

2021 NWP UPDATE

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OBJECTIVES

2017 NWP's And 2021 NWP's

- ✓ Explain the differences between the 2017 NWP's and the 2021 NWP's
- ✓ Discuss major changes to 2021 NWP's
- ✓ Some changes to General Conditions
- ✓ Some changes to Regional Conditions
- ✓ Process changes



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SUMMARY OF 2021 NATIONWIDE PERMIT REISSUANCE



- On January 13, 2021, the Corps reissued and modifying 12 existing NWP's and issued four new NWP's. The effective date for these NWP's will be today, March 15, 2021.
- For these 16 2021 NWP's, the Corps reissued and modified the NWP general conditions and definitions, and the Alaska District modified their Regional Conditions for these 2021 NWP's.
- At this time, the Corps is not reissuing or modifying the remaining 40 existing 2017 NWP's or finalizing proposed new NWP E for discharges of dredged or fill material for water reclamation and reuse facilities.
- The 40 remaining 2017 NWP's continue to be in effect under the January 6, 2017, final rule and the existing general conditions and definitions in the 2017 final rule continue to apply to those permits.





**2021 NWP's Effective
March 15, 2021 –
Will expire
March 14, 2026**

12	50
21	51
29	52
39	55
40	56
42	57
43	58
44	
48	



**2017 NWP's – Will expire
March 18, 2022**

1	13	25	37
2	14	26	38
3	15	27	41
4	16	28	45
5	17	30	46
6	18	31	47
7	19	32	49
8	20	33	53
9	22	34	54
10	23	35	
11	24	36	





NEW 2021 NATIONWIDE PERMITS 12 MODIFIED AND 4 NEW



12 – Oil or Natural Gas Pipeline Activities

21 – Surface Coal Mining Activities*

29 – Residential Developments*

39 – Commercial and Institutional Developments*

40 – Agricultural Activities*

42 – Recreational Facilities*

43 – Stormwater Management Facilities*

44 – Mining Activities*

48 – Commercial Shellfish Mariculture Activities

50 – Underground Coal Mining Activities*

51 – Land-Based Renewable Energy Generation Facilities*

52 – Water-Based Renewable Energy Generation Pilot Projects*

(NEW NWP's)

55 (A) – Seaweed Mariculture Activities

56 (B) – Finfish Mariculture Activities

57 (C) – Electric Utility Line and Telecommunications Activities

58 (D) – Utility Line Activities for Water and Other Substances

TAKE AWAY: NWP 12, 43, 48, 57 and 58 have specific PCN triggers either in the NWP itself, or due to Regional Conditions. ALL OTHER 2021 NWP's REQUIRE A PCN.





CHANGES TO NWP 12, UTILITY LINES

- Issued separate NWPs for general categories of utility line sectors:
 - Modify NWP 12 – Oil or natural gas pipeline activities
 - New NWP 57 – Electric utility line and telecommunications activities
 - New NWP 58 – Utility line activities for water and other substances





NEW NATIONWIDE PERMITS

48 was renamed to “Commercial Shellfish Mariculture Activities”

NEW:

55 (A) – Seaweed Mariculture Activities AND

56 (B) – Finfish Mariculture Activities

A PCN is required.

Understand State restrictions, requirements and processes

REGIONAL CONDITION I – NWP 48, 55 (A), and 56 (B):

When an Aquatic Farm Lease is required from the Alaska Department of Natural Resources (ADNR) for a new or modified aquatic farm, the applicant must obtain and submit a copy of the ADNR preliminary decision with a Preconstruction Notification to the USACE.





CHANGES TO GENERAL CONDITIONS

GC 25, Water quality

- Revise for consistency with EPA's new WQC regulation (40 CFR part 121)
- If project proponent cannot comply with all conditions for the WQC issued by certifying authority for issuance of the NWP, then he or she must obtain an individual WQC or waiver for the proposed discharge

GC 28, use of multiple NWPs

- Modified general condition to clarify application to NWPs with different numeric limits.





GENERAL CONDITION 32 – CHANGE TO QUANTIFYING IMPACTS TO STREAMBEDS



Removed the PCN requirement for impacts to greater than 300 lf of streams. For the 2021 NWP, impacts to streams now quantified by acres, not by linear feet.

Length of impact (below OHW) x width of impact (below OHW) = acres of loss to stream bed.

Total impacts must meet the acreage limits of the NWP you are using.
The loss of stream bed, plus any other losses of water of the U.S. cannot exceed ½ acre.

