

## PUBLIC NOTICE

**CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69A Hagood Avenue  
Charleston, SC 29403-5107**

REGULATORY DIVISION

Refer to: Revised 2017 Regional Conditions

December 1, 2016

On June 7, 2016, the Charleston District issued a public notice for the proposed regional conditions to the proposed 2017 Nationwide Permits. The proposed regional conditions have been revised. The Charleston District is seeking comments on the revised 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 NWP's are no more than minimal, individually and cumulatively. Unless otherwise noted, all revised proposed regional conditions listed on this enclosure are applicable for activities in South Carolina.

**Please note that only comments received in response to this public notice for the revised proposed regional conditions will be taken into consideration.**

Comments on regional issues relating to the revised proposed regional conditions should be sent to **Charleston District, 69-A Hagood Avenue, Charleston, South Carolina 29403, ATTN: Tracy Sanders, 843-329-8044**. Comments relating to regional conditions are due by **December 15, 2016**.

The proposed 2017 Nationwide Permits can be found at the following link:  
<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

If there are any questions concerning this public notice, please contact Tracy D. Sanders, Project Manager, at 843-329-8190 or toll free at 1-866-329-8187.

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The following Regional Conditions have been proposed by the Charleston District for the Nationwide Permits (NWP) published in the June 1, 2016 Federal Register as authorized under General Condition #27. Regional conditions are authorized to modify NWPs by adding conditions on a generic basis applicable to certain activities or specific geographic areas. Certain terminologies used in the following conditions are identified in *italics* and are defined in the above referenced Federal Register under Definitions.

**Note:** The acronym “PCN” used throughout the Regional Conditions refers to Pre-Construction Notification.

**For All Nationwide Permits:**

1. The applicant must implement *best management practices* during and after all construction to minimize erosion and migration of sediments off site. These practices may include use of devices capable of preventing erosion and migration of sediments in waters of the U.S., including wetlands. These devices must be maintained in a functioning capacity until the area is permanently stabilized. All disturbed land surfaces must be stabilized upon project completion. Stabilization refers to the minimization of erosion and migration of sediments offsite.
2. All wetland and stream crossings must be stabilized immediately following completion of construction/installation and must be aligned and designed to minimize the *loss of waters of the U.S.*
3. Necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.
4. Any excess excavated materials not utilized as authorized back fill must be placed and contained on high land and permanently stabilized to prevent erosion into waters of the U.S., including wetlands.
5. Placement and/or stockpiling (double handling) of excavated material in waters of the U.S, including wetlands, is prohibited unless specifically authorized by the nationwide permit verification. Should double handling be authorized, the material must be placed in a manner that does not impede circulation of water and will not be dispersed by currents or other erosive forces.
6. Once project construction is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to aquatic resources and the surrounding environment.
7. The permittee must notify the Corps of Engineers, Charleston District, Regulatory Division in the event archaeological or paleontological remains are found during the course of work. Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent (i.e., older than 100 years) vessel ruins. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

