



US Army Corps  
of Engineers  
Alaska District

# Public Notice

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SPN 2007-219 New Regional Conditions to the  
Nationwide Permits for the Alaska District

Regulatory Division (1145)  
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## SPECIAL PUBLIC NOTICE 2007-219

### PUBLIC NOTICE ANNOUNCING THE ALASKA DISTRICT'S REGIONAL CONDITIONS TO THE NEW NATIONWIDE PERMITS

On March 12, 2007, in Part II of the *Federal Register* (72 FR 11092), the U.S. Army Corps of Engineers (Corps) announced the reissuance of all existing Nationwide Permits (NWPs), general conditions, and definitions with some modifications. The Corps is also issued six new NWPs, two new general conditions, and 13 new definitions. The NWPs became effective on March 19, 2007.

After the publication of this *Federal Register* notice, the Alaska District began finalizing the regional conditions for the new and reissued NWPs. Regional conditions provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions help ensure protection of high value waters within the Alaska District.

The Alaska District prepared supplemental decision documents to the Corps' final decision documents for the new and reissued NWPs. Supplemental decision documents address regional conditioning of the NWPs. This special public notice announces the approval of ten (10) regional conditions by the Pacific Ocean Division.

The publication of the March 12, 2007, *Federal Register* notice also began the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) and/or Coastal Zone Management Act (CZMA) consistency determination decisions. The WQC and CZMA decisions are complete.

Attached is an index of the final NWPs, general conditions, definitions and the Alaska District's regional conditions. Additional information can be found on the internet at <http://www.poa.usace.army.mil/reg/NWPs.htm>

Questions concerning the regional conditions should be directed to Mr. Dave Casey at (907) 283-3519, or by email at [dave.c.casey@poa02.usace.army.mil](mailto:dave.c.casey@poa02.usace.army.mil) if further information is desired concerning this notice.

District Engineer  
U.S. Army, Corps of Engineers

Enclosures

## Index of Nationwide Permits, Conditions, Further Information, 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
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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
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11. Temporary Recreational Structures
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13. Bank Stabilization
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16. Return Water From Upland Contained Disposal Areas
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## Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
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11. Equipment
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23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification
28. Single and Complete Project

## Further Information: Definitions

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

## **Regional Conditions for the Alaska District**

### **REGIONAL CONDITION A - Additional Pre-Construction Notification (PCN) Requirements<sup>1</sup>**

1. NWP 6, Survey Activities: 3-D seismic surveys employing ocean bottom cables.
2. NWP 13, Bank Stabilization: Projects require a PCN when specified by NWP 13 and/or the proposed methods and techniques are not included in 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.sf.adfg.state.ak.us/sarr/restoration/techniques/techniques.cfm>

Furthermore, applicants proposing projects not contained in the Guide may still qualify for NWP 13 but they shall provide an alternative analysis to the district engineer with the PCN consisting of the bioengineered methods that were considered and rationale as to why these alternatives are not in the applicant's preferred alternative. Applicants subject to the PCN due to a design that is not included in the Guide are encouraged to include measures that minimize impacts to the aquatic environment including methods that improve fish habitat such as vegetated riprap.

3. Any activity proposing pile driving in the following Navigable (Section 10) waters: marine waters, anadromous lakes or anadromous streams.

<sup>1</sup> Where required by the terms of the NWP or Regional Condition A, a prospective permittee must notify the district engineer by submitting a preconstruction notification (PCN) as early as possible. See General Condition 27 of the NWPs for the contents of the PCN or visit [www.poa.usace.army.mil/reg/NWPs](http://www.poa.usace.army.mil/reg/NWPs). This Regional Condition does not apply to NWP 47.

### **REGIONAL CONDITION B – General Permit Agency Coordination**

*This Regional Condition establishes geographic and habitat areas that will require agency coordination for projects that are less than 1/2 acre.<sup>1</sup>*

For projects requiring a Pre-Construction Notification (PCN) and occurring within any of the following geographic/habitat areas, the Corps will conduct agency coordination with the appropriate agencies according to General Condition No.27, regardless of the amount of loss of waters of the U.S.

- 1) The Municipality of Anchorage.
- 2) Areas designated as "A" or "B" wetlands in the Juneau Wetlands Management Plan.
- 3) Areas designated as "High" or "Moderate" value wetlands in the Homer Wetland Functional Assessment.
- 4) Anadromous lakes or anadromous streams including, but not limited to catalogued streams identified in the *Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* (available at <http://www.sf.adfg.state.ak.us/SARR/FishDistrib/anadcat.cfm>)
- 5) Jurisdictional areas within 500 feet (measured from OHW or HTL) of anadromous lakes or anadromous streams as identified above.
- 6) Marine waters.

