

Shellfish Farms and CWA 401 Certifications/CZM Consistency Determinations

Bill Dewey
Taylor Shellfish farm
Director of Public Affairs



Pacific oyster bed Willapa Bay



Early/mid 1900 photo acquired from Washington State History Museum of a Pacific oyster bottom culture bed in Willapa Bay, WA in dense eelgrass.



1930s circa photo (post card?) from Matt Winters collection showing workers breaking farmed oyster clusters in eelgrass on Wiegardt Brothers beds in Willapa Bay



Breaking up clusters
of Pacific Oysters
on oyster beds of
Wiegardt Bros.
OCEAN PARK, Wn.

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**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

CENTER FOR FOOD SAFETY, a non-profit corporation,
Plaintiff,
v.
U.S. ARMY CORPS OF ENGINEERS, an agency of the United States of America,
LIEUTENANT GENERAL TODD T. SEMONITE in his Official Capacity as Chief of Engineers of the U.S. Army Corps of Engineers; MAJOR GENERAL SCOTT A. SPELLMON, in his Official Capacity as COMMANDER of the Northwestern Division of the U.S. Army Corps of Engineers; and COLONEL MARK A. GERALDI, in his Official Capacity as Commander of the Seattle District of the U.S. Army Corps of Engineers,

) Case No.
)
) **COMPLAINT**
)
)

Skagit Valley Herald

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Shellfish at center of legal fight



Taylor Shellfish employee Trevor James unhooks bags of clams that were hoisted aboard the Janet P during a late afternoon harvest in November 2016.

Taylor Shellfish, Swinomish on opposite sides of permit dispute

By **KIMBERLY CAUVEL**
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A legal battle is being waged over a national permit's use for shellfish farming operations in Washington and whether it adequately considers the environmental impacts of those farms.

Three cases brought against the U.S. Army Corps of Engineers for issuing Nationwide Permit 48 are now bound together in the U.S. District Court of Western Washington in Seattle.

A federal judge ruled in October that the Army Corps permit does not meet the requirements of the Clean Water Act and National Environ-

mental Protection Act. The Indian Tribal Community are on opposing sides of the litigation.

The Coalition to Protect Puget Sound Habitat, the Center for Food Safety and the Swinomish each filed lawsuits against the Army Corps over the five-year permit, which was originally issued in 2007 and re-issued in 2012 and 2017.

Taylor Shellfish Farms, which has operations in Samish Bay and other areas throughout Puget Sound, has sided with the Army Corps against vacating the permit, which would impact workers and come at an economic cost to the region.

The 900-employee company said in a court document it has "significant

without mandatory avoidance or minimization measures" to protect eelgrass that supports an array of wildlife including salmon, crab and other marine resources the tribe depends on for its way of life, the April 24, 2018, court filing from the Swinomish states.

The Oct. 10 ruling from U.S. District Court Judge Robert Lasnik states the Army Corps did not provide sufficient information to support its finding that the nationwide permit would not harm the environment.

The permit was based on "selectively chosen statements from the scientific literature" and "the hope that regional Corps districts will impose additional conditions ... to ensure that

AP source: Second U.S. official in Kyiv heard Trump call

WASHINGTON (AP) — A second U.S. Embassy staffer in Kyiv overheard a cellphone call between President Donald Trump and his ambassador to the European Union discussing a need for Ukrainian officials to pursue "investigations," The Associated Press has learned.

The July 26 call between Trump and Gordon Sondland was first described during testimony Wednesday by William Taylor, the acting U.S. ambassador to Ukraine. Taylor said one of his staffers overheard the call while Sondland was in a Kyiv restaurant the day after Trump's July 25 phone call with Ukrainian President Volodymyr Zelenskyy that triggered the House impeachment inquiry.

The second diplomatic staffer also at the table was Suriya Jayanti, a foreign service officer based in Kyiv. A person briefed on what Jayanti overheard spoke to AP on condition of anonymity to discuss a sensitive matter currently under investigation.

The accounts of the two embassy staffers could tie Trump closer to alleged efforts to hold up military aid to Ukraine in exchange for investigations into political rival Joe Biden and his son Hunter's business dealings. In defending Trump on Wednesday, Republicans repeatedly highlighted that Taylor never directly heard the president direct anyone to demand that the Ukrainians open the probe.

Trump on Wednesday said he did not recall the July 26 call with Sondland.

"No, not at all, not even a little bit," Trump said.

The White House did not respond to questions Thursday about the second witness to the call with Sondland.

The staffer Taylor testified about is David Holmes, the political counselor at the embassy in Kyiv, according to an official familiar with the matter who spoke on condition of anonymity.

Holmes is scheduled to testify Friday before House investigators in a closed session.

Taylor was one of the first wit-

Federal District Court Invalidates NWP48

- August 2017 suit filed challenging Seattle District implementation of the NWP48 to permit Washington farms
- October 2019, Federal District agrees with plaintiffs and invalidates the NWP48 for over 900 farms
- June 2020 – Federal District Court issues remedy order allowing farms to continue maintaining and harvesting existing crops but not allowing seeding of new crops after December 11, 2020 until new permit is obtained
- Growers appealed to Ninth Circuit Court of Appeals and lost

What activities are 404 and/or 401?

Hand raking to harvest clams



What activities are 404 and/or 401?

Machine harvest of clams



What activities are 404 and/or 401?



Installing predator exclusion nets

What activities are 404 and/or 401?

Spreading oyster seed or blank oyster shell to catch oyster seed



What activities are 404 and/or 401?



Harvesting
geoduck clams

Current status

- Industry worked with Congress, Governor and Legislature to secure \$\$\$ and staff for the Corps Seattle District and Department of Ecology to process 700+ individual permits as fast as possible!!!
- ACOE progress as of 10/1/21 (~ 10 months of working on them):
 - 252 Letters of Permission (LOPs)
 - 32 Standard Individual Permits (SIPs)
 - 78 NWP48s

Current status (continued)

- Department of Ecology as of 9/15/21:
 - 699 total shellfish projects
 - 537 pre-meeting requests
 - 377 CZM consistency determinations completed
 - 394 401 Water Quality Certifications completed
 - 131 projects that determined didn't need 401 Certifications
 - 418 public comment notices issued

Current status (Continued)

- Many of Washington's shellfish farmers were not able to plant new crops this year due to lack of an Army Corps permit
- Any not permitted by March 2022 (expiration of 2017 NWP48) also lose ability to maintain and harvest existing crops