



**US Army Corps
of Engineers®**
Albuquerque District

DISTRICT PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On September 15, 2020, the U.S. Army Corps of Engineers 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, or by email to nationwidepermits2020@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: 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 (Enclosure 2) lists the proposed regional conditions currently under consideration by the South Pacific Division for the state of Texas.

The Albuquerque District is seeking comments on the proposed regional conditions and the potential need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise

noted, all proposed regional conditions listed on this enclosure are applicable for activities in the state of Texas. Comments on regional issues relating to the proposed NWP's and proposed regional conditions should be sent by mail to: U.S. Army Corps of Engineers, Albuquerque District, ATTN: Justin Riggs Regulatory Division, 200 E Griggs St Las Cruces, NM 88001. E-mail: justin.c.riggs@usace.army.mil. Phone: (575) 652-4574

Comments relating to regional conditions are due by November 13, 2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWP's 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 NWP's. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWP's.

Draft decision documents for each of the proposed NWP's, 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 NWP's with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWP's, are available for viewing at www.regulations.gov, docket number COE-2020-0002. Final decision documents will be prepared for the NWP's that are issued.

Enclosed is a list of the proposed NWP's and general conditions (Enclosure 1). Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, at 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>.

Enclosure 1: List of Proposed Nationwide Permits and General Conditions

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 Dewatering
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

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



Enclosure 2: 2020 Proposed Regional Conditions to Nationwide Permits in the State of Texas

U.S. Army Corps of Engineers
Albuquerque District

The following regional conditions apply only within the Albuquerque District.

1. Dredge and Fill Activities in Intermittent and Perennial Streams, and Special Aquatic Sites: For all activities subject to regulation under the Clean Water Act Section 404 in intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), pre-construction notification (PCN) to the Albuquerque District Engineer is required in accordance with Nationwide Permit General Condition 32.

2. Suitable Fill: Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the Albuquerque District Engineer in accordance with Nationwide Permit General Condition 32 - Pre-Construction Notification along with justification for such use. Use of broken concrete with rebar or used tires (loose or formed into bales) is prohibited in all waters of the United States.

3. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities: For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the USACE. (See “NWP 27 Guidelines” at <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>).

ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing General Conditions:

1. Permittees are reminded of **General Condition 2** which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, individual tires, concrete jersey barriers, and trash are **not** suitable fill material.

2. Permittees should note that for Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities: Pilot channels in perennial rivers do not constitute creation of wetlands and would not be authorized under Nationwide Permit No. 27. Further discharge of excavated materials into Waters of the U.S. to change sediment load are not restoration activities under Nationwide Permit No. 27

The following regional conditions apply only within the Fort Worth District.

4. Notification to the Fort Worth District Engineer in accordance with Nationwide Permit General Condition 32 - Pre-Construction Notification (PCN) is required for all activities proposed for authorization by any NWP that result in the loss of greater than 300 linear feet of streams, 0.1 acre of wetlands, other special aquatic sites and/or other waters and must include a compensatory mitigation plan. Mitigation thresholds are cumulative irrespective of aquatic resource type at each single and complete crossing or site. PCN is also required for all activities that result in the temporary impact of 0.1 acre of scrub-shrub/forested wetland and/or 0.5 acre of emergent wetlands and must include a restoration plan.
5. Notification to the Fort Worth District Engineer in accordance with Nationwide Permit General Condition 32 - PCN is required for all activities proposed for authorization by NWP 27.
6. Notification to the Fort Worth District Engineer in accordance with Nationwide Permit General Condition 32 - PCN is required for all activities proposed for authorization by any NWP involving a water intake.
7. Seismic testing activities (i.e., explosive detonations) within perennial streams and rivers are not authorized by NWP.

The following regional conditions apply within the Fort Worth District and Galveston District Boundaries:

8. Notification to the appropriate District Engineer in accordance with Nationwide Permit General Condition 32 - Pre-Construction Notification (PCN) is required for all activities proposed for authorization by any NWP into the below listed ecologically unique and sensitive areas located within waters of the United States. The Corps will coordinate with the resource agencies as specified in NWP General Condition 32(d).
 - a. Pitcher plant bogs ((*Sarracenia* spp.) and/or sundews (*Drosera* spp.) and/or Bald Cypress/Tupelo swamps ((*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*)).

