

Shellfish Aquaculture Permitting Program Update

Seattle District
U.S. Army Corps of Engineers

April 2016



US Army Corps of Engineers
BUILDING STRONG

Meeting Agenda

- 1:00 pm Opening Remarks
- 1:05 pm Update on ongoing activities
- Programmatic Endangered Species Act Consultation
 - Permitting pathways
- 1:20 pm Questions & Answers
- 2:00 pm Details on ESA and permitting pathways
- 2:30 pm Questions & Answers
- 2:50 pm Summary of upcoming milestones and opportunities for involvement
- 2:55 pm Closing Remarks



Update on Ongoing Activities - Overall

- ▶ No decisions to announce today
- ▶ Corps is actively working the issues to reach a decision as timely as possible



Update on Ongoing Activities - ESA

- ▶ ESA compliance is a separate evaluation from the overall permit decision
- ▶ Programmatic ESA consultation is not a public process
- ▶ Not proposing a conservation measure to buffer fallow areas with eelgrass within existing aquaculture areas
- ▶ Proposed conditions are similar to previous consultations and incorporate best management practices
- ▶ Coordination is ongoing with the Services



Update on Ongoing Activities - ESA

Timeline for current consultation

- ▶ October 2015: Corps provided programmatic biological assessment to USFWS/NMFS
- ▶ Current: Ongoing coordination between Corps/USFWS/NMFS
- ▶ April/May: Expect drafts responses from USFWS/NMFS
- ▶ Finalize: Dependent on evaluation of draft responses



Update on Ongoing Activities - ESA

Next steps after programmatic consultation finalized

- ▶ Public notice announcing availability & documents posted on Seattle District web page
- ▶ Public Notice issued explaining procedures for NWP re-verifications
- ▶ Workshops with industry, Tribes, applicants and agents
- ▶ For projects not meeting conditions of the biological opinions can use the programmatic as a reference to complete an individual ESA/MSA consultation with USFWS/NMFS



Update on Ongoing Activities – Permitting Pathways

- ▶ Once the Biological Opinions are received
- ▶ Will use NWP 48 (2012) until it expires March 2017
 - Est. 4-6 months to reverify majority of actions
 - Review projects to ensure compliance with biological opinions
 - Reissue verification letter
 - Cannot use NWP 48 (2012) once it expires
 - All actions verified under NWP 48 (2012) will require re-verification in 2017
 - 1 year grandfathering period for on-going farms once NWP 48 (2012) expires



Update on Ongoing Activities – Permitting Pathways

Two options for the future:

- ▶ NWP 48 (2017) - still under development by HQ
 - Est. publication April/May in Federal Register
- ▶ Regional General Permit (RGP)
 - No decision until we see NWP 48
- ▶ Both options involve public comment process
- ▶ The process and requirements will be similar for both options
- ▶ Both options exploring ways to streamline future re-verifications



QUESTIONS?



DETAILS ON ESA AND PERMITTING PATHWAYS



Regulatory Authority

Section 10 of the Rivers and Harbors Act of 1899

- To protect and preserve the navigability of navigable waters
- All waters subject to the ebb and flow of the tide are navigable waters
- Requires a permit for any structure or work in a navigable water of the U.S.



Regulatory Authority

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 a permit for the discharge of dredged or fill material in any water of the U.S.



Permit Evaluation

- ▶ Multiple laws and/or reviews are completed during permit evaluation
 - Clean Water Act
 - Endangered Species Act
 - Section 106
 - Tribal Treaty Rights
 - Public Interest Review
 - Coastal Zone Management
 - Water Quality Certification



Photo credit. USFWS. Bull Trout



Programmatic or Individual ESA/MSA Coordination

- ▶ Corps consults with National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS)
- ▶ Typically complete individual ESA/MSA consultations for each permit application.
- ▶ Corps can choose to streamline the permit process
 - Develop programmatic consultation
 - If no programmatic coverage then can use it as a reference = reduction in time and environmental documentation for the applicant



Historical Programmatic ESA/MSA Coverage

- ▶ Expired programmatic ESA/MSA consultation tied to one permit: 2007 Nationwide Permit (NWP) 48
- ▶ Limited to existing commercial shellfish activities
- ▶ Majority of NWP 48 verifications for existing activities do not currently have ESA/MSA coverage for their work: consultation expired
- ▶ Permits for new activities completed individual ESA/MSA consultation



Current Programmatic ESA/MSA Consultation

- ▶ Covers both new and on-going activities
- ▶ Covers range of shellfish activities (e.g., commercial, recreational, research, native shellfish restoration)
- ▶ Not tied to any specific type of permit or applicant; available as an option for any shellfish activity application



Streamlined Permitting Pathways



General Permits

- ▶ Issued on either a national or regional basis for activities similar in nature
- ▶ Causes only minimal adverse environmental effects either individually or cumulatively
- ▶ Must be renewed every 5 years
- ▶ Provides streamlined authorization
- ▶ Encourages applicants to design minimally impacting projects



Options Moving Forward

- ▶ NWP 48 expires March 2017 and is being revised and reissued at the national level
- ▶ Seattle considering potential regional conditions to NWP 48
- ▶ Seattle considering development of a RGP



Usage Across the Country

- ▶ Seattle District primary user of NWP 48
 - Seattle District issued about 920 NWP 48 verifications covering approx. 37,000 acres
 - 92% of all NWP 48 verifications in nation
 - 58% of all aquaculture type permits
- ▶ Other Districts use Regional General Permits/State Programmatic General Permits
 - New England District - RGPs (316)
 - New York District - NWP 48 (51)



Comparison of RGP/NWP 48 - Similarities

- ▶ Both will undergo a public comment period before being finalized
- ▶ The process and requirements will be similar for both options
- ▶ Both need to comply with ESA, Section 106 of the National Historical Preservation Act, Tribal Treaty Rights
- ▶ Both will need to be renewed every 5 years
- ▶ Both could include options for streamlined reporting during the re-verification process



Comparison of RGP/NWP 48 - Differences

RGP:

- Can be written specific to practices in Washington
- Can be broader purpose – not just commercial aquaculture
- Can incorporate different practices for different waterbodies
- Consolidated terms and conditions
- Easier to modify to incorporate new practices

NWP 48:

- National consistency
- National perspective
- Specific to commercial aquaculture
- Limited ability to consider local practices
- Specific, general and regional conditions apply
- Conditions set for 5 years



Criteria for Making Decision – NWP or RGP

- ▶ Transparent, streamlined, predictable
- ▶ Maximize coverage
- ▶ Simplicity
- ▶ Maximum flexibility



2012 Nationwide Permit Information

<http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook/NWPs.aspx>



Summary of Upcoming Milestones*

- ▶ Late April/May 2016 – 60-day comment period for NWP (nationally) and proposed regional conditions (locally) and potentially proposed RGP
- ▶ June 2016 – Programmatic ESA consultation finalized
- ▶ June-July 2016 – Outreach meetings with various stakeholders and Tribes
- ▶ June-Dec 2016 – NWP 48 (2012) re-verifications issued

* Projected dates are estimates based on current schedule



QUESTIONS?

