



US Army Corps
of Engineers
Seattle District

Special Public Notice

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Expiration Date: November 20, 2023

**IMMEDIATE SUSPENSION OF NEW 2021 NATIONWIDE PERMIT 48 (COMMERCIAL SHELLFISH MARICULTURE ACTIVITIES) VERIFICATIONS WITHIN WASHINGTON STATE
AND
REQUEST FOR COMMENTS ON PROPOSED REVOCATION OF THE USE OF 2021 NATIONWIDE PERMIT 48 WITHIN WASHINGTON STATE**

Nationwide permits (NWP) 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. NWP 48 authorizes commercial shellfish mariculture activities. Division Engineers are authorized to modify, suspend, or revoke nationwide permits for any specific geographic area, class of activities, or class of waters within their division, including on a statewide basis.

This Special Public Notice contains two parts. First, the Northwestern Division Engineer is exercising his authority to immediately suspend the prospective issuance of verifications under the 2021 NWP 48 within the State of Washington. This suspension will remain in effect until a final decision is made on whether to revoke the use of the 2021 NWP 48 within Washington State (additional details below). Activities within Washington State that have already been verified under the 2021 NWP 48 are unaffected by this suspension, but they may be affected by the final decision on whether to revoke the use of the 2021 NWP 48 within Washington State.

Second, the Northwestern Division Engineer is proposing to exercise his discretionary authority to revoke the 2021 NWP 48 within the State of Washington, in light of the manner in which commercial shellfish mariculture operators currently seek necessary authorizations from the Corps, and to evaluate the best long-term approach for evaluating applications for Corps authorizations related to commercial shellfish mariculture in the State of Washington. The Division Engineer believes that it is in the public interest to exercise his discretionary authority to revoke the 2021 NWP 48 within the State of Washington.

Between March 19, 2017, and October 10, 2019, the Seattle District verified almost 900 projects

in Washington State under the 2017 NWP 48. These verifications within Washington State accounted for the vast majority of the total verifications issued by the Corps across the entire country during that time period. Following a decision by the U.S. District Court for the Western District of Washington that vacated the 2017 NWP 48, almost all commercial mariculture operations within Washington State sought individual permits from the Seattle District to maintain compliance with applicable federal laws. Congress appropriated funds specifically to address the backlog of authorization requests that resulted from the vacatur, and over the past few years, the Corps has reviewed and processed those requests as individual permits. As a result, most projects previously verified under the 2017 NWP 48 in Washington have sought individual permits for the necessary Clean Water Act and/or Rivers and Harbors Act of 1899 authorizations from the Seattle District which has made case-by-case determinations on those permit applications. Currently, there are less than five active commercial mariculture operations within Washington State that rely on the 2021 NWP 48.

The Division Engineer believes that it is in the public interest to exercise his discretionary authority to revoke the 2021 NWP 48 within the State of Washington in order to reflect changes in the type of authorizations requested by almost all commercial shellfish mariculture operators in Washington State as the Corps continues to consider the best long-term approach for evaluating applications for Corps authorizations related to commercial shellfish mariculture activities in the State of Washington.

The proposed revocation would have retroactive effect. Because there are commercial mariculture operations currently relying on the 2021 NWP 48, in accordance with 33 C.F.R. § 330.5(c)(1)(iv), the Division Engineer is proposing a 12-month “grandfathering period as specified in § 330.6(b) for those who have commenced work or are under contract to commence” during which time current verifications would remain valid, unless the District Engineer takes action to modify, suspend or revoke a particular NWP authorization on a case-by-case basis in accordance with the procedures at 33 C.F.R. § 330.5(d). This proposed 12-month grandfathering period would run from the date of the Division Engineer’s decision. This 12-month period will allow operators sufficient time to apply to transition to an individual permit.

In accordance with 33 C.F.R. § 330.5(c)(1)(i), the Division Engineer is seeking comment on his proposal to revoke the 2021 NWP 48 within Washington State. Comments on the proposed revocation of the 2021 NWP 48 within Washington State should be sent to NWP-SeattleTeam@usace.army.mil; include on the subject line of the email “Comments on the Proposed 2021 NWP 48 Revocation” or send comments via regular mail to 4735 E. Marginal Way South, Seattle, Washington, 98124. Comments are due by November 20, 2023. After the public process and tribal and agency coordination, the Division Engineer will make a final decision on whether to revoke the 2021 NWP 48 within Washington State.