- b. Karst Zones 1 and 2 located in Bexar, Travis and Williamson Counties (see https://www.fws.gov/southwest/es/AustinTexas/Maps_Data.html).
 - c. Caddo Lake and associated areas that are designated as “Wetland of International Importance” under the Ramsar Convention (see <http://caddolakedata.us/media/145/1996caddolakeramsar.pdf> or <http://caddolakedata.us/media/144/1996caddolakeramsar.jpg>).
 - d. Reaches of rivers (and their adjacent wetlands) that are included in the Nationwide Rivers Inventory (see <https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm>).
9. For all activities proposed for authorization under any NWP at sites approved as compensatory mitigation sites (either permittee-responsible, mitigation bank and/or in-lieu fee) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, the applicant shall notify the appropriate District Engineer in accordance with the Nationwide Permit General Condition 32 - PCN prior to commencing the activity.

The following regional conditions apply only within the Galveston District.

10. No NWP, except NWP 3, shall be used to authorize discharges into the habitat types or specific areas listed in paragraphs a through c, below. The applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification (PCN) prior to commencing the activity under NWP 3.
- a. Mangrove Marshes. For the purpose of this regional condition, Mangrove marshes are those waters of the United States that are dominated by mangroves (*Avicennia* spp., *Laguncularia* spp., *Conocarpus* spp., and *Rhizophora* spp.).
 - b. Coastal Dune Swales. For the purpose of this regional condition, coastal dune swales are wetlands and/or other waters of the United States located within the backshore and dune areas in the coastal zone of Texas. They are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting tidal waters of the United States.
 - c. Columbia Bottomlands. For the purpose of this regional condition, Columbia bottomlands must meet all of the following criteria: 1) wetlands and/or other waters of the United States, 2) currently dominated by bottomland hardwoods (*Quercus* spp.), and 3) located in the Lower Brazos and San Bernard River basins identified in the 1997 Memorandum of Agreement between the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, and Texas Parks and Wildlife Department for bottomland hardwoods in Brazoria County. (For further information, see <http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/>)

11. For all activities proposed under NWP 10 and 11 located in vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectively, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - PCN. Examples include, but are not limited to: seagrass beds, oyster reefs, and coral reefs.
12. Nationwide Permit 12, C, and D shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectively. Examples include, but are not limited to: seagrass beds, oyster reefs, and coral reefs.
13. For all activities proposed for authorization under Nationwide Permit 12, C, or D that involve underground placement below a non-navigable tributary there shall a minimum cover of 48 inches of soil below the river and/or perennial stream thalweg.
14. For all discharges and work proposed under NWP 14 and 18 in tidal waters, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 – PCN. The Galveston District will coordinate with resource agencies in accordance with NWP General Condition 32(d) – PCN.
15. No NWPs, except NWPs 3, 16, 20, 22, 37, shall be used to authorize discharges, structures, and/or fill within the standard setback and high hazard zones of the Sabine-Neches Waterway as defined in the Standard Operating Procedure - Permit Setbacks along the Sabine-Neches Waterway. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 - PCN for all discharge, structures and/or work in medium hazard zones and all NWP 3 applications within the standard setback and high hazard zones of the Sabine-Neches Waterway.
16. No NWP, except 20, 22, and 37, shall be used to authorize discharges, structures, and/or fill within the standard setback exemptions of the Gulf Intracoastal Waterway as defined in the Standard Operating Procedure- Department of the Army Permit Evaluation Setbacks along the Gulf Intracoastal Waterway. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 – PCN for all discharges, structures and/or work within the standard setback, shoreward of the standard setback, and/or standard setback exemption zones.

17. All work in the San Jacinto Waste Pit (SWJP) Area of Concern (AOC), authorized under an NWP, requires a waiver from the Galveston District Engineer (DE). The applicant shall notify the DE in accordance with the NWP General Condition 32 - PCN. The PCN shall be used to review the project to determine if it will result in more than minimal effects to the region and does not lessen the restriction provided by any General Condition of the NWPs. The applicant must receive written approval, including a waiver, from the DE prior to starting work in jurisdictional areas. (For further information, see <http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/>)
18. Federal Agencies: For activities that trigger the requirement for compensatory mitigation, as defined in 33 CFR 332, the Federal Agency must provide the Galveston District Engineer a copy of the Federal Agency's self-verification documentation, within 30-days after start of work in waters of the United States. The self-verification documentation must show how the compensatory mitigation was/or will be completed in accordance with 33 CFR 332.
19. Federal Agencies: For activities that trigger the requirements under General Condition 31 Activities Affecting Structures or Works Built by the United States, the Federal Agency must notify the Galveston District Engineer in accordance with NWP General Condition 32 - PCN and cannot start work in Waters of the United States until the district engineer issues a written NWP verification.