

# SHELLFISH MARICULTURE (AQUACULTURE) PERMITTING UPDATE

March 31, 2021  
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, Reinforcement Team updates, permitting process procedures, completeness determinations, progress update, and general questions and answers.





# PRESENTATION OUTLINE



- Permit Authorities and Permit Pathways
- Reinforcement Team
- Permit Processing, Applications & Drawings
- Website & Frequently Asked Questions (FAQs)
- Q and As



# 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



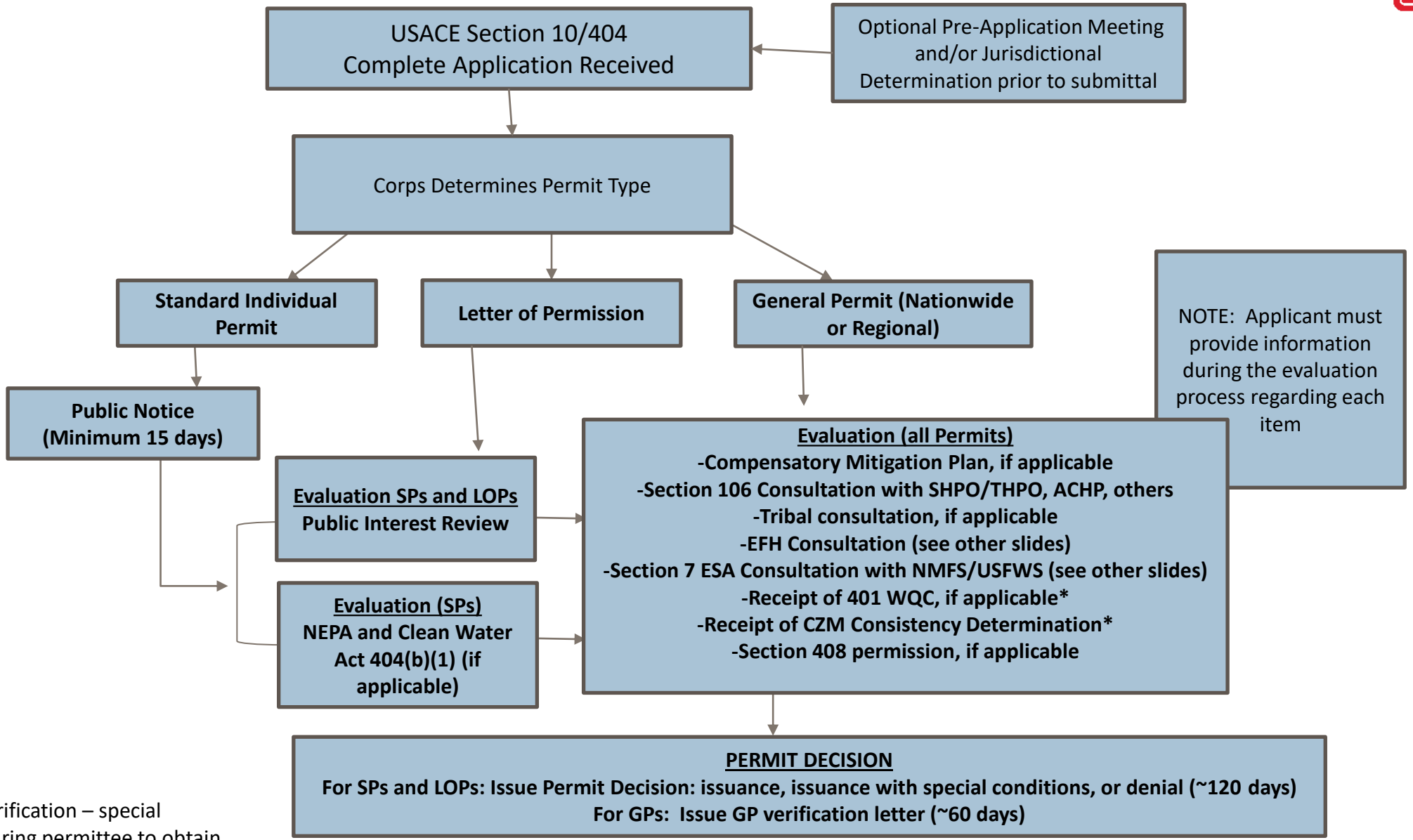
# GENERAL PERMITS – NATIONWIDE PERMITS



- 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 NWP's became effective on 15 March 2021



# USACE Section 10/404 Application Process



\*Not required for GP verification – special condition included requiring permittee to obtain before GP is valid.



