

January 23, 2008

INFORMATION MEMORANDUM FOR THE DIRECTOR

FROM: Acting Assistant Director - FHC

TELEPHONE #: (202) 208-6394

SUBJECT: Background on Nationwide Permit 48, *Existing Commercial Shellfish Aquaculture Activities*

I. SUMMARY

In March 2007, the Corps of Engineers (Corps) issued a new Nationwide Permit (NWP) to authorize existing commercial shellfish aquaculture activities. The new permit, NWP 48, authorizes installation of structures and discharges of dredged or fill material associated with pre-existing operations. The Service was engaged in the review of NWP 48, raising several concerns in a Departmental letter in November, 2006.

II. DISCUSSION

Nationwide Permit 48

- NWPs are issued by the Corps pursuant to section 404(e) of the Clean Water Act. Section 404(e) authorizes the Secretary of the Army to issue general permits for categorized activities similar in nature that cause no more than minimal individual and cumulative adverse effects on the aquatic environment. The Corps reissues NWPs every five years. Their reissuance package of March, 2007 included NWP 48.
- NWP 48 authorizes structures and discharges of fill associated with existing commercial shellfish aquaculture operations but does not authorize new operations or expansion of existing operations. Expansions and new operations require an individual permit. Notification requirements for NWP 48 are triggered by: project areas greater than 100 acres; reconfigurations; changes in species cultivated or in culturing/harvesting methods; and for conducting certain activities in areas with submerged aquatic vegetation (SAV).

Prior Service Comments on NWP 48:

- The Department's letter of November 27, 2006 on the proposed reissuance of the NWPs noted several concerns raised by the Service over the then-proposed NWP 48.
- Concurrently with the development of NWP 48, a Regional General Permit (RGP) for Pacific Coast Shellfish Culturing was under development by the Corps for activities in AK, CA, OR and WA. That effort was suspended when the NWPs were finalized. Believing a Pacific Coast RGP to be a more rigorously evaluated mechanism, the Service requested that NWP 48 be rescinded or held in abeyance until an RGP was finalized. If NWP 48 were issued, the Service asked that it be replaced with the RGP upon its effective date.
- The Service was also concerned that NWP 48 would authorize more than minimal environmental effects due to inadequate permit conditions related to fill thresholds, culturing/harvesting methodology, and mitigation of impacts to SAV.
- The Service recommended that all projects authorized by NWP 48 require pre-construction notification and that producers document alternatives that would minimize impacts to SAV beds and associated trust resources.
- Most of the Department's comments were not adopted by the Corps in the final permit.

PREPARED BY: Chief, Division of Habitat and Resource Conservation
DATE: 1/23/08

January 23, 2008

INFORMATION MEMORANDUM FOR THE DIRECTOR

FROM: Ren Lohofener, Regional Director, Pacific Region

TELEPHONE #: (503) 231-6118

SUBJECT: Endangered Species Act Section 7 Consultation on the Army Corps of Engineers' Issuance of Nationwide Permit 48 for Shellfish Aquaculture in Washington State

I. SUMMARY: The FWS has provided comments to the Army Corps of Engineers (Corps) on a draft Biological Assessment (BA) for the subject action. We expect to receive a revised BA from the Corps by the end of January 2008, and to meet with the Corps and their consultants in February to discuss the revised BA and next steps in this consultation. Assistant Secretary of the Army John Woodley has met with the Pacific Shellfish Growers Association on this matter in Washington, D.C.

II. DISCUSSION: The Corps reissued Nationwide Permits (NWP) in March 2007, including NWP 48 for Shellfish Aquaculture, which authorizes ongoing shellfish aquaculture activities throughout the United States. The FWS is currently consulting with the Corps on the effects of NWP 48 on listed species and critical habitat. The FWS elected to conduct Regional consultations rather than a National consultation on this action. In Region 1, the decision was made to conduct individual state-level consultations, starting with Washington State.

The FWS and NOAA Fisheries have been working with the Portland District of the Corps since April 2007, in a pre-consultation capacity. The FWS received a draft BA from the Corps on October 15, 2007, and submitted comments on the BA to the Corps on November 19, 2007.

Throughout our coordination with the Corps, we have requested specific information and analyses necessary to complete this consultation in an efficient and effective manner. Our comments on the BA are consistent with those requests, and focus on the need for: (1) a complete description of the scope of the action; (2) an analysis of the additive effect of shellfish-farming activities on listed species and their prey; (3) an analysis of the effects of implementing NWP 48 on the primary constituent elements of bull trout critical habitat; and (4) inclusion of the best scientific and commercial data available.

PREPARED BY: Ken Berg, Manager, Western Washington Fish and Wildlife Office, Lacey, Washington; tel: (360) 753-4065.

DATE: January 23, 2008.