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8. Use of nationwide permits does not obviate requirements to obtain other Federal, State, county, or local government authorizations.
9. No NWP is authorized in areas known or suspected of sediment contamination, with the exception of NWP 38, and NWP A when used in combination with NWP 38.
10. In accordance with General Condition #31, "Activities Affecting Structures or Works Built by the United States," a PCN must be submitted if an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE" project"). See General Condition #32 paragraph (b)(10) for PCN requirements and timing for Section 408 submittals. An activity that requires section 408 permission is not authorized by a NWP until the appropriate Corps district office issues the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer issues a written NWP verification.
11. For all proposed activities that would be located adjacent to an authorized Federal Navigation project, as listed in Regional Condition #13, the PCN must include project drawings that have the following information: a) location of the edges of the Federal channel; b) setback distances from the edge of the channel; c) the distance from watermost edge of the proposed structure or fill to the nearest edge of the channel and the Mean High and Mean Low waterlines; and d) coordinates of both ends of the watermost edge of the proposed structure or fill (NAD 83 State Plane Coordinates in decimal degrees). This notification requirement is in addition to the PCN requirements listed in General Condition #32.
12. For all proposed activities that would be located in waters that are designated critical habitat under section 7 of the Endangered Species Act, and waters that are proposed critical habitat, the perspective permittee must submit a PCN to the District Engineer in accordance with General Condition #32. Refer to the following National Oceanic and Atmospheric Administration (NOAA) Fisheries website for the most up-to-date information regarding Critical Habitat designations under the jurisdiction of the National Marine Fisheries Service (NMFS):  
[http://sero.nmfs.noaa.gov/protected\\_resources/section\\_7/threatened\\_endangered/](http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/)
13. For all proposed activities that would be located within a FEMA designated floodway, the perspective permittee must submit a PCN to the District Engineer in accordance with General Condition #32.
14. For all proposed activities that would be located within a FEMA designated floodway, the PCN must include a "No Rise" letter from the National Flood Insurance Program (NFIP) coordinator.
15. For all proposed activities that would be located within a FEMA designated floodplain, the PCN must include a "No Impact" letter from the NFIP coordinator.

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**FOR SPECIFIC NATIONWIDE PERMITS:**

16. For NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52, in accordance with General Condition # 22(a), Designated Critical Resource Waters, the discharges of dredged or fill material into waters of the U.S. within, or directly affecting, critical resource waters, including wetlands adjacent to such waters, are not authorized by these NWP's. Note: The ACE Basin National Estuarine Research Reserve (NERR) is a Designated Critical Resource Water.
17. For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and NWP B, in accordance with General Condition # 22(b) , Designated Critical Resource Waters, a PCN is required for any activity proposed in designated critical resource waters including wetlands adjacent to those waters. Refer to General Condition #32 for PCN requirements.
18. For **NWP's 1, 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 19 and 36**, the prospective permittee must submit a PCN to the District Engineer for any activity that would be located adjacent to an authorized Federal Navigation project. These Federal navigation areas include Adams Creek, Atlantic Intracoastal Waterway (AIWW), Ashley River, Brookgreen Garden Canal, Calabash Creek Charleston Harbor (including the Cooper River and Town Creek), Folly River, Georgetown Harbor (Winyah Bay, Sampit River, and Bypass Canal), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Savannah River, Shem Creek (including Hog Island Channel & Mount Pleasant Channel), Shipyard Creek, Village Creek and the Wando River.
19. For **NWP's 3, 11, 12, 13, 14, 15, 20, 22, and 33**, temporary structures, fills, and/or work, including the use of temporary mats, are only authorized for a period of 90 days per temporary impact area and/or phase of the overall project. The permittee may submit a written request at least 15-days prior to the expiration of the original period of 90 days requesting an extension of up to an additional 90 days. The District Engineer may extend the 90-day period of up to an additional 90 days, not to exceed more than a total of 180 days, where appropriate. After expiration of the 180-day period, all temporary structures, fills, and/or work, including the use of temporary mats, for the temporary impact area and/or phase of the overall project must be removed and the disturbed areas restored to pre-disturbance conditions. Activities that require the use of temporary structures, fills, and/or work, including the use of temporary mats, in excess of 180 days will require Individual Permit authorization from the Corps prior to construction.
20. For **NWP's 3, 11, 12, 13, 14, 15, 20, 22, and 33**, that require PCNs AND that involve temporary structures, fills, and/or work, including the use of temporary mats, the PCN must include a written description and/or drawings of the proposed temporary activities that will be used during project construction. This requirement is in addition to the PCN requirements listed in General Condition #32.
21. For **NWP's 29, 39, 40, 42, 43, 44, 51, and 52**, impacts to streambeds\*\* must be provided in both linear feet and acreage.
22. **NWP's 12, 14, 29, 39, 43, 51 and 52** will not be used in conjunction with one another for an activity that is considered a *single and complete project*.

