

Subject: FW: FW: [Non-DoD Source] Aquaculture NWP
Date: Thursday, October 22, 2020 at 6:29:05 PM Pacific Daylight Time
From: Berkner, Jason R CIV USARMY CEPOA (USA)
To: alicia.bishop@noaa.gov
CC: samuel.rabung@alaska.gov, rsmith@afdf.org, Morgan, Shannon R CIV USARMY CEPOA (USA), Berkner, Jason R CIV USARMY CEPOA (USA)

Hi Alicia,

The following are responses to the questions posed Mariculture Task Force. Great questions. Please be sure to let me know if I can clarify any of the responses.

Thanks,

Jason Berkner
Project Manager
Regulatory Division
U.S. Army Corps of Engineers
PO Box 6898, 2204 3rd St.
JBER, Alaska 99506

📞 (907)-753-5778

They were hoping to better understand the time associated with developing a PCN and how much time adding a PCN requirement adds to the permitting process? Reading through the Federal Register notice, it was unclear why the PCN requirement was being removed, but we're assuming removing the requirement would speed up permitting time?

The average NWP processing days (years 2011-2015) is 85% verified in less than 60 days. NWP verification timeframes that exceed 60 days are most often associated with ESA, EFH or NHPA consultation processes.

In reference to PCNs, it is important to note that various NWP general conditions often trigger the need for a PCN for some activities, even though the PCN requirement has been removed from the description of the particular NWP. For instance, all NWP (including NWP 48) activities proposed to be conducted by non-federal permittees must comply with the requirements of paragraph (c) of General Condition 18, "Endangered Species" (85 FR 57386). So if a proposed NWP 48 activity is within the range of a listed species or designated critical habitat, the non-federal applicant is required to submit a PCN to the district engineer and no work may begin until the applicant is notified that the requirements of the ESA have been satisfied.

In the most general terms, the NWP 48 PCN requirement is proposed to be removed because, in consideration of the NWP 48 terms and conditions, shellfish mariculture (as described in NWP 48) was determined to have no more than minimal adverse environmental effects. The proposed rule further addresses the question at 85 FR 57335; "The proposed removal of this PCN threshold would also be consistent with our view that commercial shellfish mariculture activities typically only have temporary impacts on submerged aquatic vegetation and that cultivated shellfish and submerged aquatic vegetation can sustain a healthy coexistence and provide estuarine and marine ecosystems with a variety of ecological functions and services, including habitat for a number of finfish and invertebrate species. We developed this view

after reviewing a number of scientific studies of interactions between submerged aquatic vegetation and shellfish mariculture operations, and a number of those studies are discussed in this preamble.”

- Can you further explain the process of how the District Engineer determines if a proposed NWP 48 activity may affect ESA-listed species/Critical habitat or EFH and conducts a consultation when there is *not* a PCN requirement. Is there still a notification to resource agencies? And just to clarify-- removing the PCN requirement only applies to Federal agencies, not non-federal applicants right?

As discussed above, a non-federal applicant must submit a PNC to the Corps if the proposed activity triggers General Condition 18, “Endangered Species”. Upon receipt of the PCN, the Corps initiates its evaluation of the proposal. If it is determined that the proposed NWP activity under evaluation may have adverse effects on EFH, the district engineer will initiate EFH consultation with the NMFS. The Corps makes effects determinations for ESA and EFH on a case-by-case basis. Regarding Federal Agencies, under the proposed rule a PCN would not be required for NWP 48. Federal agencies would be responsible for satisfying ESA, NHPA, EFH, etc. by following their own procedures.

- If a NWP does not require a PCN is it possible for someone to start construction prior to receiving a permit?

Yes, provided the work complies with all the terms and conditions of the NWP.

- Can you briefly explain the timing associated with the various permitting options for mariculture activities (NWP, IP, LOP), and if the NWP process is the most expedited? NWP ~ "x" days, Letter of Permission ~ "x" days, and Individual Permit takes ~ "x" days for permitting. From what I recall NWP is the fastest (60 days?), and the other two are around 120 days? The main difference is if the effects are more than minimal it shifts the process from NWP to Individual Permit right? What shifts projects between Individual Permit or Letter of Permission processes?

