drawing should have a Title Block. Additional information can be found on our website: <http://www.nws.usace.army.mil/> (click on "Regulatory/Permits")

1. GENERAL GUIDELINES AND USEFUL INFORMATION TO INCLUDE ON DRAWINGS

- () Use clear black lettering and the fewest number of pages necessary; use 8 1/2- by 11-inch paper
- () Even if drawings are created by hand please use a graphic scale
- () Vertical and horizontal scales should use the same units of measure
- () Vicinity maps and plan drawings must include an accurate North Arrow
- () Descriptions/types of substrate can be included on drawings along with photographs
- () Critical habitat and/or known essential fish habitat can be indicated on drawings along with surveys
- () A drawing with the existing water features overlaid with the proposed project would be helpful

2. TITLE BLOCK EXAMPLES

- () A completed title block (first example) should be on the first page; for subsequent sheets you can use the smaller abbreviated form (second example)

REFERENCE: (USACE will provide)	LOCATION: (address/intersection/ parcel number)	PROPOSED PROJECT: (short description)
APPLICANT: _____	LAT/LONG: _____	IN: (waterbody)
ADJACENT PROPERTY OWNERS: 1. (include name/parcel on plan view) 2. (include name/parcel on plan view)	PAGE # OF # DATE: (last revised)	NEAR/AT: (closest city or town) COUNTY: (county) STATE: WA

Reference Number:	
Applicant Name:	
Proposed Project:	
Location:	
Sheet # of #	Date:

3. VICINITY MAP

- () Show and label location of each *project area* (e.g. circle the perimeter, use an arrow, etc.)
- () Show and label location of each *mitigation site*, if applicable
- () List latitude, longitude, section, township, and range and parcel numbers – a parcel map can be helpful
- () Show and label all waterways (e.g. ditches, wetlands, ponds, streams, rivers, lakes, inlets, oceans, etc.)
- () Show roads, streets, and/or mileage to nearest town or city limits
- () The map should be zoomed out enough to show the area but detailed enough to see landmarks for context

4. PLAN VIEWS

- () *Marine/tidal waters:* Harbor Lines, Mean high water (MHW), and High Tide Line (HTL)
- () *Freshwater wetlands, bogs, fens, lakes, streams, etc:* Ordinary high water (OHW)/Wetland boundaries
- () Waters, including wetlands and other features extending across property boundaries
- () Show dimensions of proposed and existing structures
- () Indicate location, quantity, and type of fill and excavation (area and volume)
- () Direction of currents, if known (e.g. tidal ebb, drift cells, creek flow, etc.)

5. ELEVATION AND/OR SECTION VIEWS

- () Label shorelines with the MHW line, HTL line, OHW line, and/or wetland boundary, as appropriate
- () Show original and proposed elevations, water depths, dimensions of proposed structures or fills, and pertinent vertical dimensions to top and base of structure/fill; use the same vertical and horizontal scale

6. DRAWINGS INVOLVING DREDGING AND/OR THE DISPOSAL OF DREDGED MATERIAL

If proposing to discharge dredged material in one of the Dredged Material Management Program Disposal (DMMP) sites, another in-water disposal site, or as beach nourishment the information below should be submitted:

- () Include pages with all applicable items in Sections 1-5 of this document
- () In-water disposal site name (if applicable) with coordinates and boundaries (*see Note*)
- () Upland/beach "beneficial use" disposal site coordinates and boundaries
- () If using an in-water disposal site specify the type (non-dispersive or dispersive)
- () Identify the barge positioning method (either the U.S. Coast Guard Vessel Traffic Service and/or a differential GPS used in conjunction with the National Dredging Quality Management Program automated monitoring system)

Note: The Dredged Material Management Office has printable maps of open-water disposal sites in Washington State. For maps and dredging project assistance go to the Seattle District website: <http://www.nws.usace.army.mil/index.cfm>