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23. For **NWP's 12, 14, 29, 39, 46, 51 and 52**, all PCNs must include appropriately sized and positioned culverts that meet the requirements of General Conditions #2, #9 and #10 for each individual crossing of waters of the U.S. This requirement is in addition to the PCN requirements listed in General Condition #32.
24. For **NWP's 12, 14, 29, 39, 51 and 52**, that include the construction of culverted road crossings, at a minimum, the width of the base flow culvert(s) shall be approximately equal to the average channel width. The culvert(s) should not permanently widen/constrict the channel or reduce/increase stream depth. Multiple pipe culverts may not be used to receive base flows. These requirements are minimum requirements but do not replace local and State requirements for roadway design.
25. For **NWP's 12, 14, 29, 39, 51 and 52**, that include culverted stream crossings which are not designed by a South Carolina Licensed Professional Engineer, the individual culverted stream crossings are required to demonstrate accommodation of bankfull\* channel cross sectional area. Flows that exceed bankfull must be accommodated by placement of additional culverts above the bankfull elevation.
26. For **NWP's 12, 14, 18 and 27**, the discharge cannot cause the loss of more than 300 linear feet of stream bed\*\*, unless for intermittent and ephemeral stream beds the District Engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects.
27. For **NWPs 12, 14, 18, and 27**, the discharge cannot cause the loss of more than 300 linear feet of perennial stream beds\*\*.
28. For **NWPs 12, 14, and 18**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, prior to commencing the activity if the proposed discharge will impact more than 25 linear feet of streambed\*\*. This notification requirement is in addition to the PCN requirements listed in General Condition #32.
29. For **NWP 3, paragraph (a) and (c) activities**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition # 32, if the proposed discharge of dredged or fill material will cause the loss of greater than 1/10-acre of waters of the U.S. or if the proposed discharge will be located within a special aquatic site, including wetlands and riffle pool complexes.
30. For **NWP 3, paragraph (b) activities**, excavation of accumulated sediment or other material is not authorized in areas adjacent to existing private or commercial dock facilities, piers, canals dug for boating access, marinas, or boat slips.
31. For **NWP's 7 and 12**, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms and the inflow velocity of the associated intake structures must be limited to  $\leq 0.5$  ft/sec.
32. Activities authorized by **NWP 7** must occur in the immediate vicinity of the outfall, and must be necessary for the overall construction or operation of the outfall (e.g. pump equipment, rip-rap). NWP 7 shall not be used to authorize ancillary activities such as construction of access roads, installation of utility lines leading to or from the outfall or intake structures, construction of buildings, distant activities, etc.

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33. For **NWP 12** activities that involve horizontal directional drilling beneath section 10 waters, the PCN must include a proposed remediation plan (i.e. frac-out plan). This requirement is in addition to the PCN requirements listed in General Condition #32.
34. For **NWP 12**, excavated material shall be returned to the trench and any remaining material shall be relocated and retained on an upland disposal site. Substrate containing roots, rhizomes, seeds, etc., must be kept viable and replaced at the surface of the excavated site. Impacted wetlands will be replanted with native wetland species or allowed to naturally re-vegetate from the replaced substrate, as long as the resulting vegetation is native.
35. For **NWP 12**, stream banks that are cleared of vegetation will be stabilized using bioengineering techniques and/ or the planting of deep-rooted native species.
36. For **NWP 12**, construction techniques to prevent draining, such as anti-seep collars, will be required for utility lines buried in waters of the U.S. when necessary. If no construction techniques to prevent draining are proposed, the applicant must provide appropriate documentation that such techniques are not required to prevent drainage of waters of the U.S.
37. For **NWP 12**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, prior to commencing the activity if the activity will involve temporary structures, fills, and/or work. To be complete, the PCN must also include the specifications of how pre-construction contours will be re- established and verified after construction. This notification requirement is in addition to the notification criteria listed for this NWP.
38. For **NWP 12**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, prior to commencing the activity if the activity will involve maintained utility crossings. To be complete, the PCN must also include a justification for the required width of the maintained crossing that impacts waters of the U.S. This notification requirement is in addition to the notification criteria listed for this NWP.
39. For **NWP 12**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, prior to commencing the activity if the activity will involve the construction of a sub-station in waters of the U.S. To be complete, the PCN must also include a statement of avoidance and minimization for the loss of waters of the U.S. impacted by the utility line sub-station. This requirement is in addition to the PCN requirements listed in General Condition #32.
40. For **NWP 12**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, prior to commencing the activity if the activity will involve the permanent conversion of forested wetlands to herbaceous wetlands. To be complete, the PCN must also include the acreage of conversion impacts of waters of the U.S. and a compensatory mitigation proposal or a statement of why compensatory mitigation should not be required. This requirement is in addition to the PCN requirements listed in General Condition #32.

