

DISTRICT PUBLIC NOTICE - PROPOSAL

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

Public Notice Date: September 29, 2020

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 1) lists the proposed regional conditions currently under consideration by the Charleston District for the State of South Carolina. The Charleston 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 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 South Carolina. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to **Charleston District, Attention: Tracy D. Sanders, 69A Hagood Avenue, Charleston, South Carolina 29403, 843-329-8044** or by email Tracy.d.sanders@usace.army.mil. 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 (Enclosure 2) is an index of the proposed NWP's and conditions. 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>.



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, CHARLESTON DISTRICT
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

Enclosure 1

**FINAL REGIONAL CONDITIONS FOR 2020 NATIONWIDE PERMITS IN
CHARLESTON DISTRICT (SAC)**

A. BACKGROUND

1. The following Regional Conditions have been approved by the Charleston District for the Nationwide Permits (NWP) published in the **MMM DD, 2020**, Federal Register. As specified, under NWP General Condition #27, Regional and Case-By-Case Conditions: The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
2. Note: The acronym "PCN" used throughout this document refers to *Pre-Construction Notification* as further defined in NWP General Condition #32.

B. EXCLUDED WATERS AND/OR AREAS

Not applicable.

C. REGIONAL CONDITIONS APPLICABLE TO ALL NWP's

1. Use of nationwide permits does not obviate requirements to obtain all other applicable Federal, State, county, and local government authorizations.
2. No NWP activities are authorized in areas known or suspected to have sediment contamination, with the exception of activities authorized by NWP 38, activities authorized by NWP 53 when used in combination with NWP 38, and sediment sampling for dredging projects authorized by NWP 6.
3. For all proposed activities that would be located within a FEMA designated floodway, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32.
4. For all NWPs, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, for any activity that would be located in or adjacent to an authorized Federal project, including Federal Navigation project. The Federal projects include Buck Creek, North Carolina and South

Carolina, Eagle Creek in Dorchester County, Kingstree Branch in Williamsburg County, Sawmill Branch in Berkeley and Dorchester Counties, Scotts Creek in Newberry County, Socastee Creek in Horry County and Turkey Creek in Sumter County. Federal Navigation projects include Adams Creek, Ashley River (0.5 miles east of Hwy 7 bridge downstream to AIWW), Atlantic Intracoastal Waterway (AIWW), Brookgreen Garden Canal, Calabash Creek, Charleston Harbor (including the Cooper River, Town Creek, Shem Creek to Coleman Blvd and Mount Pleasant Channel), Folly River, Georgetown Harbor (Winyah Bay, Sampit River and Bypass Channel), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Shipyard Creek, Town Creek McClellanville (i.e. Five Fathoms Creek, AIWW to Bulls Bay), and Village Creek. For the most current list of Federal projects, please see <https://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>.

5. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C. 4., the PCN must include the following information on the project drawings: a) State Plane Coordinates (NAD 1983) for a minimum of two corners of each structure or fill where it is closest to the federal project; b) the distance from watermost edge of the proposed structure or fill to the nearest edge of the channel, the Mean Low Water line and the Mean High Water line. This notification requirement is in addition to the PCN requirements listed in General Condition #32.

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWP's

1. For **NWP 3**, paragraph (a) activities, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, for the repair, rehabilitation or replacement of existing utility lines, electric lines, telecommunication lines and/or pipelines constructed over navigable waters of the United States (i.e., Section 10 waters) and existing utility lines, electric lines, telecommunication lines and/or pipelines routed in or under navigable waters of the United States (i.e., Section 10 waters), even if no discharge of dredged or fill material occurs.

2. For **NWP 3**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32 for maintenance activities related to stormwater management that would occur in tidal waters, including tidal wetlands.

3. For **NWPs 3, 11, 12, 13, 14, 15, 20, 22, 33, C and D**, temporary structures, fills, and/or work, including the use of temporary mats, are authorized for the minimum amount of time necessary to accomplish the work and shall not exceed a period of 180 days without additional Corps approval. The temporary structures, fills, and/or work, including the use of temporary mats, shall be removed as soon as the work is

completed. The temporary mats include timber mats, metal, synthetic and/or artificial mats.

