



US Army Corps
of Engineers®
Seattle District

Special Public Notice

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ANNOUNCEMENT: Requirements of the 2012 Nationwide Permit 48 for Commercial Shellfish Aquaculture Activities

BACKGROUND: On February 21, 2012, the U.S. Army Corps of Engineers (Corps) published the notice in the Federal Register announcing the reissuance of all existing nationwide permits (NWP), general conditions, and definitions with some modifications. The NWPs will be effective on March 19, 2012, and will expire on March 18, 2017. Nationwide Permit (NWP) 48 for Commercial Shellfish Aquaculture Activities was modified and reissued. This SPN explains the requirements of the modified NWP 48 as applicable in Washington State.

1. Terms and Conditions of 2012 NWP 48: Under the 2007 NWPs, NWP 48 only authorized existing commercial shellfish aquaculture activities, provided certain conditions are met. The 2012 NWP 48 authorizes existing, expansion, and new commercial shellfish aquaculture activities, provided certain conditions are met. The full terms and conditions of the 2012 NWP 48 can be found on the Seattle District Regulatory Branch website at: www.nws.usace.army.mil, select Regulatory Permits, then select Permit Guidebook, then select Nationwide Permits.
2. Notification Requirements: To authorize an existing, expansion, or new commercial shellfish aquaculture activity by the 2012 NWP 48, applicants must first submit a permit application (also known as a JARPA). This application is called a “pre-construction notification” or a “PCN” and is **required in all cases** per Nationwide Permit General Condition (NGC) 18, Endangered Species.

NGC 18 states: Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the Endangered Species Act (ESA) have been satisfied and that the activity is authorized. In Washington State, commercial shellfish aquaculture typically occurs in tidal waters. All tidal waters in Washington State support ESA-listed species. Therefore, because commercial shellfish aquaculture activities occur in the vicinity of ESA-listed species, a PCN is required in all instances.

The application (JARPA) for commercial shellfish activities can be found on the Seattle District Regulatory Branch website at: www.nws.usace.army.mil, select Regulatory Permits, then select Forms, then select JARPA or you can request a hard copy by calling (206) 764-3495.

Note: If you have already submitted an application for authorization under the 2007 NWP 48, you do not need to resubmit application materials. NWP 48 verifications will commence Spring of 2012.

3. Endangered Species Act Requirements: Applicants applying for NWP 48 authorization for existing activities must submit documentation showing that they were authorized to perform the activity and planted the area prior to March 18, 2007, for the work to be covered by the ESA Programmatic Consultation for Existing Shellfish Aquaculture Activities. For the expansion of existing project areas or new project areas created after March 18 2007, applicants will need to complete individual ESA consultation.
4. Modification to Authorized Activities: Per the existing Seattle District ESA Programmatic Consultation for Existing Shellfish Aquaculture Activities, if you are proposing any changes to the authorized work, such as changing the species or cultivation method, or increasing the gravel applied to special aquatic sites (e.g., mudflats, eelgrass), you must submit a request for a permit modification and receive written approval from the Corps before you begin the modified work.
5. Other Activities Included in NWP 48: This NWP authorizes any property markers to demarcate the boundaries of the project area in tidal areas. The permittee must ensure that the markers are not a navigation hazard and must be in compliance with U.S. Coast Guard requirements.
6. Activities Not Authorized by NWP 48:
 - (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
 - (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;
 - (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste;
 - (d) Expansion of existing operations or new activities with more than 0.5 of an acre of disturbance to submerged aquatic vegetation (e.g., eelgrass);
 - (e) Activities resulting in a loss of waters of the United States in a mature forested wetland, bog, bog-like wetland, aspen-dominated wetland, alkali wetland, wetlands in a dunal system along the Washington coast, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons; and
 - (f) The commercial harvest of clams by means of hydraulic escalator harvester equipment.

Activities that do not qualify for authorization under a NWP will be reviewed as an individual permit.

7. Agency Notification required by National Condition 31: As required by NWP National Condition 31(d)(2), all NWP 48 activities that require a PCN, will require agency notification. Therefore, because a PCN is required for all NWP 48 activities as described above, the Corps will initiate agency notification once we receive a complete PCN.
8. Regional General Condition 8 (Vegetation Protection and Restoration): This regional general condition requires that for all NWPs, areas subject to temporary vegetation removal shall be replanted with appropriate native species. This condition further states if an aquaculture area is permitted to impact submerged aquatic vegetation (SAV) under NWP 48, the aquaculture area does not need to be replanted with submerged aquatic vegetation. This condition is applicable as long as there is an ongoing aquaculture activity occurring. Should the permitted activity be abandoned, then the vegetation removal area will likely have to be restored and replanted.