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41. For **NWP 13 and NWP 54** activities that require submittal of a PCN, the PCN must include the following information:
- a. Habitat type along the shoreline;
  - b. The presence of stabilization structures in the vicinity of the project;
  - c. Cause/s, extent, and approximate rate of erosion (if known);
  - d. Site specific information which may include: shoreline orientation, slope, bank height, tidal range, nearshore bathymetry, fetch, substrate stability, etc.
  - e. Rational for selecting the preferred stabilization technique;
  - f. Structural materials toxic to aquatic organisms shall not be use. If stone is proposed, only clean stone, free of exposed rebar, asphalt, plastic, soil, etc., may be used; and
  - g. Filter fabric should be used as appropriate when stone or other heavy material is proposed. These requirements are in addition to the PCN requirements listed in General Condition #32.
42. Projects qualifying for **NWP 27 and NWP B** will require coordination with appropriate Federal, State, and local agencies. The coordination activity will be conducted by the Corps of Engineers. Agencies will generally be granted 15 days to review and provide comments unless the District Engineer determines that an extension of the coordination period is reasonable and prudent.
43. For **NWP 29**, the loss of waters of the U.S. is limited to a maximum of ¼-acre for a single family residence.
44. For **NWP's 29 and 39**, the discharges of dredged or fill material for the construction of *stormwater management facilities in perennial streams* are not authorized.
45. For **NWP 33**, the perspective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, for temporary construction, access, and dewatering activities that occur in non-tidal waters of the U.S., including wetlands. In addition, the PCN shall include a restoration plan.
46. For **NWP 36**, only one boat ramp may be constructed on a single lot or tract of land (e.g. each lot within a subdivision). NWP 36 may be used to authorize the construction of all boat ramps.
47. For **NWP 38**, the PCN require the following information:
- a. documentation that the specific activities are required to effect the containment, stabilization, or removal of hazardous or toxic waste materials as performed, ordered, or sponsored by a government agency with established legal or regulatory authority;
  - b. a narrative description indicating the size and location of the areas to be restored, the work involved and a description of the anticipated results from the restoration;
  - c. a plan for the monitoring, operation, or maintenance of the restored area.

