



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: June 16, 2014
Comment Deadline: July 16, 2014
Corps Action ID Number: SAW-2014-00957

The Wilmington District, Corps of Engineers (Corps) received an application from Mr. Joey Daniels, seeking Department of the Army authorization to create 3 new shellfish lease sites (9.4 acres, 5 acres, 5 acres) by utilizing oyster bags, containers, and cages and other current methods associated with expansion of a current shellfish operation in Roanoke Sound, Dare County, North Carolina.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

Applicant: Mr. Joey Daniels
Wanchese Fish Company
Post Office Box 369
Wanchese, North Carolina 27981

Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- Section 404 of the Clean Water Act (33 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

Location

Directions to Site: Site A is approximately 2.75 miles south east of Wanchese Seafood Park, just northwest of Duck Island. Site B is located 1 mile west of Wanchese Seafood Park. Site C is located 2.05 miles south east of Wanchese Seafood Park.



(Figure 1. Locations Approximate)

Project Area (acres): Site A: 9.4 acres
Site B: 5 acres
Site C: 5 acres

Nearest Town: Wanchese

Nearest Waterway: Roanoke Sound

River Basin: Pasquotank

Latitude and Longitude: Site A, 35.8033N, -75.60466W
Site B, 35.840916N, -75.60466W
Site C, 35.8154N, -75.606683W

Existing Site Conditions

The applicants proposed shellfish leases are located at three sites within the Roanoke Sound. These sites are located in areas with a hard sandy bottom with an average water depth less than 2 meters. The North Carolina Division of Marine Fisheries (NCDMF) has investigated all three sites for shellfish lease suitability. Sparse submerged aquatic vegetation (SAV) has been found in each proposed location. According to the “Shellfish Lease Investigation Report” provided by the applicant, Site A is a suitable area for shellfish cultivation. Site A also contains some patches of SAV throughout the site. Site B also contained SAV but all samples were 1 to 2 sprigs according to the NCDMF investigation report and also marked “yes” for “suitability of area for shellfish cultivation.” Site C also contained 1-2 rooted individual sprigs of SAV in approximately 9.6% of samples obtained by NCDMF according to their investigation report. The applicant is seeking Department of the Army authorization at the recommendation of the North Carolina Division of Marine Fisheries by letter to the applicant dated March 18, 2014.

Applicant’s Stated Purpose

The purpose of the proposed project is to expand the existing shellfish farm in an effort to produce more healthy, sustainable products.

Project Description

The proposed activity will be marked and operated in accordance with NCDMF at 3 different locations within the Roanoke Sound. The applicant will use natural shell substrate to stabilize the seeded oyster spat along bottom portions of each proposed site. Material will be transported by small boat and barge in accordance with NCDMF methodologies. Unseeded portions of the lease bottoms will be used for conventional oyster racks, bags, and cages and other common practices associated with shellfish cultivation.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

The applicant will take all necessary steps to avoid damaging the surrounding ecosystem and all construction/farming methods will be done in accordance NCDMF best management practices. The applicant states that the activity will provide a filtering service to the estuary and create habitat for many other species within the area. The proposed activity is water dependent.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

Due to the nature of the activity and the potential benefits to the environment, the applicant has not offered any compensatory mitigation at this time.

Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project may affect, but not likely to adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an

adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).

- The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

Endangered Species

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

- The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat.
The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

Other Required Authorizations

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

North Carolina Division of Water Resources (NCDWR): The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt

of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by July 16, 2014 to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit
(USPS mailing address): 1650 Mail Service Center, Raleigh, NC 27699-1650

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

North Carolina Division of Coastal Management (NCDWM):

- The application did not include a certification that the proposed work complies with and would be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2 (b)(2) the Corps cannot issue a Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDWM, and the NCDWM notifies the Corps that it concurs with the applicant's consistency certification. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDWM.
- Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

Evaluation

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline

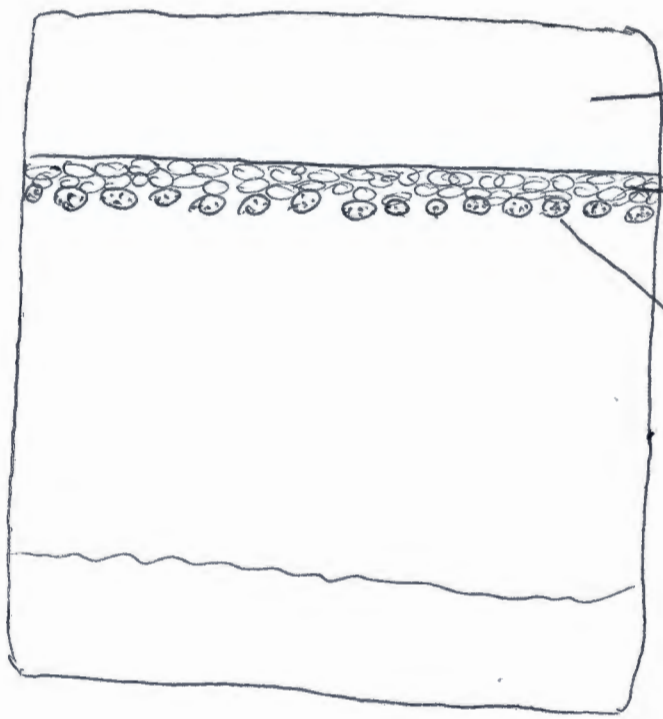
erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, July 16, 2014. Comments should be submitted to Josh Pelletier, Washington Regulatory Field Office, 2407 West Fifth Street, Washington, North Carolina 27889, at (910) 251-4605.

