



Coastal Management
ENVIRONMENTAL QUALITY

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February 23, 2017

Kevin P. Landers, Sr.
Colonel, U.S. Army
Wilmington District, Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403-1343

SUBJECT: CD17-0009 Consistency Concurrence Regarding the proposed reissuance of the Nationwide Permits (NWP) including regional conditions in North Carolina (DCM#17-006)

Dear Colonel Landers:

The Division of Coastal Management (DCM) received notice that the U.S. Army Corps of Engineers (USACE) announced the proposed reissuance of its NWPs, including modifications, and two new NWPs and associated conditions, in the Federal Register on January 6, 2017. This announcement initiated the Coastal Zone Management Act (CZMA) federal consistency review process. The Federal Register announced a 90-day review period with a deadline of April 6, 2017; however, the announcement indicated that the NWPs would become effective on March 19, 2017. Additionally, DCM received proposed regional conditions to the NWPs on January 19, 2017 from the USACE Wilmington District. DCM has reviewed both the proposed reissuance of the NWPs and the regional conditions, and this letter serves as the final federal consistency determination for the proposed reissuance of the NWPs including NWP 48 for commercial shellfish aquaculture activities, and the new NWP 54 for living shorelines.

The private culture of shellfish has occurred in North Carolina since at least the mid-1800s, and the State's current leasing and franchise system is now codified primarily under N.C. General Statute 113-202 *et seq.* To date, N.C. has approximately 1,900 acres leased for shellfish aquaculture; however, in comparison, Virginia currently has approximately 90,000 acres leased for shellfish aquaculture. According to the Virginia Institute of Marine Science, the farm-gate value for 2015 shellfish aquaculture was valued

at 48.3 million dollars. Virginia now leads the eastern US in production of clams and oysters.

The success of Virginia's shellfish lease program has stimulated interest in our state, and recent legislative actions seek to further promote the sustainable growth of this industry in North Carolina. Driven by the high value of oysters and a growth in consumer demand, lease applications to the N.C. Division of Marine Fisheries (DMF) increased four-fold over the past year and are anticipated to continue at this level for the foreseeable future. Additionally, recent legislative amendments which include the removal of formal survey requirements, increased lease contract terms, allowance of 18-inch structures on bottom leases, and the elimination of licensing requirements for leaseholders will reduce cost and increase growth potential on both bottom and water column leases, thus stimulating an increase in shellfish lease applications.

State law requires that the director of DMF grant leases only if they are compatible with other lawful public uses. With the increase in water column and bottom cage use during 2016, DMF and DCM staff adopted a proactive approach to better identify navigational issues and procedures to reduce public use conflicts. The two Divisions identified ancillary structures that might be associated with aquaculture operations, and will require additional state reviews and/or permitting of those structures. DMF created an application process that requires more detailed lease management plans from applicants so that resource and regulatory agencies can more accurately assess potential impacts prior to the issuance of a lease or permit. This improved process also seeks to address known concerns from federal agencies including the USACE, U.S. Coast Guard, and NOAA's National Marine Fisheries Service - including concerns associated with the presence of submerged aquatic vegetation (SAV) in the proposed lease area. While this process involves a higher level of detail and review, it keeps application costs low, follows the same timeline, and provides the lease applicant with a clear and concise experience when beginning their aquaculture venture.

During this federal consistency review process, DCM became aware of a new Pre-Construction Notification (PCN) requirement for NWP 48 for all newly-proposed shellfish lease areas. This PCN requirement will add an additional regulatory burden on DMF and the applicant. Additionally, during the review process, DCM also became aware that other east coast states have coordinated with the USACE regional offices to eliminate this PCN requirement which allow those states to streamline the application process for shellfish leases.

In addition to the State's goal to promote shellfish aquaculture, the State also has a similar goal to promote and streamline the permitting process for the construction of "living shorelines," including marsh sills. The State developed a General Permit (GP) in 2004 for the construction of small-scale marsh sills (15A NCAC 7H .2700). Over the subsequent 12 years, DCM held numerous coordination meetings with other agencies in an effort to revise the GP and streamline the permitting of small-scale marsh sills. The State and

research community have collected significant data demonstrating that these small-scale marsh sills have been effective structures for erosion protection and habitat enhancement.

DCM has undertaken substantial efforts to advance marsh sills and other forms of living shorelines as alternatives to traditional bulkheads for estuarine shoreline stabilization in North Carolina. Living shorelines include a suite of options for shoreline erosion control that maintain existing connections between upland, intertidal, estuarine, and aquatic areas which are necessary for maintaining water quality, ecosystem services, and habitat values. Over the past several years, DCM developed a strategy, in cooperation with DMF, to facilitate the use of living shorelines. This "Living Shorelines Strategy" includes outreach, public awareness, financial incentives, monitoring and short and long-term implementation actions, which have included several training courses, a marsh sill evaluation effort, and development of an Estuarine Shoreline Stabilization Guide/Handbook for property owners.

DCM has recently been working with a large stakeholder group, including the USACE, to further streamline the State's GP for small-scale marsh sills, and is encouraged by the new proposed NWP 54 for living shorelines. While NWP 54 is certainly a step in the right direction, as proposed it will require a PCN even for the small-scale structures that can be permitted under the State's GP. This PCN requirement will add additional processing time to the State GP process that is designed to take no more than a week.

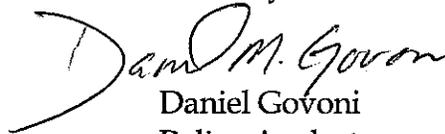
North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina's Administrative Code, and local land use plans. It is the objective of DCM to ensure that proposed Federal activities will be compatible with safeguarding and perpetuating the biological, social, economic, and aesthetic values of the State's coastal area.

DCM has reviewed the submitted information pursuant to the management objectives and enforceable policies of Subchapters 7H and 7M of Chapter 7 in Title 15A of the North Carolina Administrative Code and concurs that the proposed Federal activity by the U.S. Army Corps of Engineers is consistent, to the maximum extent practicable, with North Carolina's approved coastal management program. DCM is concerned, however, that NWP 48 and the new NWP 54 will not allow the State to achieve its goals to promote aquaculture and living shorelines as explained above. DCM recommends that the USACE Wilmington District coordinate with DCM and other relevant agencies to explore ways to streamline the aquaculture permitting process. DCM also recommends that the USACE Wilmington District create a Regional General Permit for living shorelines, specifically to coincide with the State's updated general permit for the construction of marsh sills.

Should the proposed action be modified, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency determination pursuant to 15 CFR 930.46, or a new consistency determination pursuant to 15 CFR 930.36. If you have any questions, please contact me at 252-808-2808 x215.

Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

A handwritten signature in black ink that reads "Daniel M. Govoni". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel Govoni
Policy Analyst