

Email from Casey Ehorn, Army Corps of Engineers, to Protect Our Shoreline, June 27, 2007

At 11:22 AM 6/27/2007, you wrote:

Letter should be in the mail today, but here is the text:

Regulatory Branch

Ms. Kathryn Townsend
Protect Our Shoreline
Post Office Box 6358
Olympia, Washington 98507

Reference: NWP 48 Inquiry

Dear Ms. Townsend:

Thank you for your June 5, 2007, letter, regarding Nationwide Permit (NWP) 48, Existing Commercial Shellfish Aquaculture Activities. The U.S. Army Corps of Engineers (Corps) has prepared the following responses to your questions:

1) It is our understanding that under NWP 48 new commercial shellfish aquaculture operations require an individual Army Corp permit? Is this the case?

Corps Response: NWP 48 covers only existing commercial shellfish aquaculture activities. All new shellfish aquaculture activities will require an individual permit. Please see question 4 for more clarification.

2) Have any Army Corps permits for new or existing shellfish aquaculture operations been issued in the last year and specifically was an Army Corps permit for new operations issued to either Henry (Mao) Xia or Taylor Shellfish for the Henderson Inlet parcel or for any other parcel in Thurston County?

Corps Response: The Seattle District has not issued Henry (Mao) Xia or Taylor Shellfish a permit for the parcel in question, but Mr. Xia's project may be eligible for coverage under NWP 48, provided that they meet all terms and conditions of the permit. Additionally, we are aware of a property line dispute at the Xia site. It is our understanding that the Washington State Department of Natural Resources has contacted the involved parties and that the issue was resolved by removing by removing the geoduck tubes on the area in question.

3) Has the Army Corps advised individual shellfish companies in Washington State of the new Army Corps permit requirements under NWP 48 or do you intend to advise them?

Corps Response: On March 12, 2007, the U.S. Army Corps of Engineers published a final notice in the Federal Register (72 FR 11092) announcing the re-issuance of nationwide permits and the issuance of 6 new nationwide permits, including NWP 48. Additionally, the Corps has been coordinating with some individual shellfish growers and a shellfish grower trade association.

4) We have heard that the Army Corps can issue one of two permitting letters. Can you tell us which letter will be used for shellfish aquaculture and specifically for geoduck aquaculture?

Corps Response: The Corps has several processes for authorizing proposed aquaculture facilities and it is the scope of the project and nature of the potential impacts that will determine which path is followed. The Corps has two categories of permits and each category of permit has two types, as discussed below. Generally, new aquaculture facilities, including geoduck, will be processed under the individual permit process.

General Permits

* Nationwide Permits (NWP 48): A nationwide permit is a form of general permit which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met. One of the most important conditions of NWP 48 is that the facility must be existing.

* Regional Permits: no regional permit exists for authorizing either new or existing aquaculture activities in the Seattle District.

Individual Permits

* Standard Individual Permits (for projects requiring authorization under Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act (RHA)): Standard individual permits are issued following a full public interest review of an individual application for a Department of the Army permit. A public notice is distributed to all known interested persons. After evaluating all comments and information received, final decision on the application is made. The permit decision is generally based on the outcome of a public interest balancing process where the benefits of the project are balanced against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest.

* Letters of Permission (for projects requiring authorization only under Section 10 of the RHA): A Letter of Permission is a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and State environmental agencies and a public interest evaluation, but without the publishing of an individual public notice. This permit is normally used for activities in navigable waters where objections are unlikely, and the activity does not qualify for a General Permit.

5) We understand that the Washington State Department of Ecology has issued its Army Corps corollary that excludes existing geoduck aquaculture operations from being permitted under NWP 48, thus requiring existing operations to get individual Army Corps permits. Has the Army Corps accepted this?

Corps Response: For those activities that result in a discharge of dredge or fill material into waters of the United States, a Section 401 Water Quality Certification (WQC) from Ecology is required. On June 20, 2007, the U.S. Army Corps of Engineers, Northwest Division, approved the WQC decisions for the 2007 nationwide permits. Ecology has given WQC approval to all activities eligible for coverage under NWP 48, with the exception of existing geoduck aquaculture activities that involve the discharge of dredge or fill material. Existing geoduck aquaculture activities that involve the discharge of dredge or fill material will require an individual WQC from Ecology. Regardless of whether an existing geoduck aquaculture activity requires an individual WQC, the geoduck aquaculture activity is still eligible for verification under NWP 48. Additionally, Seattle District has determined that normal operations at geoduck farms do not necessarily result in a discharge of dredge or fill material. Consequently, for geoduck aquaculture activities where there was no discharge of dredge or fill material, no WQC would be required.

More information about Ecology's 401 process is available from their website:

<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=43>

6). Please help us by providing written documentation that specifically describes what process the shellfish companies are supposed to go through to get the new Army Corps permits for shellfish aquaculture and geoduck aquaculture in particular. We would like to know what information is required from the shellfish companies to document existing and new aquaculture.

Corps Response: Attached is the newly developed Nationwide Permit 48 Reporting & PCN Instructions and Forms. This is an optional form developed by the Seattle District. More information on the NWP program can be found at our website: <http://www.nws.usace.army.mil> click on Regulatory, Regulatory/Permits, 2007 Nationwide Permits. Other information about what is required for an application for an individual Department of the Army permit is at 33 CFR 325, in particular see 325.1(d) and (e), and 325.3(a), which are available at <http://www.usace.army.mil/cw/cecwo/reg/33cfr325.htm>.

If you have any questions about our regulatory program, please call my aquaculture project manager, Mr. Casey Ehorn at (206) 764-6900 or email Casey.H.Ehorn@usace.army.mil.

Sincerely,

Michelle Walker, Chief
Regulatory Branch

Enclosures