



# Public Notice

U.S. Army Corps of Engineers, Alaska District

Regulatory Division (1145)  
CEPOA-RD  
Post Office Box 6898  
JBER, Alaska 99506-0898

**PUBLIC NOTICE DATE: September 21, 2020**

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## **NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS Deadline November 16, 2020**

## **ALASKA DISTRICT REGIONAL CONDITIONS REQUEST FOR COMMENTS Deadline November 4, 2020**

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWP) and issue five new NWP.

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.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2020-0002 at: [www.regulations.gov](http://www.regulations.gov), or by email to: [nationwidepermits2020@usace.army.mil](mailto:nationwidepermits2020@usace.army.mil) or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, Attention: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWP are due by November 16, 2020.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help 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.

An enclosure for this Public Notice (PN) (Enclosure 1) lists the proposed regional conditions currently under consideration by the Pacific Ocean Division, Alaska District. The Alaska District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWPs are no more than minimal, individually and cumulatively. All proposed regional conditions listed on this enclosure are applicable for activities in Alaska. Comments on regional issues relating to the proposed NWPs and proposed regional conditions should be sent to U.S. Army Corps of Engineers, Alaska District Regulatory Office, Attention: Shannon Morgan, CEPOA-RD, P.O. Box 6898, JBER, Alaska 99506-0898, or via email at: [regpagemaster@usace.army.mil](mailto:regpagemaster@usace.army.mil). Comments relating to regional conditions are due by **November 4, 2020**. Similar PN's proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWPs are issued, the final regional conditions will be issued after they are approved by the Division Commander.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWPs.

Draft decision documents for each of the proposed NWPs, 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 NWPs with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWPs, are available for viewing at: **[www.regulations.gov](http://www.regulations.gov)**, docket number COE-2020-0002. Final decision documents will be prepared for the NWPs that are issued.

Enclosed is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through the Corps Home Page at: **<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>**, at: **[www.regulations.gov](http://www.regulations.gov)** in docket number COE-2020-0002, or at the following Federal Register address: **<https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>**.

### ***Index of Proposed Nationwide Permits, Conditions, and Definitions***

#### ***Nationwide Permits***

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf

9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and De-watering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams

- 54. Living Shorelines
  - A. Seaweed Mariculture Activities
  - B. Finfish Mariculture Activities
  - C. Electric Utility Line and Telecommunications Activities
  - D. Utility Line Activities for Water and Other Substances
  - E. Water Reclamation and Reuse Facilities

***Nationwide Permit General Conditions***

- 1. Navigation
- 2. Aquatic Life Movements
- 3. Spawning Areas
- 4. Migratory Bird Breeding Areas
- 5. Shellfish Beds
- 6. Suitable Material
- 7. Water Supply Intakes
- 8. Adverse Effects from Impoundments
- 9. Management of Water Flows
- 10. Fills Within 100-Year Floodplains
- 11. Equipment
- 12. Soil Erosion and Sediment Controls
- 13. Removal of Temporary Fills
- 14. Proper Maintenance
- 15. Single and Complete Project
- 16. Wild and Scenic Rivers
- 17. Tribal Rights
- 18. Endangered Species
- 19. Migratory Birds and Bald and Golden Eagles
- 20. Historic Properties
- 21. Discovery of Previously Unknown Remains and Artifacts
- 22. Designated Critical Resource Waters
- 23. Mitigation
- 24. Safety of Impoundment Structures
- 25. Water Quality
- 26. Coastal Zone Management
- 27. Regional and Case-by-Case Conditions
- 28. Use of Multiple Nationwide Permits
- 29. Transfer of Nationwide Permit Verifications
- 30. Compliance Certification
- 31. Activities Affecting Structures or Works Built by the United States
- 32. Pre-Construction Notification

***District Engineer's Decision***

***Further Information***

**Definitions**

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Ecological reference  
Enhancement  
Establishment (creation)  
High Tide Line  
Historic property  
Independent utility  
Indirect effects  
Loss of waters of the United States  
Navigable waters  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Tribal lands  
Tribal rights  
Vegetated shallows  
Waterbody