6. MITIGATION AND/OR PLANTING PLAN DRAWINGS

- () Include pages with all applicable items in Sections 1-5 of this document
- () Reference the title and date of the approved mitigation/planting plan (*See Note*)
- () Planting areas with key identifying specific species and plant spacing
- () Buffer areas and staging or construction access areas
- () Amounts and locations of temporary fill or excavation work (area and volume)
- () Structures, piers, piling, over-water floats, etc. to be removed for the purpose of mitigation

Note: See also 33 CFR Part 332.4(c) regarding the contents of a mitigation plan

8. DRAWINGS FOR AQUACULTURE PROJECTS

- () Include pages with all applicable items in Sections 1-5 of this document
- () Include the county parcel numbers; a parcel map is helpful
- () Show and label the current project area including fallow areas (*see Note*)
- () Show and label areas proposed for expansion or new aquaculture activities
- () Specify species, methodologies using a key (e.g. long-line Pacific oysters, tube culture of geoduck, etc.)
- () Identify areas with canopy predator nets
- () Identify the latitude and longitude for each corner of the project area
- () Show and label areas with eelgrass, kelp, or mudflats



ALTERNATIVES



For a Standard Permit, if there is a discharge of dredged or fill material: additional information is required to undertake the “alternatives analysis” required for NEPA and the Section 404(b)(1) Guidelines.

The Clean Water Act states, with some exceptions, “no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” (40 CFR 230.10(a)).

You can find information papers on our website by clicking “Forms, Templates, & Info Papers” under “Quick Links” on our website at:

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



ALTERNATIVE'S ANALYSIS RESOURCES



US Army Corps
of Engineers
Seattle District

Alternatives Analysis Framework

Date: April 18, 2016



The U.S. Army Corps of Engineers (Corps) federal permit program requires all applicants for a Department of the Army (DA) permit to avoid and minimize impacts to waters of the U.S. Under the National Environmental Policy Act¹ (NEPA) and the Clean Water Act Section 404 (b)(1) Guidelines² (Guidelines), the Corps is required to evaluate alternatives to a proposed project. Alternatives may include on-site designs or off-site locations. The permit applicant is required to prepare and submit information regarding project alternatives. The information applicable to NEPA and the Guidelines can be combined in a single report called an alternatives analysis. The preparation of an alternatives analysis requires close coordination between the Corps and the permit applicant. This document provides a framework for preparing an alternatives analysis.

The NEPA requires the Corps to evaluate reasonable alternatives that would accomplish the underlying purpose and need of a proposed project. Under NEPA, the Corps must also evaluate a "no action" alternative, which is an alternative resulting in construction not requiring a DA permit. The no action alternative may be a modified project design or a location that eliminates work that would require a DA permit (i.e., avoidance) or the Corps' denial of the permit.

In addition to NEPA, projects that include the discharge of dredged or fill material into waters of the U.S. are subject to evaluation under the Guidelines. The Guidelines are regulations published by the U.S. Environmental Protection Agency and are the substantive criteria used in evaluating proposed discharges into waters of the U.S. The Guidelines have been written to provide an added degree of discouragement for non-water dependent activities proposed to be located in a special aquatic site, which include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

