



US Army Corps  
of Engineers  
Seattle District

# Special Public Notice

**Regulatory Branch**  
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**Public Notice Date: November 23, 2016**  
**Expiration Date: December 23, 2016**

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## **NATIONWIDE PERMIT 48 COMMERCIAL SHELLFISH AQUACULTURE ACTIVITIES** **REISSUANCE REQUEST FOR COMMENTS**

On June 1, 2016, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the 50 existing nationwide permits (NWP) and issue two new NWP. On June 20, 2016, the Corps' Seattle District issued a special public notice with regional conditions specific to the Seattle District. The Seattle District is now seeking comments on the proposed regional conditions for NWP 48 for *Commercial Shellfish Aquaculture Activities*.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWP require notification to the District Engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

### **Regional Issues Concerning the Proposed NWP, Including Regional Conditions**

Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal.

This public notice lists the proposed NWP 48 regional general conditions and NWP 48 specific regional conditions currently under consideration by the Northwestern Division for the Seattle District, covering Washington State. The Seattle District is seeking comments on the proposed regional conditions for NWP 48 and seeking comments on the need for additional regional conditions for NWP 48 to help ensure that the adverse environmental effects of activities authorized by NWP 48 will be no more than minimal, both individually and cumulatively. Comments on regional issues relating to the proposed NWP 48 and proposed regional conditions to NWP 48 should be sent via email to [pamela.sanguinetti@usace.army.mil](mailto:pamela.sanguinetti@usace.army.mil) or by mail to:

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Comments relating to regional conditions are due by **December 23, 2016**.

After the NWP's are issued, the final regional conditions will be issued after approval by the Northwestern Division Commander. After the NWP's are issued, the Washington State Department of Ecology, Environmental Protection Agency, and Tribes with 401 certification authority will make their Clean Water Act Section 401 (401) water quality certification decisions and States will make their Coastal Zone Management Act (CZMA) consistency determination decisions. The 401 and CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP's. The final NWP's will go into effect on March 19, 2017.

National draft decision documents for each of the proposed NWP's, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP's (national conditions) with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP's, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2015-0017. Final decision documents will be prepared for the NWP's that are issued. In addition, the final national NWP decision documents will be supplemented by Division Commanders to address their decisions concerning regional conditions for the NWP's.

## **PROPOSED NWP 48 SPECIFIC REGIONAL CONDITIONS**

### **48. Commercial Shellfish Aquaculture Activities**

1. The pre-construction notification (PCN) must include a complete description of the NWP 48 activities anticipated to occur over the duration of the permit authorization within the applicant's project area. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the District Engineer to request a modification of the NWP verification and receive written approval prior to commencing work.
2. The harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

## **PROPOSED REGIONAL GENERAL CONDITIONS APPLICABLE TO NWP 48**

The initial draft proposed Regional General Conditions (RGCs) can be found at <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/News-and-Updates/>. In this initial version of the draft proposed RGCs, RGCs 10 and 14 contained a note stating that the conditions do not apply to NWP 48 activities. This public notice clarifies that RGCs 10 and 14 have been revised to remove that statement. RGCs 10 and 14 will be applicable to NWP 48 activities. All applicable RGCs must be met for an activity to be verified under NWP 48. Listed below are the revised RGCs 10 and 14 which apply to NWP 48 activities.

## **10. Submerged Aquatic Vegetation and Forage Fish**

To the maximum extent possible, all activities and structures must avoid submerged aquatic vegetation (e.g., eelgrass, macroalgae attached to or rooted in substrate). For activities in marine waters with the potential to impact eelgrass and/or macroalgae, the PCN must include a delineation of any eelgrass and/or macroalgae. For projects requiring a delineation please contact the Seattle District for current delineation protocols.

For projects in marine waters, the PCN must include the location and size of documented forage fish spawning areas within one mile of the project site (i.e., Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), and surf smelt (*Hypomesus pretiosus*)). Please specify the distance to each documented site; refer to the spawning location map on Washington Department of Fish and Wildlife's website located at: [http://wdfw.wa.gov/conservation/research/projects/marine\\_beach\\_spawning/](http://wdfw.wa.gov/conservation/research/projects/marine_beach_spawning/).

## **14. Temporary Impacts and Site Restoration**

- a. Temporary impacts to waters of the U.S. shall not exceed six months unless the prospective permittee requests and receives a waiver by the District Engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.
- b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the District Engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).
- c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas shall include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.
- d. The permittee shall revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation shall begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures shall be removed as soon as the area has established vegetation sufficient to control erosion and sediment.
- e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved after the monitoring period, contingencies must be implemented, and additional monitoring will be required.