## ENCLOSURE 1

### **ALASKA DISTRICT PROPOSED REGIONAL CONDITIONS for the PROPOSED 2020 NATIONWIDE PERMITS (NWP)**

The Alaska District Regulatory Office has issued the following proposed Regional Conditions to ensure that activities authorized by NWPs in the Alaska District cause no more than minimal adverse environmental effects, individually and cumulatively. Before the Alaska District will verify an activity under one or more NWPs, the proposed activity must comply with the NWP terms and all applicable General and Regional Conditions.

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**APPLICABILITY:** The following would apply throughout the state of Alaska.

#### **RESTRICTIONS:**

##### **Regional Condition A – Revoked Permits**

The following NWPs are revoked within Alaska:

2. Structures in Artificial Canals
24. Indian Tribe or State Administered Section 404 Programs
30. Moist Soil Management for Wildlife
34. Cranberry Production Activities

##### **Regional Condition B – Additional Pre-Construction Notification (PCN) Requirements**

1. NWP 13, Bank Stabilization: In addition to the PCN requirements specified by NWP 13, a PCN is required for proposed bank stabilization projects in fresh water when the proposed methods and techniques are not included in the Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions. The Guide is available at:  
<http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>.

Applicants proposing bank stabilization projects in fresh water using methods and techniques not contained in the Guide must include an alternatives analysis in the PCN. The alternatives analysis must identify the bioengineered methods and techniques that were considered and provide a rationale as to why those methods or techniques were not included in the applicant's preferred alternative.

2. Proposed projects that qualify for NWPs 12, 13, 14 and 18 within the Municipality of Anchorage require a PCN.

##### **REGIONAL CONDITION C - Activities Involving Trenching**

Trenches may not be constructed or backfilled in such a manner as to drain waters of the United States (U.S.) (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to a non-wetland location. The backfilled trench shall achieve the pre-construction elevation, within a year of disturbance unless climatic conditions warrant additional time. The additional time must be approved by the Corps.

Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.

**REGIONAL CONDITION D - Site Restoration for Projects with Ground Disturbing Activities**

Re-vegetation of the site shall begin as soon as site conditions allow and in the same growing season as the disturbance. Topsoil (at least the top 6 inches) removed from the construction area shall be separated and used for site rehabilitation. When backfilling, topsoil shall be placed as the top layer to provide a seed bed for regrowth. If topsoil is not available from the project site, local native material may be used. Species used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the region; 3) species native to the state.

**REGIONAL CONDITION E - Delineation of Project Footprint**

Prior to commencement of construction activities within waters of the U.S., the permittee shall clearly identify the permitted limits of disturbance at the project site with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.). The permittee shall properly maintain such identification until construction is complete and the soils have been stabilized. The permittee is prohibited from conducting any unauthorized Corps-regulated activity outside of the permitted limits of disturbance (as shown on the permit drawings).

**REGIONAL CONDITION F - Maintenance of Hydrology Patterns**

Natural drainage patterns shall be maintained using appropriate methods. Excessive ponding or drying adjacent to fill areas shall indicate non-compliance with this condition.

**REGIONAL CONDITIONS G and H APPLY TO SPECIFIC NWPs**

**REGIONAL CONDITION G - NWP 40 Agricultural Activities**

The following activities are not authorized by NWP 40: a. Installation, placement, or construction of drain tiles, ditches, or levees; and b. Mechanized land clearing or land leveling in wetlands within 300 feet of an anadromous lake or an anadromous stream.

**REGIONAL CONDITION H - NWP 44 Mining Activities**

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit POA-2014-00055-M1. In Alaska, NWP 44 may only authorize the following activities:

1. Hard rock mining, not including trenching, drilling, or access road construction. Applicable to Section 404 only.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally de-watered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal Ordinary High Water events, or prior to equipment being removed from site, whichever occurs first.