

## Advocacy Comments on Army Corps' Proposed Rule to Reissue and Modify Nationwide Permits

On November 16, 2020, the Office of Advocacy submitted comments to the U.S. Army Corps of Engineers (Army Corps) on its proposed rule to reissue and modify nationwide permits under the Clean Water Act and Rivers and Harbors Act.

- Under Section 1344 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act, the Secretary of the Army has the authority to issue nationwide permits (NWP) for categories of activities involving dredged or fill material if the Secretary determines that such activities will have a minimal adverse effect on the environment. NWPs can be issued for a period of no more than five years.
- The Army Corps has proposed several changes to NWP 48 and offered additional data to support the issuance of this permit. Key changes to the permit that are pertinent to Advocacy's comments are summarized here:
  1. The Army Corps is proposing to revise the title of this NWP from "Commercial Shellfish Aquaculture Activities" to "Commercial Shellfish Mariculture Activities."
  2. The Army Corps is proposing that shellfish seed placed on the bottom of the waterbody is not discharge of fill material and does not require a Section 404 permit.
  3. The Army Corps asserts that some commercial shellfish activities involve mechanical harvest techniques that may result in discharges of dredged material into jurisdictional waters.
- Advocacy urged the Army Corps to consider the comments below when finalizing NWP 48 and strongly encouraged the agency to consider the additional comments and data sources provided by small businesses in bolstering its environmental impact analyses for the rulemaking.
  1. The Army Corps should retain the term aquaculture and not implement the proposed change to the term "mariculture."
  2. The agency should reconsider classifying certain seeding activities and equipment as "structures" subject to permitting requirements.
  3. The Army Corps should not categorize aquaculture harvest activities as "dredge and fill" activities.