TAKE AWAY: There is no longer a linear foot limitation for streams. Stream impacts are quantified as acres.

****Reminder: This does not apply to NWP13 (a 2017 NWP)****





NEW REGIONAL CONDITION B



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

2. A PCN is required for projects that qualify for NWPs 12, 57 (C), and 58 (D) within the Municipality of Anchorage.

3. NWP 48: A PCN is required for impacts to greater than 1/2 acre of special aquatic sites (wetlands, mudflats, vegetated shallows, coral reefs, etc.).

4. NWP 12, 57 (C), 58 (D). In addition to other triggers for the PCN, a PCN is required for projects located within permafrost soils identified using the appropriate soil survey or other appropriate data.





2021 NWPS - GPAC VS AGENCY NOTIFICATION



GPAC

- For 2017 NWPs, GPAC requirements under GC 32(d) and RC B remain the same.
- The 2017 GPAC RC B was rescinded for the 2021 NWP RCs.
- For 2021 NWPs, GPACs would only occur under GC 32(d).

For 2021 NWPs USACE will send an Agency Notification (email) instead of a GPAC to notify agencies of a NWP verification request:

- Once the PCN is complete.
- For notifying NWPs (PCN required) and when applicant requests written verification of non-notifying NWP.
- Agency may comment but no timeframe.
- All consultations required under other laws (e.g., Endangered Species Act, National Historic Preservation Act, tribal consultations, etc.) must still occur.

NEW!

TAKE AWAY: This will stream-line the review process while ensuring no more than minimal adverse effect.





NEW REGIONAL CONDITION I



REGIONAL CONDITION I – NWP 48, 55 (A), and 56 (B): When an Aquatic Farm Lease is required from the Alaska Department of Natural Resources for a new or modified aquatic farm, the applicant must obtain and submit a copy of the Alaska Department of Natural Resources (ADNR) preliminary decision with a Preconstruction Notification to the USACE.

TAKE AWAY: Applicants must submit a copy of the preliminary state decision with the NWP request to avoid permitting delays.





NEW REGIONAL CONDITION J



REGIONAL CONDITION J – NWP's 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52: A written waiver from the district engineer is required for:

- 1) Discharges which would result in losses of anadromous streambed, and
- 2) Discharges adjacent to and/or upstream of an anadromous waterbody;

The waiver must conclude that the discharge would result in no more than minimal individual and cumulative adverse environmental effects.

PROCESS:

For projects that fit under the above NWP's, and that impact anadromous streams:

- 1) Submit a PCN to USACE
- 2) USACE may determine if project would result in no more than minimal impacts to the anadromous waterbody, write a waiver, and process as a NWP.
- 3) USACE may determine the project would result in more than minimal impacts to the anadromous waterbody, take discretionary authority and process as an Individual Permit.
- 4) Not dependent on discharge acreage but impacts of that discharge.

TAKE AWAY: A USACE waiver is required for projects affecting anadromous streams.





STATE WATER QUALITY CERTIFICATION FOR 2021 NWPS



- The State of Alaska issued Water Quality Certifications that apply to the 16 2021 NWPs in December of 2020.
- Any conditions of the WQC must be complied with to qualify for the NWPs.

**TAKE AWAY: All 2021 NWPs
have been certified by the
State.**





2021 NWP – EPA Water Quality Certification for Denali National Park, Metlakatla Indian Community

EPA is the certifying agency for lands within Denali National Park and Preserve, and the Metlakatla Indian Community.

For NWP 40, Agricultural Activities, that may occur within Denali National Park and Metlakatla Indian Community, the EPA granted certification with conditions.

For all other projects seeking certification under a 2021 NWP within these geographical areas, the certification was denied. For NWPs that require a PCH, the applicant must apply and receive an individual water quality certification, and submit it to the Corps. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver..

TAKE AWAY: An individual water quality certification required for work in Denali National Park and Preserve, and the Metlakatla Indian Community.





IN SUMMARY:



- **Recognize that the NWPs have changed! 12 revised NWP and 4 new for 2021.**
- **KNOW which NWPs you are using. 2017 or 2021.**
- **USE the correct General Conditions and Regional Conditions to ensure the proposed project fits under the NWP.**
- **ALL NWPs must comply with applicable REGIONAL AND GENERAL CONDITIONS.**
- **KNOW how to quantify impacts to stream beds.**
- **Understand and follow PCN requirements.**



QUESTIONS?

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