



US Army Corps
of Engineers®
Seattle District

Public Announcement

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REMINDER TO 2017 NATIONWIDE PERMIT 48 VERIFICATION HOLDERS OF THE UPCOMING COURT- ORDERED DECEMBER 11, 2020, APPLICATION FILING DEADLINE

On June 11, 2020, the District Court for the Western District of Washington issued final orders invalidating authorizations for commercial shellfish aquaculture operations under 2017 Nationwide Permit (NWP) 48, *Commercial Shellfish Aquaculture Activities*, in the state of Washington. In accordance with that order, beginning on August 11, 2020, activities currently authorized under 2017 NWP 48 were no longer authorized.

However, the decision has provisions for operations that were previously verified under the 2017 NWP 48. Specifically, the court order allows 2017 NWP 48 verification holders to conduct the following activities provided the U.S. Army Corps of Engineers, Seattle District (Corps) receives a new permit application for the project by **December 11, 2020**:

- Continue seeding and planting new shellfish crop until December 11, 2020, in areas of the project that do not contain mature native eelgrass beds; and
- Until the expiration of their current 2017 NWP 48 verification, continue maintenance and harvest activities for shellfish planted or seeded on or before December 11, 2020.
- Commercial shellfish aquaculture verified under 2017 NWP 48 that provides treaty harvest in furtherance of adjudicated treaty rights may continue in accordance with the terms of the verification, provided that a request for authorization is submitted to the Corps by December 11, 2020.

After December 11, 2020, if the applicant has submitted a new application for a previously verified NWP 48, the operator can continue to harvest (what was planted before December 11, 2020) and maintain their structures until the expiration of their current 2017 NWP 48. However, no other activities are authorized after December 11, 2020, pursuant to the verified NWP 48s. The applicant must receive authorization under a new permit in order to undertake other activities after December 11, 2020.

Please note that in accordance with EPA requirements under their new 401 Water Quality Certification (WQC) regulations, for those actions that may result in a discharge and require an individual 401 WQC applicants are required to do the following (independent of the Corps):

1. Submit a Pre-Filing Meeting Request to the certifying agency 30-days in advance of the WQC request to ensure the certifying authorities receive early notification and have an opportunity to discuss the project and potential information needs with the project proponent before the statutory timeframe for review begins.
2. Submit a WQC request to the certifying agency and the Corps. That request requires 9 items. Please see the Special Public Notice for details.

Please see the Ecology website at <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/401-Water-quality-certification> for additional filing information.

In addition, for individual Department of the Army permits individual Coastal Zone Management Act (CZMA) consistency determinations are required. You will need to fill out and submit the Coastal Zone Management - Certificate of Consistency with the Washington State Coastal Zone Management (CZM) Program form developed by the state of Washington. Please submit the form as part of the application package to the Corps. Any Department of the Army permit will not be valid until Ecology makes a decision regarding CZMA. Ecology will have 6-months from receipt of the form to make their decision. Please consult with Ecology regarding any processing questions.

At this time, the Corps is processing shellfish applications as individual permits and will continue to process such applications as expeditiously as possible. Some growers are combining multiple NWP 48 actions into one individual permit application, depending on the specific circumstances. Operators should reach out to their [Corps Project Manager](#) if they have questions about whether combining previously verified operations would be appropriate.

If you are able to submit your request electronically, please send your application package to NWS-PermitApp@usace.army.mil following the Special Public Notice for *Instructions for Submitting Electronic Requests* (link to <https://www.nws.usace.army.mil/Portals/27/eDocs-All-Instruct-v20191223.pdf>). The Corps will continue to accept paper copies of your requests if you are unable to submit them electronically. Mail documents to: U.S. Army Corps of Engineers, Regulatory Branch, P.O. Box 4735, Seattle, Washington, 98124-3755.

For information, Special Public Notice's, and regularly updated Frequently Asked Questions (FAQs) <https://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Shellfish-Aquaculture/>