4. For **NWPs 3, 11, 12, 13, 14, 15, 20, 22 33, C and D** 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 and include the specifications of how pre-construction contours will be re-established and verified after construction. Temporary mats include timber mats, metal, synthetic and/or artificial mats. This requirement is in addition to the PCN requirements listed in General Condition #32.

5. For **NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51 52 and C and D** in accordance with General Condition #22(a) and for **NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38 and 54**, in accordance with General Condition #22 (b), the ACE Basin National Estuarine Research Reserve and the North Inlet Winyah Bay National Estuarine Research Reserve are Designated Critical Resource Waters. Activities described in the NWPs listed herein are subject to the limitations and/or PCN requirements. Refer to General Condition 22 (a) and (b).

6. For **NWPs 7 and D**, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms, and the inflow velocity of the associated intake structures cannot exceed 0.5 feet/second.

7. For **NWPs 12, C and D** activities that involve horizontal directional drilling beneath navigable waters of the United States (i.e., 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.

8. For **NWPs 12, 14, 29, 39, 46, 51, 52, C and D** that involve crossings and require submittal of a PCN, the PCN must include the minimum size of and number of culvert/pipes that are proposed. This requirement is in addition to the PCN requirements listed in General Condition #32.

9. For **NWPs 12, 14, 43, 51, 52, C and D**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32 for activities that involve the loss of more than 100 linear feet or 0.005 acre of intermittent and/or perennial stream bed.

10. For **NWPs 12, 14, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, C, D and E**, that involve the loss of more than 100 linear feet or 0.005 acre of intermittent and/or perennial stream bed, compensatory mitigation will be required and the PCN shall include a

compensatory mitigation plan. This requirement is in addition to the PCN requirements listed in General Condition #32.

11. For **NWPs 12, 14, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, C, D and E**, the discharge cannot cause the loss of more than 500 linear feet or 0.05 acre of intermittent and/or perennial stream bed.

12. For **NWPs 29 and 39**, the discharges of dredged or fill material for the construction of stormwater management in perennial streams are not authorized.

13. For **NWP 33**, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, for temporary construction, access, and dewatering activities that impact greater than 0.1 acre of non-tidal waters of the United States, including wetlands. In addition, the PCN shall include a restoration plan.

14. For **existing NWP 48** activities that involve changing from bottom culture to floating or suspended culture OR **proposed NWP 48** activities that involve floating or suspended culture, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32.

15. For **proposed NWP 48** activities involve floating or suspended culture and/or **proposed NWP B** activities that will occur adjacent to property that is not owned by the prospective permittee, 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 property(ies) 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 mariculture activity from each of the adjacent 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. Or, if the prospective permittee is unable to obtain a letter(s) of "no objection", the Corps will notify the adjacent property owner(s) of the proposed project by letter wherein the adjacent property owner will be given 15 days to provide comments.

16. For **NWP 53**, 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.

17. For NWP's wherein the South Carolina Department of Health and Environmental Control (SCDHEC) has not issued the 401 Water Quality Certifications (WQC), the PCN must include a copy of the valid 401 WQC for the proposed activity. This requirement is in addition to the PCN requirements listed in General Condition #32.

E. ACTIVITY SPECIFIC REGIONAL CONDITIONS

Not applicable

F. SECTION 401 WATER QUALITY CERTIFICATION AND/OR COASTAL ZONE MANAGEMENT ACT CONSISTENCY DETERMINATION CONDITIONS

To Be Determined

G. DEFINITIONS

Not applicable.

H. DISTRICT POINT OF CONTACT

Tracy D. Sanders
USACE- Charleston District
69A Hagood Avenue
Charleston, South Carolina 29403
843-329-8044
Tracy.d.sanders@usace.army.mil

Enclosure 2

Index of Proposed Nationwide Permits, Conditions, and Definitions

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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
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Structure

Tidal wetland
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