First off to briefly clarify, the term ‘Individual permit’ consists of two subcategories; a) Letter of Permission (LOP), and b) Standard Permit. LOPs are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. For the purposes of Alaska, a LOP can only be issued under the authority of Section 10 of the Rivers and Harbors Act of 1899 (Section 10). If a mariculture project is proposed to include discharges of dredge or fill material (for example: earthwork causing addition or redistribution of sediment), then a Standard Permit evaluation may occur, which includes a public notice and triggers much steeper requirements which must be met (Sec 404 of the Clean Water Act).

Our agency goal is to finalize 75% of NWPs within 60 days, and to finalize 50% individual permits within 120 days. The start of these timeframes is triggered by the date we receive information sufficient to evaluate. When evaluations do not meet these timeframe objectives, it is typically the result of consultation over statutes (NHPA, ESA, etc.) administered by other agencies.

NWPs are a type of general permit designed to regulate with little, if any, delay or paperwork certain activities having minimal impacts. No activity can be authorized under a NWP if it would have more than minimal individual or cumulative adverse effects on the environment. Activities that may have more than minimal effect are evaluated under individual permits.

- Any ideas why the majority of mariculture permits so far have been through Individual Permits vs. NWP? Do you anticipate the addition of these new mariculture NWPs will shift mariculture into using the NWP permitting option more frequently?

One known reason recent shellfish mariculture projects have been evaluated through LOP

procedures rather than the NWP 48 is that some of the proposed operations also proposed to include a component of seaweed mariculture. Without digging too deep, there may also have been cases where a proposed shellfish mariculture project was elevated to a LOP because it could not comply with the 2017 NWP 48 restriction (d), which does not allow new shellfish operations to affect more than ½ acre of submerged aquatic vegetation beds. Incidentally, restriction (d) is proposed to be removed from the 2020 NWP 48.

We do anticipate increased use of the 3 proposed mariculture NWPs, if approved. Just looking at the ~3.5 year period that ended 15-SEPT-2020, an estimated 32 LOP evaluations were finalized in Alaska District. Had the proposed mariculture NWPs been in effect, we can anticipate that those mariculture operations would have been evaluated as NWPs.

From: Morgan, Shannon R CIV USARMY CEPOA (USA) <Shannon.R.Morgan@usace.army.mil>
Sent: Wednesday, October 21, 2020 12:58 PM
To: Alicia Bishop - NOAA Federal <alicia.bishop@noaa.gov>; Berkner, Jason R CIV USARMY CEPOA (USA) <Jason.R.Berkner@usace.army.mil>
Cc: Rabung, Samuel H (DFG) <samuel.rabung@alaska.gov>; Riley Smith <rsmith@afdf.org>
Subject: RE: FW: [Non-DoD Source] Aquaculture NWPs

Hi Jason,

I've got too many things on my plate right now, would you please assist Alicia with answers to the questions below and cc me? I would really appreciate it.

Thank you!

Shannon

From: Alicia Bishop - NOAA Federal <alicia.bishop@noaa.gov>
Sent: Wednesday, October 21, 2020 12:28 PM
To: Morgan, Shannon R CIV USARMY CEPOA (USA) <Shannon.R.Morgan@usace.army.mil>
Cc: Rabung, Samuel H (DFG) <samuel.rabung@alaska.gov>; Riley Smith <rsmith@afdf.org>
Subject: Re: FW: [Non-DoD Source] Aquaculture NWPs

Hi Shannon,

We just had a meeting with a subgroup of the Mariculture Task Force. They are planning on submitting comments to the USACE regarding the mariculture related NWPs. One question came up regarding Pre-Construction Notification requirements.

