

Frequently Asked Questions – Aquaculture – September 22, 2020

Processing

Q9. What aquaculture activities are regulated under Section 10 of the Rivers and Harbors Act (RHA) of 1899?

A9. Under the RHA, the Corps regulates structures and work in navigable waters of the United States (33 CFR 322.2(b) & (c)). The following provides some examples of aquaculture-related structures and work typically subject to Section 10, although a fact-based decision will need to be made on a project-specific basis. Structures related to aquaculture include, but are not limited to, racks, cages, bags, lines, nets, and tubes. These structures may be floating, suspended in navigable waters, or on the bottom of a waterbody. Work would include, but is not limited to, such activities as dredging for harvesting and bed preparation and placing fill material such as shell or gravel to provide suitable growing substrate.

Q10. What aquaculture activities are regulated under Section 404 of the Clean Water Act (CWA)?

A10. Under the CWA, the Corps regulates the discharge of dredged or fill material into waters of the United States (33 CFR 323.2(d) & (f)). The following provides some examples of aquaculture-related activities typically resulting in a discharge, although a fact-based decision will need to be made on a project-specific basis. The placement of fill material such as shell or gravel in waters of the United States to provide suitable growing substrate, i.e., frosting. Placement of dredged or excavated material on clam netting to bury the edge or anchor the net. The use of mechanical equipment during bed preparation to grade and level the site before or between planting.

Q11. Has the Corps changed their policy as to what is regulated under Section 10 and/or Section 404?

A11. Previously issued verifications made under NWP covered activities under both Section 10 and Section 404 and therefore differentiating between the two authorities was not necessary. As the District is now proceeding with individual permits it is more important to differentiate between the two authorities. The District will be carefully reviewing on a case-by-case basis whether a proposed activity would result in the discharge of dredged or fill material into waters of the United States or would require structures or work in navigable waters. Activities that do not result in the discharge of dredged or fill material in waters of the United States do not require authorization under Section 404.

Q12. Will the proposed NWP 48 be available to be used in Washington?

A12. The Corps is proposing to use a new NWP 48 in the State of Washington. A public notice soliciting comments on the proposed set of revised nationwide permits, including NWP 48 for Commercial Shellfish Aquaculture was published in the Sept. 15, 2020, Federal Register at <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>. USACE will accept written comments through Nov. 16, 2020. Comments may be submitted by e-mail to nationwidepermits2020@usace.army.mil or through the Federal eRulemaking portal at www.regulations.gov at docket number COE-2020-0002. The current set of nationwide permits expire on March 18, 2022. The nationwide permits being proposed today will replace the existing set.

Q13. I submitted my application a while ago, and it has yet to be assigned to a PM? When can we expect a PM has been assigned to my project review?

A13. This is a significant workload increase for the District and we are working as expeditiously as possible. You will be contacted by your PM once one is assigned. See also Q6 and 7 under Processing FAQ.

Q14. Should I combine multiple sites into a single application or provide separate applications for each site?

A14. The Corps evaluates site-specific information for proposed impacts as it relates to our federal authority. Operators may consider combining previous projects that are geographically adjacent or in close proximity to other sites. Applicants should provide previous Corps reference numbers, parcel numbers, and revised project drawings. See also Q16 under Processing FAQ.

Q15. When submitting application, should I reference the previous Corps number for the site?

A15. Yes, Corps reference numbers should be provided with projects previously verified or authorized.

Q16. Please provide further information as to combining aquatic farms that are geographically adjacent or close in proximity into single application.

A16. Determining whether to combine farms into a single application should be made by the applicant on a case-by-case basis. Factors to consider include, but are not limited to, whether the sites are geographically adjacent (e.g., located in the same water body), the nature of the potential impacts (e.g., whether special aquatic sites will be impacted), tribal coordination, and land ownership (e.g., leased land versus operator-owned). Operators may contact their Corps PM to discuss their specific situation.

Q17. If no changes are proposed for previously verified projects and JARPAs have already been provided can the Corps use those rather than having operators resubmitting the same application?

A17. The Corps will use the information from the previous permits or verifications to the maximum extent possible. If no changes are being proposed, the applicant can send a letter stating no changes are proposed and requesting the Corps proceed with processing their application based on the information previously provided. It would be beneficial if updated drawings were included with the letter to verify and ensure the most recent information regarding the proposed activities is provided, including latitude and longitude points, parcel numbers, Corps jurisdictional boundaries (e.g., high tide line or MHW line, eelgrass boundaries and buffers), etc. The Corps will contact the applicant should additional information be required.

Q18. Does a JARPA need to be submitted to Ecology for the Section 401 Water Quality Certification (WQC) and Coastal Zone Management Consistency Determination?

A18. Ecology should be contacted regarding their application requirements. Please note, new regulations go into effect on 11 September 2020 regarding Section 401 WQC and Ecology should be contacted regarding those requirements.

Permitting

Q10. Will previously authorized projects with proposed expansions be able to continue operating in the existing previously verified footprint while the Corps processes the application for the existing and the expansion?

A10. Operators are responsible for ensuring they have the appropriate authorizations and conduct their work in accordance with the court's order and the terms and conditions of those prior authorizations.