



Skagit River System Cooperative

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January 5, 2017

Pam Sanguinetti
U. S. Army Corps of Engineers
Seattle District
Regulatory Branch

Electronic Correspondence

Reference: Special Public Notice NWP 48 Reissuance and Regional Conditions

Dear Ms. Sanguinetti:

Skagit River System Cooperative (SRSC) makes the following comments on behalf of the Swinomish Indian Tribal Community and the Sauk-Suiattle Indian Tribe. The Swinomish Tribe and the Sauk-Suiattle Tribe are federally recognized Tribes and signatories to the Treaty of Point Elliott of 1855. Activities authorized by the Seattle District U. S. Army Corps of Engineers (USACE) under NWP 48 may affect resources vital to the Tribes.

SRSC has been actively engaged in NWP 48 issues along with other Treaty Tribes, the USACE, and the National Marine Fisheries Service (NMFS) for several years. We have put considerable effort into literature review to demonstrate the importance of eelgrass as habitat for salmon, forage fish, and crab; and the degradation and loss of eelgrass habitat when aquaculture expands into eelgrass.

NWP 48 authorizes as ongoing aquaculture any area where aquaculture has occurred in the last 99 years. We know of no other USACE authorized activity that considers areas inactive for many decades as ongoing. SRSC in discussion with Taylor United Shellfish, seeking clarification on active versus fallow aquaculture, learned that in Samish Bay Taylor Shellfish has 2,000 acres that has been fallow for 35 years or more. Most of those 2,000 acres overlap with eelgrass beds. Under NWP 48 Taylor Shellfish could expand into those 2,000 acres without taking any avoidance measures to avoid loss of critical eelgrass habitat or mitigate for that loss.

The USACE (in consultation with NMFS) recognized the importance of protecting eelgrass in its initial draft of the Programmatic Biological Assessment (PBA) with the inclusion of Conservation Measure 7.

For continuing activities in “fallow” areas, those activities shall not occur within 16 horizontal feet of native eelgrass (*Zostera marina*). If eelgrass is present in the vicinity of a fallow acreage proposed for shellfish activities, the eelgrass shall be delineated and a map or sketch prepared and submitted to the Corps. Surveys to determine presence and location of eelgrass shall be done during time of peak above-ground biomass: June-August. The following information must be included to scale: parcel boundaries, eelgrass location and on-site dimensions, shellfish activity locations and dimensions.

In subsequent drafts of the PBA the Seattle District removed Conservation Measure 7 at the request of the Washington Congressional Delegation acting on behalf of the shellfish aquaculture industry.

NMFS recognized the potential impact of aquaculture activities (including activities under NWP 48) when they determined those activities were likely to adversely affect chinook and forage fish habitat in the Biological Opinion for Seattle District authorized shellfish aquaculture activities.

The USACE again recognized the importance eelgrass habitat with the inclusion of proposed Regional General Condition 10. Submerged Aquatic Vegetation and Forage Fish. As you are aware Regional Conditions are issued in

response to specific regional unique circumstances, habitats, and species that are not adequately addressed by National General Conditions. Eelgrass, salmon, and forage fish are critical to the Tribes and are not adequately addressed by national conditions. Regional Conditions are also critical to ensure the use of NWP result in impacts that are no more than minimal and like National General Conditions they apply to all NWP. The Seattle District developed RGC 10 and RGC 14 to protect critical resources unique to the Seattle district. When the first draft of Seattle District Regional Conditions was noticed RGC 10 and RGC 14 contained a note that they did not apply to NWP 48. This was presumably because the Seattle District did not know if it would utilize NWP 48 or develop a Regional General Permit for shellfish aquaculture activities. When the reissuance of NWP 48 was noticed on November 23 by the Seattle District there was a note explaining that RGC 10 and RGC 14 would, as one would expect of a RGC, apply to NWP 48. On November 30, however, a clarification was issued stating that RGC 10 and RGC 14 would not apply to NWP 48. The clarification directs users of NWP 48 to National General Conditions 23 (Mitigation) and 32 (Pre-construction notification) neither of which provide any specific protection for eelgrass and forage fish habitat and clearly are not redundant with or replacements for the protections in RGC 10 and RGC 14. Again, regional conditions are developed to address regional circumstances not adequately addressed by national conditions, the USACE clearly recognized national conditions did not adequately address eelgrass and forage fish habitat when they developed RGC 10 and RGC 14. Exempting NWP 48 from RGC 10 and RGC 14 is arbitrary and capricious especially considering NWP 48 is the NWP with the highest potential impact on eelgrass in North Puget Sound.

In several correspondence SRSC and the Swinomish Tribe have repeatedly stated we/they do not oppose ongoing existing shellfish aquaculture or expansion of aquaculture if habitat protection measures are in place. I reiterate that here, SRSC understands the value of a thriving shellfish aquaculture industry but expansion of that industry cannot come at the expense of additional loss of habitat essential to salmon recovery. SRSC believes that NWP 48 is workable as long as all RGCs apply to it and it is implemented consistent with the NMFS BiOp on shellfish aquaculture activities in the Seattle District. If, however, NWP 48 is exempted from RGC 10 and RGC 14 it would be inconsistent with the Seattle Districts own analysis, the NMFS BiOp on shellfish aquaculture activities in the Seattle District, and ongoing Treaty Rights at Risk discussions between the Tribes and the Seattle District.

On behalf of the Swinomish Tribe and the Sauk-Suiattle Tribe SRSC requests the Seattle district apply all Regional General Conditions to NWP 48 if it is to be reissued. If NWP 48 is exempted from RGC 10 and RGC 14, SRSC requests NWP 48 be rescinded in the Seattle District and all shellfish aquaculture activities be authorized through Individual Permit.

Skagit River System Cooperative appreciates our relationship with the USACE and the opportunity to comment on NWP 48 reissuance. If you have any questions about our comments, please call me (360) 466-1512 or email swalsh@skagitcoop.org.

Sincerely,



Stan Walsh
Environmental Services Manager
Skagit River System Cooperative

Cc: Walker (USACE)
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