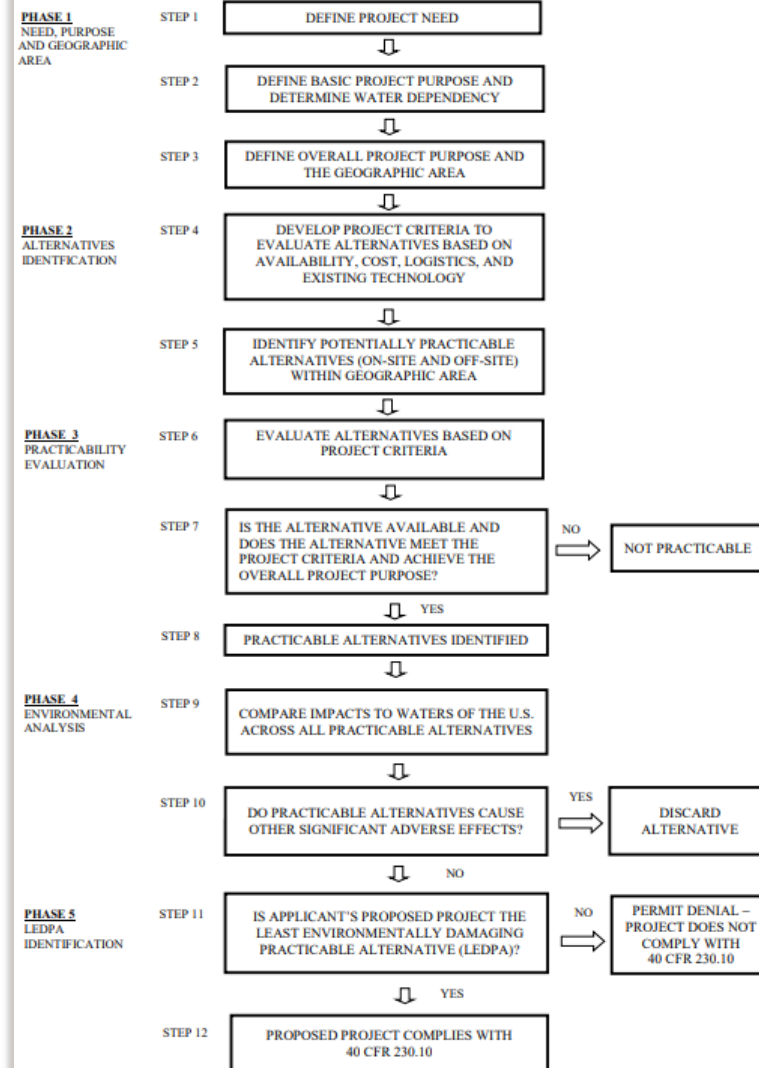
In accordance with the Guidelines, when an activity associated with a discharge is proposed to occur in a special aquatic site and the activity is not water dependent, the regulations presume that (1) practicable alternatives that do not involve impacting special aquatic sites are available and (2) these alternatives will have less adverse impact on the aquatic ecosystem. No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The permit applicant is responsible for rebutting the presumptions that an alternative not involving impacts to a special aquatic site is available and would have less adverse impact on the aquatic environment. The parameters used to rebut the presumptions and to evaluate alternatives must be coordinated with and approved by the Corps. The Corps makes the final

¹ 33 CFR 325, Appendix B. NEPA Implementation Procedures for the Regulatory Program

² 40 CFR 230. Guidelines for Specification of Disposal Sites for Dredged or Fill Material

ALTERNATIVES ANALYSIS FRAMEWORK



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PUBLIC INTEREST REVIEW FACTORS



For individual permit decisions, the Corps must evaluate the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. The benefits which reasonable may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments. There are twenty-one public interest review factors the Corps must consider and discuss when they are relevant to the proposal.

These public interest review factors include: **conservation, economics, aesthetics, general environmental concerns**, wetlands, historic properties, **fish and wildlife values**, flood hazards, floodplain values, land use, **navigation, shoreline erosion and accretion, recreation**, water supply and conservation, **water quality**, energy needs, **safety, food and fiber production**, mineral needs, **consideration of property ownership**, and the **needs and welfare of the people**.



UNAUTHORIZED ACTIVITIES



An unauthorized activity is an activity undertaken without Department of the Army (DA) authorization where an aspect of that activity falls under the authorities of Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act

Examples of unauthorized activities include implementing a new commercial shellfish aquaculture operation without first obtaining DA authorization, expanding an existing operation outside of what was previously permitted, or changes in methodologies or species at the existing operation not addressed under the previous authorization.

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