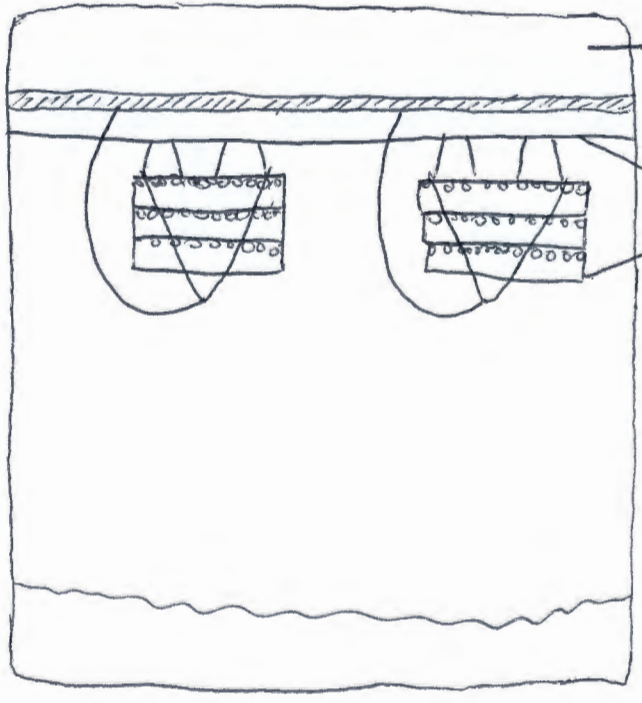


Bottom Culture

seeded shell
(spat on shell)

substrate shell layer
about 6"

hard sandy
bottom



Gage Culture

3 - 3' x 4' trays
4" deep on 6" legs
clipped to anchor
line

18"

hard sandy
bottom

Types of culture
methods to be
used on these
sites

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MAY 22 2014

U.S. ARMY CORPS ENG
Washington Regulatory File #



North Carolina Department of Environment and Natural Resources

Division of Marine Fisheries

Pat McCrory
Governor

Dr. Louis B. Daniel III
Director

John E. Skvarla, III
Secretary

March 18, 2014

Mr. Joey Daniels
Wanchese Fish Company
4683 Mill Landing Road
Wanchese, NC 27981

Dear Mr. Daniels:

RE: Investigation of proposed shellfish lease (1701838) and water column (1701846) Site #2

The second site location of your proposed shellfish lease (1701838) and water column (1701846) site of approximately 5.0 acres was investigated and sampled On March 11, 2014. A portion of the lease investigation process includes taking samples of the benthic habitat to determine the abundance and density of shellfish; and to ensure that submerged aquatic vegetation (SAV) is not present on the proposed lease site. During the initial lease investigation, 100 samples were taken, 29 of which contained shoal grass shoots and rhizomes; resulting in 29% of samples containing SAV. The location of SAV is not restricted to one part of the proposed lease site, but throughout the length and width of the proposed lease location.

Currently, the definition of SAV in North Carolina is as follows:

Submerged aquatic vegetation (SAV) habitat. Submerged lands that:

- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*) and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
- (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds. This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas.

Currently, all shellfish leases and aquaculture activities in North Carolina are permitted under USACE Nationwide Permit (NWP) 48 for Shellfish Aquaculture through the NC Division of Marine Fisheries (NCDMF). NCDMF must ensure compliance with NWP 48 as well as other related NWPs to continue to permit shellfish leases in North Carolina. NCDMF is unable to permit a new shellfish lease in areas that contain SAV based upon the US Army Corp of Engineers (USACOE) Nationwide Permit 48 (NWP 48) regional conditions.

The regional conditions of NWP 48 do not allow the NCDMF to permit new shellfish leases where the proposed lease boundaries contain the presence of SAV at time of sampling or based upon historic documentation of SAV habitat.

Under NWP 48:

1.8 Preservation of Submerged Aquatic Vegetation

Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

Due to the presence of SAV being found on your proposed lease site, we recommend one of the following actions:

- choose another lease location that does not contain SAV
- withdraw your shellfish lease application
- *• contact the USACE-Wilmington District in effort to get an USACE Individual Permit
- provide NCDMF with exemption from USACE requirements regarding SAV relative to lease operations on the proposed lease site.

Please notify the NC Division of Marine Fisheries of your decision. If you decide to choose another proposed location, please contact us so that we can discuss the proposed area, and continue the lease investigation process.

If you have any questions or would like to discuss this in more detail, please call me at (800) 682-2632 ext. 8061 or (252) 808-8061.

Sincerely,



Brian Conrad
Shellfish Lease and Franchise Program
Habitat and Enhancement Section

Enclosures: Proposed Shellfish Lease 1701838 and WC 1701846 lease investigation location and sample map