



US Army Corps  
of Engineers  
Portland District

# Public Notice

## Announcing the Regional Conditions for the 2017 Nationwide Permits in Oregon

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On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published a notice in the *Federal Register* announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs are effective as of March 19, 2017, and will expire on March 18, 2022.

Concurrent with the public interest review conducted for the NWPs, the Portland District solicited public comment concerning proposed regional conditions for the 2017 NWPs. The regional conditions are intended to provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. The final Regional Conditions for the 2017 NWPs, which apply to the state of Oregon and have been approved by the Northwestern Division Commander, are attached.

The Regional Conditions will be posted to the Portland District website soon. The District's website can be found at <http://www.nwp.usace.army.mil/Missions/Regulatory.aspx>. In addition to the Regional Conditions, the website will include Section 401 Water Quality Certification (WQC) decisions on the 2017 NWPs from the Oregon Department of Environmental Quality and U.S. Environmental Protection Agency (for certain tribal lands), and the Coastal Zone Management Act (CZMA) consistency determination from the Oregon Department of Land Conservation and Development (DLCD). These documents will be posted as they become available.



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## **2017 Nationwide Permit Regional Conditions Portland District**

The following Nationwide Permit (NWP) regional conditions are for the State of Oregon. Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resource concerns.

### ALL NWPs –

- 1. Notification:** For permittees that received written NWP approval, upon starting the authorized activities, you shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch that the work has started. Notification shall be provided by e-mail to [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) and the email subject line shall include: Corps project number and the project location by county.
- 2. Aquatic Resources of Special Concern:** Pre-construction notification to the District Engineer is required for all activities proposed in waters of the U.S. within an aquatic resource of special concern. Aquatic resources of special concern are resources that are difficult to replace, unique, and/or have high ecological function. For the purpose of this regional condition, aquatic resources of special concern are native eel grass (*Zostera marina*) beds, mature forested wetlands, bogs, fens, vernal pools, alkali wetlands, wetlands in dunal systems along the Oregon coast, estuarine wetlands, Willamette Valley wet prairie wetlands, marine gardens, marine reserves, kelp beds, and rocky substrate in tidal waters.

In addition to the content requirements of NWP General Condition (GC) 32, the pre-construction notification must include a statement explaining why the effects of the proposed activity are no more than minimal. Written approval from the District Engineer must be obtained prior to commencing work.

Note: If the District Engineer determines that the adverse effects of the proposed activity are more than minimal, then the District Engineer will notify the applicant that either:

(a) the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) the activity is authorized under the NWP subject to submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) the activity is authorized under the NWP with specific modifications or conditions.

- 3. Cultural Resources and Human Burials-Inadvertent Discovery Plan:** In addition to the requirements in NWP GCs 20 and 21, the permittee shall immediately notify the District Engineer if, at any time during the course of the work authorized, human burials, cultural items, or historic properties, as defined by the National Historic Preservation Act and Native American Graves Protection and Repatriation Act, are discovered. The permittee shall implement the following procedures:

a. Immediately cease all ground disturbing activities.

b. Notify the Portland District Engineer as soon as possible following discovery but in no case later than 24 hours. Notification may be sent by fax (503-808-4375) or electronically (cenwp.notify@usace.army.mil) and shall identify the Corps project number and clearly specify the purpose is to report a cultural resource discovery. The permittee shall also notify the Corps representative (by email and telephone) identified in the verification letter.

c. Notify the Oregon State Historic Preservation Office by telephone at (503) 986-0690.

Failure to stop work immediately and until such time as the District Engineer has coordinated with all appropriate agencies and Native American tribes, and complied with the provisions of 33 CFR 325 (Appendix C), the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, and other pertinent regulations could result in violation of state and federal laws. Violators may be subject to civil and criminal penalties.

**4. In-water Work:** To minimize potential impacts to aquatic species and habitat, in-water work will be limited by the following timing considerations:

a. Permittee shall complete all in-water work, to the maximum extent practicable, within the preferred time period (i.e., work window) specified in Oregon Department of Fish and Wildlife's (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at: <http://www.dfw.state.or.us/lands/inwater/>.

b. If work cannot be completed within the preferred timing window, despite every attempt to do so, permittee shall submit a written request to work outside of the preferred window to the District Engineer. The request can be made by means of the joint-agency In-water Work Period Variance Request for Previously Permitted Authorizations form which can be found at <http://www.oregon.gov/dsl/WW/Pages/WWforms.aspx>. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the District Engineer.

