

November 15, 2020

NWP-Seattle Team
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Subject: Comments on 2020 NWP Regional Conditions

On behalf of the grower members of the Pacific Coast Shellfish Growers Association (PCSGA) thank you for the opportunity to comment on Regional Conditioning of the Proposed NWPs. We have submitted separately comments specific to the general provisions and wording of the draft reissuance of portions of the Nationwide Permit. This letter is specific to the regional conditions proposed by the Seattle District. U.S. Army Corps of Engineers' (Corps).

PCSGA was founded in 1930 and represents approximately 100 private and tribal farms in Alaska, California, Hawaii, Washington and Oregon. PCSGA's members are diverse in both farm size and location where oysters, clams, mussels, and geoduck are grown for both domestic and export markets. Most of our members operate farms in Washington State and fall within the purview of the Seattle District (District).

The only Specific Regional Condition pertaining to NWP48 that the District is proposing is:

- The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by NWP.

PCSGA has no issue regarding the inclusion of that proposed regional condition. The use of a hydraulic escalator for harvesting is not a standard technique used in the geographic region associated with the Seattle District. Inclusion of this condition is reasonable.

PCSGA requests that the District also incorporate the conditions that shellfish farmers in Washington must follow related to the Programmatic Endangered Species Act and Essential Fish Habitat Consultation in Washington State that was conducted in 2016 (Programmatic Consultation). Shellfish growers who obtain authorization under NWP48 (Commercial Shellfish Aquaculture Activities) generally must abide by the conditions developed by the Corps, the National Marine Fisheries Service and the US Fish and Wildlife Service (Federal Services) as part of that consultation. These conditions, which include restrictions addressing eelgrass protection, plastic and debris management, forage fish protections and other issues, ensure implementation of the Endangered Species Act and the Essential Fish Habitat portions of the Magnusson Stevens Act and also help to ensure that shellfish farms in Washington State that are authorized under NWP 48 do not result in more than minimal environmental impacts, in accordance with the Clean Water Act and the National Environmental Policy Act. These conditions were

attached to every NWP verification issued in Washington State under the 2017 version of NWP 48.

We request that any conditions from the Programmatic Consultation that are based in the Clean Water Act or the Rivers and Harbors Act be incorporated as Regional Conditions for NWP 48 in Washington. We further request that the Corps make clear that any conditions from the Programmatic Consultation that are based in the Endangered Species Act or the Essential Fish Habitat portions of the Magnusson Stevens Act will be imposed as special conditions on individual project verifications in Washington State.

The Conditions presented by the Federal Services are rigorous and combined with state and local requirements, do their part to ensure shellfish operations appropriately consider protections of the marine habitat, species diversity and clean water which are essential to growing shellfish. Shellfish growers demand and rely upon the cleanest of areas to produce shellfish and these conditions assist in achieving that.

Additionally, PCSGA is seeking clarification regarding proposed regional condition language related to NWP 27– Aquatic Habitat Restoration, Establishment, and Enhancement Activities. The specific language which says, “*Restoration projects involving shellfish seeding must use shellfish native to the watershed*”. We assume that the language is meant to indicate that shellfish restoration can occur with shellfish species that at one point lived in that watershed. If this is correct, PCSGA requests that you edit the language of the proposed condition to be “*Restoration projects involving shellfish seeding must use shellfish native to the watershed at some point in time*”.

Thank you again for the opportunity to review and offer comments on the proposed Regional Conditions considered by the Seattle District. Please don't hesitate to contact me should you like to discuss these further.

Respectfully,

A handwritten signature in black ink, appearing to read 'M. A. Pilaro', written in a cursive style.

Margaret A. Pilaro
Executive Director