# REINFORCEMENT TEAM



## Evaluating and managing shellfish mariculture permit evaluation in the Seattle District

County	POC for Aquaculture Related Questions **	Phone Number	Email
Clallam	Kirsten Brown	(309) 794-5369	Kirsten.L.Brown@usace.army.mil
Grays Harbor	Mary Romero	(309) 794-5369	Mary.R.Romero@usace.army.mil
Island	Ben Sherman	(504) 862-2041	Benjamin.C.Sherman@usace.army.mil
Jefferson	Meg Fullam	(443) 310-4567	Meghan.E.Fullam@usace.army.mil
King	Meg Fullam	(443) 310-4567	Meghan.E.Fullam@usace.army.mil
Kitsap	Meg Fullam	(443) 310-4567	Meghan.E.Fullam@usace.army.mil
Mason (West)	Christine Jacek	(978) 578-7548	Christine.M.Jacek@usace.army.mil
Mason (East)	Jessica Miller	(410) 820-8629	Jessica.D.Miller@usace.army.mil
Pacific	Mary Romero	(907) 753-2773	Mary.R.Romero@usace.army.mil
Pacific	Marion Gall	(814) 330-0872	Marion.Gall@usace.army.mil
Pierce	Kirsten Brown	309-794-5369	Kirsten.L.Brown@usace.army.mil
San Juan	Ben Sherman	(504) 862-2041	Benjamin.C.Sherman@usace.army.mil
Skagit	Matthew Bennett	(206) 764-3428	Matthew.J.Bennett@usace.army.mil
Snohomish	Kirsten Brown	309-794-5369	Kirsten.L.Brown@usace.army.mil
Thurston (West)	Ben Sherman	(504) 862-2041	Benjamin.C.Sherman@usace.army.mil
Thurston (East)	Meg Fullam	(443) 310-4567	Meghan.E.Fullam@usace.army.mil
Whatcom	Kirsten Brown	(309) 794-5369	Kirsten.L.Brown@usace.army.mil

\*\*Questions regarding currently pending applications should be directed to the Project Manager assigned to that project.

\*\*General questions for the AQ Reinforcement Team can be directed to Andy Dangler at (518) 487-0215 or Andrew.c.dangler@usace.army.mil



# 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 1/2" 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> 2. <i>(include name/parcel on plan view)</i>	Parcel #'s	NEAR/AT: <i>(closest city or town)</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:

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

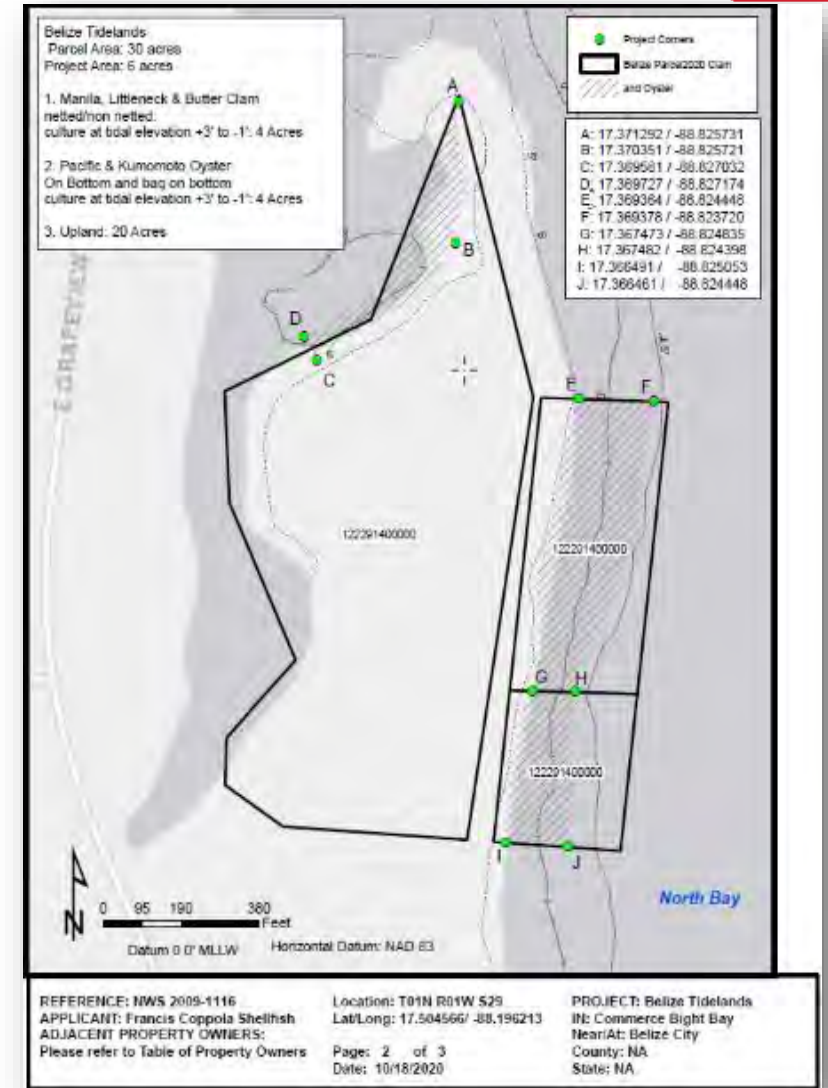


# AQUACULTURE PLAN VIEW MAP



• 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 1/2" by 11-inch
- Corps Jurisdictional Line(s): Mean High Water (MHW) and/or High Tide Line (HTL)

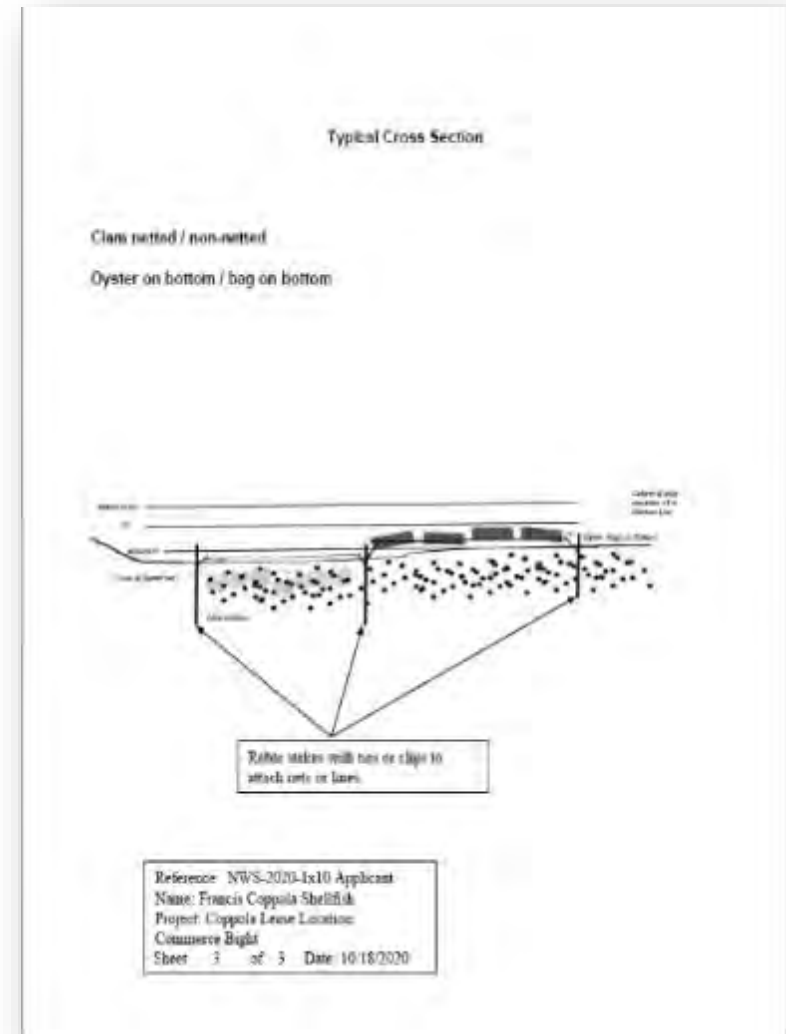




# AQUACULTURE CROSS-SECTION VIEW



- 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 1/2" by 11-inch







# AQUACULTURE PROJECT DRAWINGS



- You can use the drawing checklist as a framework



## 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: <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>	PAGE # OF #	NEAR/AT: <i>(closest city or town)</i>
2. <i>(include name/parcel on plan view)</i>	DATE: <i>(last revised)</i>	COUNTY: <i>(county)</i>
		STATE: <u>WA</u>

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 waterway: (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

1/2

### 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

2/2





# 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



**Alternatives Analysis Framework**  
 US Army Corps of Engineers  
 Seattle District  
 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 Act<sup>1</sup> (NEPA) and the Clean Water Act Section 404 (b)(1) Guidelines<sup>2</sup> (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.

