

January 24, 2010

DNR Aquatics Division Manager

1111 Washington St. SE

Olympia, WA 98504

Re: Notice of Final Determination, Taylor Resources, Inc., Totten Inlet Geoduck Nursery Tray Proposal, SEPA File No. 09-121101

Dear Kristin Swenddal,

This is in response to your Notice of Final Determination, dated January 22, 2010, for Taylor Shellfish Company's Geoduck Nursery Tray Proposal, SEPA File No. 09-121101. I am requesting clarification on several statements in your Notice of Final Determination.

You stated that "Taylor Shellfish is currently completing an Environmental Impact Statement for Totten Inlet mussel rafts that is not yet available for review". Is this a new EIS or a separate EIS from the "Assessment of Potential Water Column Impacts of Mussel Raft Culture in Totten Inlet" by NewFields Northwest? I was aware of the NewFields assessment, but not of any other EIS. The NewFields paper is of great concern because it points out a significant reduction in dissolved oxygen below the mussel rafts, and by as much as 200 meters down current from the raft array. Obviously, this can adversely impact fisheries in the area, including juvenile and adult Rockfish as I mentioned in my email regarding the SEPA review. Although this paper has been around for several years, it was not mentioned in the "exhaustive" NMFS biological opinion. For your convenience, here is a link to the NewFields assessment:

http://www.caseinlet.org/uploads/Mussel--Taylor_EIS-Water_Column_study_Oct_08_1_1_.pdf

You also stated the following:

“This detailed analysis and biological evaluation of activities under Nationwide Permit 48 was exhaustive and involved a lengthy investigation to determine the impacts of shellfish farms”. And, “Following this assessment, the Corps conducted further evaluation and investigation, and concluded that while actions conducted under the proposed NWP 48 would have environmental effects, they are not likely to adversely affect any threatened or endangered species or result in an adverse modification of their critical habitat”.

My review of the opinion comes with a different interpretation than yours, and I would appreciate your comments on the following quotations from the biological opinion. For your convenience, here is a link to the NMFS opinion:

http://www.caseinlet.org/uploads/NWP_48_04-28-2009__NMFS_Opinion__1_.pdf

1. “During consultation, NMFS concluded that while actions conducted under the proposed NWP 48 would have environmental effects, these effects were not reasonably certain to impair normal behaviors resulting in their actual injury or death.” Page 2, letter to Lawrence Evans from Barry Thom on ESA and MSA evaluation.

2. “The COE also determined that the activities would not adversely affect CH, but would adversely affect EFH.” Page 1.

3. “During consultation, NMFS analysis revealed that although the activities carried out under the proposed action were likely to adversely affect the environment in the action area, they were not likely to adversely affect these species.” Page 2.

4. “The proposed action is likely to adversely affect CH designated for PS Chinook salmon and Hood Canal summer-run Chum salmon.” Page 25.

5. “Review of the literature during consultation revealed divergent findings on many relevant issues such that there remains some uncertainty regarding the likelihood of the effects of these activities on the environment and whether or not likely effects would bear on EFH and managed fish.” Page 72.

There is a fair amount of uncertainty in the opinion. I would agree that shellfish aquaculture probably won't kill or maim an individual Chinook salmon, but neither will bulkheads or docks, yet we know these activities are averse to productive habitat and we're limiting their use. And, the opinion clearly states that shellfish aquaculture has adverse affects on both EFH and CH for PS Chinook.

It is of concern that the biological opinion is being used to justify new and additional activities, when the opinion is clear that only existing activities are covered. It is of concern that an institutional bias is clear, present and unmistakable in the opinion.

It is clear is that the opinion is not “exhaustive” or independent at all, but rather, it is predicated on a preponderance of biased, non-scientific data, much of it irrelevant to Puget Sound. The opinion is based on a compilation of hand picked literature which includes unpublished, preliminary, non-peer reviewed, non-statistically analyzed data that is, in some cases, funded by aquaculture interests.

The opinion excludes widely available relevant scientific data and expert opinion. For example, the NewFields Totten Inlet mussel raft assessment mentioned earlier, and expert opinion by fisheries biologists for the South Sound Salmon Recovery Group could have been included but were not. Also of concern is that fact that much of the literature for the opinion was compiled by Jeff Fisher, a Taylor Shellfish collaborator and a geoduck farm owner and operator.

Thank you in advance for responding to my concerns, comments and questions. I look forward to your reply.

Sincerely,

Curt Puddicombe

Director,

Coalition to Protect Puget Sound Habitat/

Case Inlet Shoreline Association

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