Note: The final specified in-water work period will be based on a project-specific evaluation and may supersede these guidelines through special conditions of the permit verification.

**5. Essential Fish Habitat:** Activities which may adversely affect essential fish habitat, as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), are not authorized by NWP until essential fish habitat requirements have been met by the applicant and the Corps. Non-federal permittees must submit a pre-construction notification to the District Engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the District Engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (e.g., Pacific coast salmon, Pacific coast groundfish, and/or Coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available at NOAA's website: <http://www.westcoast.fisheries.noaa.gov/>.

**6. Bank Stabilization:** Permittee shall include the use of bioengineering techniques and natural materials in the project design to the maximum extent practicable and shall minimize the use of rock. Bioengineering bank stabilization techniques are those that increase the strength and structure of soils with a combination of biological and mechanical elements (e.g., vegetation, root wads and woody debris, rock structures). Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.

**7. Fish Screening:** To prevent injury or mortality to fish due to entrainment, the permittee shall ensure that all intake pipes include adequately sized screens.

**Note:** Fish passage and screening criteria can be obtained from the National Marine Fisheries Service (NMFS) at [http://www.westcoast.fisheries.noaa.gov/fish\\_passage/solutions/index.html](http://www.westcoast.fisheries.noaa.gov/fish_passage/solutions/index.html). Information regarding Oregon's fish passage laws can be obtained from ODFW at <http://www.dfw.state.or.us/fish/passage/links.asp>.

**8. Work Area Isolation and Dewatering:** Appropriate best management practices shall be implemented to prevent erosion and to prevent sediments from entering waters of the U.S.

a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows to the maximum extent practicable.

b. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized.

c. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering waters of the U.S.

d. Upstream and downstream flows shall be maintained by routing flows around the construction site.

e. When dewatering is necessary for construction, a sediment basin, or other applicable method, shall be used to settle sediments prior to releasing the water back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion. Sediment basins shall be placed in uplands.

f. Fish and other aquatic species must be salvaged (i.e., safely captured and relocated away from the project or development site) prior to dewatering.

**Note:** The ODFW requires a Scientific Take Permit be obtained to salvage fish and wildlife. Further information from ODFW is available at [http://www.dfw.state.or.us/fish/license\\_permits\\_apps/scientific\\_taking\\_permit.asp](http://www.dfw.state.or.us/fish/license_permits_apps/scientific_taking_permit.asp).

**9. Dredging:** For NWP-authorized activities that involve removal of sediment from waters of the U.S., the permittee shall ensure that any necessary sediment characterization regarding size, composition, and potential contaminants is conducted prior to dredging. Sediment characterization must be conducted per the Sediment Evaluation Framework for the Pacific Northwest (available at: <http://www.nwp.usace.army.mil/Missions/Environment/DMM.aspx>).

**Note 1:** The return water from a contained disposal area is defined as a discharge of dredged material by 33 CFR Part 323.2(d) and requires separate authorization from the District Engineer (e.g., by NWP 16).

**Note 2:** The Oregon Department of Environmental Quality (DEQ) requires removed material placed in an upland site to meet the definitions of clean fill as provided in OAR 340-093-0030 or the use must be specifically allowed by DEQ by rule, permit, or other authorization.

**10. Mechanized Equipment:** In addition to the requirements in NWP GC 11, permittee shall implement the following practices to prevent or minimize impacts to the aquatic environment from mechanized equipment:

a. Use existing roads, paths, and construction pads where available. Temporary mats or pads, when required to provide access onto wetlands or tidal flats, shall be removed within 30 days of completing the authorized work.

b. Operate equipment from the top of a streambank and conduct work outside of the active stream channel, unless specifically authorized by the District Engineer.

c. Equipment shall not be staged, fueled, or maintained within waters of the U.S.

d. Spill prevention and containment materials shall be maintained and be readily accessible at vehicle staging areas. The amount of spill response materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags) maintained on-site must be appropriate for the size of the authorized activity.

**11. Stormwater Management:** Pre-construction notification to the District Engineer is required for all activities resulting in the creation of new impervious surfaces if any species or designated critical habitat listed under the Endangered Species Act (ESA) might be affected or are in the vicinity of the activity. The Corps may require a post-construction stormwater management plan (SWMP) and completion of a supplemental Stormwater Information Form to assist in the determination of the activity's affects to listed species or designated critical habitat and to be used in ESA consultation as necessary.