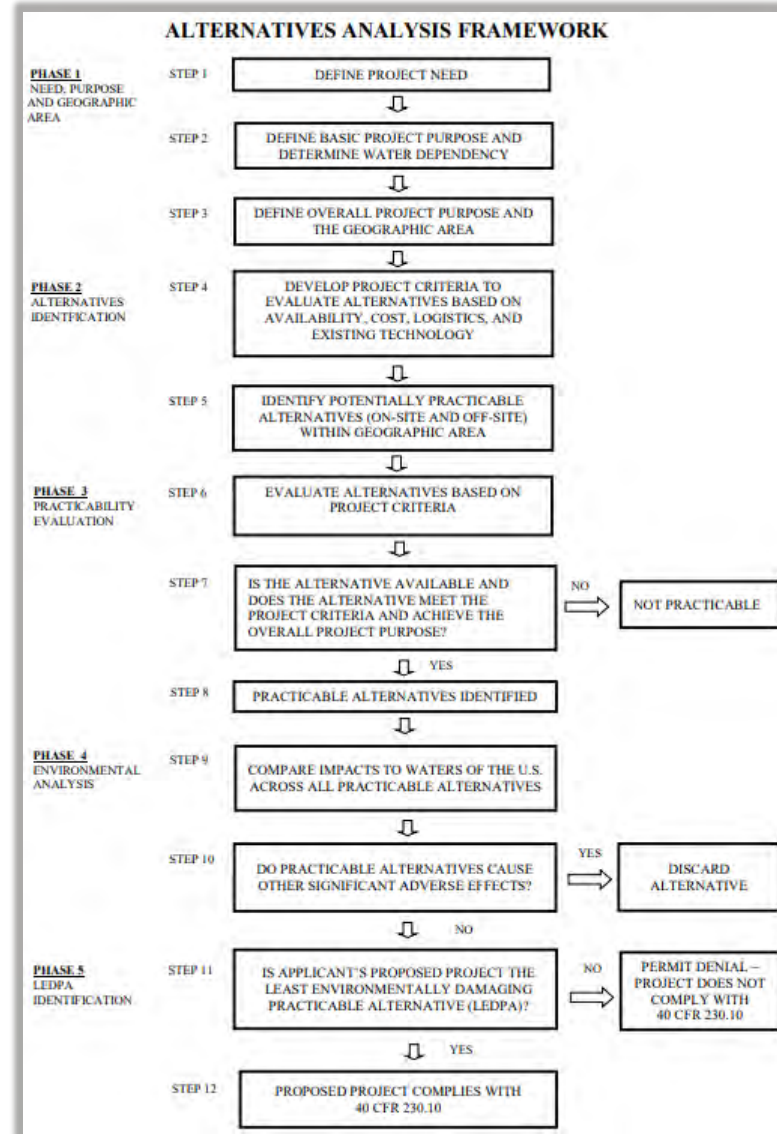
The NEPA requires the Corps to evaluate reasonable alternatives that would accomplish the underlying purpose and need of a proposed project. Under NEPA, the Corps must also evaluate a "no action" alternative, which is an alternative resulting in construction not requiring a DA permit. The no action alternative 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

<sup>1</sup> 33 CFR 325, Appendix B. NEPA Implementation Procedures for the Regulatory Program  
<sup>2</sup> 40 CFR 230. Guidelines for Specification of Disposal Sites for Dredged or Fill Material



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/>



# 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.

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.



# CURRENT STATUS OF PERMITTING AND THE WAY-AHEAD



- The Reinforcement Team has made 15 individual permit decisions and has over 600 plus pending applications. The permit review process has many steps and the Corps has taken action on many of the applications.
- The Corps acknowledges it will not be able to issue over 600 permits in the next few months.
  - Recent average pace is 4 per week, and we anticipate the pace will increase within weeks.
- To assist, Corps is doubling the size of the leadership and project management team.
- Please be responsive to information requests and ask project managers question if something is not clear or if you do not understand the request.
  - » Incoming PMs will reach out to applicants for introductions and notifying of their taking over the project.
  - » They will discuss with you the status of your application.
- We are continuously evaluating our procedures for opportunities to create efficiencies through adaptive management.





# 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/>

**For more information, about the geographic project manager for shellfish mariculture (TO BE UPDATED):**

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



# QUESTIONS