Local, State or Federal applicants may choose to conduct agency coordination in accordance with this regional condition for projects in the above geographic areas having less than 1/2 acre loss of waters of the U.S. The documentation of agency coordination shall be supplied with the PCN and if the Corps determines the applicant's proposal adequately addresses agency concerns, the project will not be coordinated again.

The Corps (or local, State or Federal applicant, as described above) will coordinate such projects with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service and State Historical Preservation Officer or Tribal Historical Preservation Officer. Additionally, project coordination will occur with the State of Alaska's Department of Natural Resources, Office of Project Management and Permitting for projects that are within the coastal zone or when outside the coastal

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zone, coordination will occur with the Department of Environmental Conservation, the State of Alaska's Department of Natural Resources, Office of Habitat Management and Permitting, and the Department of Fish and Game for activities within State Refuges, Critical Habitat Areas and Sanctuaries.

<sup>1</sup> For activities requiring a PCN that result in the loss of greater than 1/2-acre of waters of the U.S., agency coordination will occur according to general condition 27(d) but also include the agencies as specified above.

### **REGIONAL CONDITION C - Wood Preservatives**

*This Regional Condition applies to all NWP's when the regulated activity involves the use of wood preservative products in waters of the U.S.<sup>1</sup>*

1. For new materials<sup>2</sup>:

- a) Preservatives for wooden structures shall be applied by pressure treatment.
- b) In fresh waters, wood structures treated with creosote or pentachlorophenol preservative shall not be used.
- c) In marine waters, wood structures treated with pentachlorophenol preservative shall not be used.

2. For the reuse of previously treated wood products in marine waters the wood preservative product's use shall be consistent with its original use and may not be treated with any additional wood preservative. (e.g. the reuse for dock piling of creosote treated wood for dock piling is allowable, the reuse for a retaining wall of creosote treated railroad ties is not allowed, etc.).

<sup>1</sup> Wood preservative products allowed for use in the aquatic/marine environments is determined by the Environmental Protection Agency.

<sup>2</sup>Treated wood products are produced and installed in accordance with the "Best Management Practices for the Use of Treated Wood in Aquatic and Other Sensitive Environments" (August 2006), including amendments published by the Western Wood Preservers Institute (WWPI) ( [www.wwpinstitute.org](http://www.wwpinstitute.org) ) including the standards set forth by the American Wood-Preservers Association (AWPA) ([www.awpa.com](http://www.awpa.com)), the Timber Piling Council (TPC) ([www.timberpilingcouncil.org](http://www.timberpilingcouncil.org)) and/or the American Lumber Standards Committee as appropriate.

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

Trenches cannot be constructed or backfilled in such a manner as to drain waters of the 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 original surface condition, within a year of disturbance unless climatic conditions warrant additional time and is approved by the Corps.

Revegetation of the trench should follow the process outlined in RC E.

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

Disturbed areas shall be stabilized immediately after construction to prevent erosion. Revegetation of the site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time and is approved by the Corps. Native vegetation and

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soils removed for project construction shall be stockpiled separately and used for site rehabilitation. If soil and/or organic materials are not available from the project site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used only if identified in the PCN and approved in the NWP verification. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state. Revegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means.

### **REGIONAL CONDITION F - Equipment Standards**

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures (e.g. ice roads, compacted snow, low psi ground bearing weight, etc) must be taken to prevent soil disturbance.

### **REGIONAL CONDITIONS G - J APPLY TO SPECIFIC NWPs.**

#### **REGIONAL CONDITION G- Seasonal Docks Authorized by NWP 11, Temporary Recreational Structures**

Small, seasonal docks shall not extend more than 50 feet waterward of the ordinary high water mark or mean high water mark, or exceed more than 25 percent of the width of the waterbody, whichever is less.

#### **REGIONAL CONDITION H – NWP 40 Agricultural Activities**

The following activities are not authorized by NWP 40: a. Drain tiles, ditches, or levees or; b. Mechanized land clearing and land leveling in jurisdictional wetlands within 500' of anadromous lakes or anadromous streams.

#### **REGIONAL CONDITION I – 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 2006-1944. In Alaska, NWP 44 will 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 dewatered 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, and/or prior to equipment being removed from site, whichever comes first.

#### **REGIONAL CONDITION J – NWP 48 Existing Commercial Shellfish Aquaculture Activities**

NWP 48 is revoked in Alaska. Applicants seeking authorization for this work are encouraged to apply for Regional General Permit 1991-7-P, Mariculture Activities in Alaska.