- They were hoping to better understand the time associated with developing a PCN and how much time adding a PCN requirement adds to the permitting process? Reading through the Federal Register notice, it was unclear why the PCN requirement was being removed, but we're assuming removing the requirement would speed up permitting time?
- Can you further explain the process of how the District Engineer determines if a proposed NWP 48 activity may affect ESA-listed species/Critical habitat or EFH and conducts a consultation when there is *not* a PCN requirement. Is there still a notification to resource agencies? And just to clarify-- removing the PCN requirement only applies to Federal agencies, not non-federal applicants right?

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- Can you briefly explain the timing associated with the various permitting options for mariculture activities (NWP, IP, LOP), and if the NWP process is the most expedited? NWP ~ "x" days, Letter of Permission ~ "x" days, and Individual Permit takes ~ "x" days for permitting. From what I recall NWP is the fastest (60 days?), and the other two are around 120 days? The main difference is if the effects are more than minimal it shifts the process from NWP to Individual Permit right? What shifts projects between Individual Permit or Letter of Permission processes?
- Any ideas why the majority of mariculture permits so far have been through Individual Permits vs. NWP? Do you anticipate the addition of these new mariculture NWPs will shift mariculture into using the NWP permitting option more frequently?

Thanks for your help! We're excited to see more mariculture NWP options.

We were hoping you or someone else from the USACE would be available to answer questions during the upcoming **October 29th** Mariculture Task Force meeting ~30 minutes. If so, Riley can provide information on when this will come on the agenda for you to call in.

Cheers,
Alicia

On Mon, Oct 5, 2020 at 2:57 PM Morgan, Shannon R CIV USARMY CEPOA (USA) <Shannon.R.Morgan@usace.army.mil> wrote:

Good Afternoon Alicia,

Please see the below link to the Nationwide Permit reissuance efforts at the HQ level as well as the Alaska proposed Regional Conditions level. I'm happy to talk with you about this when you are ready, please just give me a call at (907) 753-5552.

[Blockedhttps://www.poa.usace.army.mil/Portals/34/docs/regulatory/publicnotices/2020/Nationwide%20Permit%20Reissuance_PN.pdf?ver=95xUC2ulmlWB8UUvVerI2w%3d%3d](https://www.poa.usace.army.mil/Portals/34/docs/regulatory/publicnotices/2020/Nationwide%20Permit%20Reissuance_PN.pdf?ver=95xUC2ulmlWB8UUvVerI2w%3d%3d)

Thank you,

Shannon Morgan
North Branch Chief
USACE, Alaska District

From: Budnik, Roberta K (Birdie) CIV USARMY CEPOA (USA) <Roberta.K.Budnik@usace.army.mil>
Sent: Monday, October 5, 2020 8:03 AM
To: Morgan, Shannon R CIV USARMY CEPOA (USA) <Shannon.R.Morgan@usace.army.mil>
Subject: FW: [Non-DoD Source] Aquaculture NWPs

Good morning, Shannon!

Alicia Bishop of NMFS has been working Aquaculture Coordinator in Alaska for a while now. She is asking if someone could talk with this Mariculture Task Force about the proposed new NWP's. I'm happy to talk to them, but I thought it might be more appropriate for someone on the reissuance team to discuss these new NWP's. Please let me know what you think. Thanks!

-Birdie

From: Alicia Bishop - NOAA Federal <alicia.bishop@noaa.gov>

Sent: Sunday, October 4, 2020 1:59 PM

To: Budnik, Roberta K (Birdie) CIV USARMY CEPOA (USA) <Roberta.K.Budnik@usace.army.mil>

Subject: [Non-DoD Source] Aquaculture NWP's

Hi Birdie,

At our last Mariculture Task Force (MTF) meeting, folks were interested in learning more about the proposed mariculture Nationwide Permits.

NWP 48 - Commercial Shellfish Mariculture Activities

NWP A - Seaweed Mariculture Activities

NWP B - Finfish Mariculture Activities

Whether or not multitrophic should be considered as a separate NWP

In addition, is there information on when proposed Regional Conditions will be out for public review/comment?

Would you, or another member of the Alaska District staff be available to chat with a MTF subgroup in the next few weeks? Please let us know your availability.

Thanks,
Alicia

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Alicia Bishop

Alaska Regional Aquaculture Coordinator

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