Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 7/24/2018 2:52:32 PM
To: Wade, Alexis [Wade.Alexis@epa.gov]
Subject: FW: ACTION FW: Shellfish Follow-up

Hi Alexis,

Let me know what you think about the language below, that Rachel sent Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Question: do normal commercial shellfish farming activities usually result in discharges of dredged or fill material, as those terms are defined under Section 404 of the Clean Water Act?

Answer:

Ex. 5 Deliberative Process (DP)

Simma Kupchan
EPA Office of General Counsel
Water Law Office
202-564-3105
WJC North #7426Q

From: FertikEdgerton, Rachel
Sent: Tuesday, July 24, 2018 10:48 AM
To: Kaiser, Russell <Kaiser.Russell@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: ACTION FW: Shellfish Follow-up

Here is some draft language for Simma and Alexis to review. Citations could be moved to footnotes for improved readability.

Ex. 5 AC/DP

Thanks,
Rachel

From: Kaiser, Russell
Sent: Tuesday, July 24, 2018 9:11 AM
To: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Hurld, Kathy <Hurld.Kathy@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: FW: ACTION FW: Shellfish Follow-up

Rachel,

I need you to work on the below task ASAP. Response can be brief. For example, two sentences. One

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Rachel – after we reach agreement on the language, pls insert as described below and forward to all parties. **Please note this is due today**.

Russell L. Kaiser
Chief, Freshwater and Marine Regulatory Branch
Oceans, Wetlands and Communities Division
Office of Wetlands, Oceans and Watersheds
1301 Constitution Ave., N.W.

Room 7114B West Bldg.
Washington, DC 20004
P: 202.566.0963
C: Ex. 6 Personal Privacy (PP)

From: Goodin, John
Sent: Tuesday, July 24, 2018 8:26 AM
To: Frazer, Brian <Frazer.Brian@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>
Cc: Connors, Sandra <Connors.Sandra@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: ACTION FW: Shellfish Follow-up

Morning, Folks--Need to do this today. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks
John

From: Forsgren, Lee
Sent: Tuesday, July 24, 2018 8:15 AM
To: Goodin, John <Goodin.John@epa.gov>
Subject: RE: Shellfish Follow-up

John,

Can you put in the ESA discussion and then I will get this to Chairman Graves.

Lee

From: Goodin, John
Sent: Monday, July 23, 2018 2:56 PM
To: Forsgren, Lee <Forsgren.Lee@epa.gov>
Subject: Shellfish Follow-up

Per discussion, see below. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

From: Goodin, John
Sent: Tuesday, June 12, 2018 2:49 PM
To: Forsgren, Lee <Forsgren.Lee@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Russell Kaiser <Kaiser.Russell@epa.gov>; Sandra Connors (Connors.Sandra@epa.gov) <Connors.Sandra@epa.gov>
Subject: Shellfish Follow-up

Lee—below is our coordinated response with OGC that addresses the questions below regarding

Ex. 5 Deliberative Process (DP)

Thanks,

John

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Question: To the extent any shellfish farming activities do involve regulated discharges of dredged or fill material, is the Clean Water Act Section 404(f)(1)(A) exemption applicable to shellfish farming, including seeding, cultivation, and harvesting activities?

Answer:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: "Forsgren, Lee" <Forsgren.Lee@epa.gov>
Date: June 5, 2018 at 10:12:11 PM EDT
To: "Bennitt, Ian" <Ian.Bennitt@mail.house.gov>
Cc: "Goodin, John" <Goodin.John@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>, "Ringel, Aaron" <ringel.aaron@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>
Subject: Re: Shellfish

Ian,

Let me do some checking and get back to you ASAP.

Lee

Sent from my iPhone

On Jun 5, 2018, at 9:19 PM, Bennitt, Ian <Ian.Bennitt@mail.house.gov> wrote:

> Lee – following up. Can we request some TA from yall with regard to our shellfish issue. Specifically, we would like to know whether EPA concurs with the Army Corps of Engineers' position, as stated in the March 2016 draft preamble to the 2017 Nationwide Permit 48, regarding the applicability of Section 404 of the Clean Water Act to commercial shellfish farming activities, including:
>
> i. That normal commercial shellfish farming activities usually do not result in discharges of dredged or fill material, as those terms are defined under Section 404 of the Clean Water Act; and
> ii. That, to the extent any shellfish farming activities do involve regulated discharges of dredged or fill material, the Clean Water Act Section 404(f)(1)(A) exemption is applicable to shellfish farming, including seeding, cultivation, and harvesting activities.

Thanks for your help,

Ian H. Bennitt

Staff Director, Water Resources and Environment Subcommittee

Committee on Transportation and Infrastructure

202-225-4360

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