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48. For **NWP 41**, a PCN must be submitted to the District Engineer for projects that require mechanized landclearing in waters of the U.S., including wetlands, in order to access or perform reshaping activities.
49. **NWP 41** is prohibited in channelized streams or stream relocation projects that exhibit natural stream characteristics and/or perform natural stream functions.
50. For **NWP 48**, changing from bottom culture to floating or suspended culture will require submittal of a PCN to the District Engineer. Additionally, new activities involving suspended or floating culture will require submittal of a PCN to the District Engineer. Refer to the PCN requirements listed in General Condition #32. Note: If the District Engineer determines that the proposed floating or suspended culture will result in more than minimal adverse environmental effects, discretionary authority may be exercised and an Individual Permit may be required for the proposed activity.
51. For **NWP 48**, when a new culture project will occur at a location that is adjacent to an upland property or properties that are owned by others, the project will require submittal of a PCN to the District Engineer. The PCN must include the following information in addition to the PCN requirements listed in General Condition #32:
- a. A map or depiction that shows the adjacent upland properties and adjacent property owners contact information. Note: This information may be obtained online from the applicable county's tax information pages.
  - b. A signed letter(s) of "no objection" to the proposed commercial shellfish project from each of the adjacent upland property owner(s). Each letter shall include the name, mailing address, property address, property Tax Map Parcel (TMS) number, and signature of the property owner.
52. For **NWP A**, the PCN must include a Tier I evaluation, in accordance with the Inland Testing Manual, for the project area immediately upstream of the low-head dam. If the Tier I evaluation indicates contaminated sediments are present, a Tier II evaluation may be required.
53. For **NWP B**, the PCN must include the following information in addition to the PCN requirements listed in General Condition #32:
- a. A plan view project sketch that shows the proposed project footprint, the Mean High Water (MHW) line, the Mean Low Water (MLW) line, marsh line (if applicable), shoreline, width of the waterway at the project location, location of adjacent structures such as docks and boat ramps (if applicable), distance of the project footprint from the MHW line and the distance of the project footprint from adjacent structures; and proposed location of informational or navigation markers. Refer to c. and d. below, if applicable. Note: Refer to Regional Condition #11 if the proposed project is located adjacent to an authorized Federal Navigation project for the additional information that will be required.
  - b. A cross-section sketch that shows the height of the proposed project above substrate and the water depth at MHW and MLW in relation to the proposed project.



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c. For low profile projects that are **18” in height or less** above substrate AND consist of **hard structures or fill material**, such as, but not limited to, riprap, oyster castles, bagged oyster shell and wooden sills, informational signs to alert boaters to the presence of the project area will be required. The PCN must include a depiction and description of proposed informational signs. The signs must be made of reflective material or must include reflective tape on the sign or sign post. The signs must be located at each end of the project area and at 100 ft increments along the project area, if applicable. Note 1: Living shoreline projects that include the use of loose shell **ONLY** will not require the installation of informational or navigational signs. If additional structures or materials are used with the loose shell, signs may be required to those structures or fills if over 18” in height. Note 2: The permittee shall be made aware that the U.S. Coast Guard (USCG) may require the project area to be marked. Prior to commencing work, the permittee shall contact the USCG at U. S. Coast Guard District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL. 33131, or by phone at 305-415-6755 or 305-415-6750 regarding possible markers and/or lighting requirements. The permittee shall install all markers and/or lighting as required by the USCG. In the event that the USCG does not require markers or lighting, the permittee shall mark the project area with above Corps approved informational signs. Note 3: These requirements will be added to the NWP verification as special conditions.

d. For high profile projects that are **18” in height or more** above substrate AND consist of **hard structures or fill material**, such as, but not limited to, riprap, oyster castles, bagged oyster shell, and wooden sills, the prospective permittee shall be made aware that the project area must be marked with diamond shaped white day markers with orange border and black print stating “Danger Obstruction”. The signs shall be located at each end of the project area and at 100 ft increments along the project area, if applicable. Note 1: Living shoreline projects that include the use of loose shell **ONLY** will not require the installation of informational or navigational signs. If additional structures or materials are used with the loose shell, signs may be required to mark those structures or fills if over 18” in height. Note 2: Prior to commencing work, the permittee shall contact the USCG at U. S. Coast Guard District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL. 33131, or by phone at 305-415-6755 or 305-415-6750 regarding potential project specific approval of the markers. The permittee shall install all markers and/or lighting as required by the USCG. In the event the USCG does not require these or other markers and/or lighting, the “Danger Obstruction” markers are still required by the Corps. Note 3: These requirements will be added to the NWP verification as special conditions.

\* For the purpose of these regional conditions, bankfull is defined as the top-of-bank to top-of-bank of the channel in a cross-sectional view.

\*\* For the purpose of these regional conditions, the term stream bed also includes the terms tributary, relatively permanent water, etc.