**Note 1:** The Corps considers impervious surfaces to include roof tops, walkways, patios, driveways, parking or storage areas, concrete or asphalt paving, gravel roads, packed earthen material, and oiled surfaces.

**Note 2:** Under the DEQ 401 Water Quality Certification Program, the DEQ evaluates post-construction stormwater pollution for any project resulting in new, an increase in, or redevelopment of impervious surfaces. DEQ may require the applicant to submit a post-

construction SWMP for review and approval prior to the start of construction. DEQ provides information on preparing a SWMP at

<http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf>. DEQ requires applicants to first consider low impact development options. If these options can't be implemented, a narrative must be provided explaining why.

**12. Erosion Control:** During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. Temporary stockpiles of excavated or dredged material shall be stabilized to prevent erosion. Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all non-biodegradable components of installed control measures.

Note: DEQ provides information on erosion and sediment control measures at <http://www.deq.state.or.us/wq/wqpermit/docs/general/npdes1200c/ErosionSedimentControl.pdf>. Details on best management practices are found at <http://www.deq.state.or.us/wq/wqpermit/docs/general/npdes1200c/BMPManual.pdf>.

**13. Temporary Fills and Impacts:** To ensure no more than minimal adverse environmental effects from temporary fills and impacts to waters of the U.S:

a. Temporary fills and/or impacts to waters of the U.S. shall not exceed six months unless otherwise approved by the District Engineer.

b. No more than one-half (½) acre of waters of the U.S. may be temporarily filled or impacted unless otherwise approved by the District Engineer (temporary fills and impacts do not affect specified limits for loss of waters associated with specific nationwide permits).

c. Native soils and/or sediments removed from waters of the U.S. for project construction shall be stockpiled and used for site restoration to the maximum extent practicable.

d. Site restoration of temporarily filled or impacted areas shall include returning the area to pre-project ground surface contours. The permittee shall appropriately revegetate temporarily filled or impacted areas with native, noninvasive herbs, shrubs, and/or tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

**Note:** The Corps will determine compensatory mitigation requirements for temporary fills and impacts on a case-by-case basis depending on the duration and nature of the temporary fill or impact and the type of aquatic resource affected.

**14. Contractor Notification of Permit Requirements.** The permittee must provide a copy of the nationwide permit verification letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work, prior to the commencement of any work in waters of the U.S.

**15. Inspection of the Project Site:** The permittee shall allow representatives of the District Engineer to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in

advance to allow a property owner or representative the option to be on site during the inspection.

## **NATIONWIDE SPECIFIC CONDITIONS:**

### NWP 5 – Scientific Measurement Devices

1. Permittee shall remove all scientific measurement devices including all associated structures and fills including anchoring devices, buoys, and cables within 30 days after the device is no longer being used for its intended purpose.

### NWP 6 – Survey Activities

1. The use of explosives in waters of the U.S. is not authorized by this NWP.
2. Permittee shall isolate all in-stream exploratory trenching from flowing water.

### NWP 12 – Utility Line Activities

1. Manholes placed in streams or other waterways require specific approval by the District Engineer.

Note: To ensure there are no impacts to native shellfish beds, agency coordination by the Corps of Engineers is required where utility lines are proposed in estuaries.

### NWP 13 – Bank Stabilization

1. Pre-construction notification, when required, must include photo documentation of the existing conditions at the proposed project site.

### NWP 23 – Approved Categorical Exclusions

1. Pre-construction notification to the District Engineer is required for all activities.

### NWP 29 – Residential Developments

1. The loss of waters of the U.S. associated with the construction or expansion of a single residence including attendant features (e.g., utility lines, roads, yards, etc) shall not exceed one-fourth ( $\frac{1}{4}$ ) acre.
2. Pre-construction notification must identify if the project is for the construction or expansion of a single residence, a multiple unit/subdivision residential development, or a phased residential development. For projects proposed within or associated with a multiple unit/subdivision residential development or a phased residential development, the pre-construction notification must identify any known previous Department of the Army (DA) authorizations received for the multiple unit/subdivision residential development or a phased residential development.

### NWP 33 – Temporary Construction, Access, and Dewatering

1. Pre-construction notification to the District Engineer is required prior to commencing all activities conducted in waters of the U.S. (i.e. Section 10 and 404 waters). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

#### NWP 39 – Commercial and Institutional Developments

1. Pre-construction notification must identify if the project is for the construction or expansion of a single commercial or institutional development, a multiple unit commercial or institutional development, or a phased commercial or institutional development. For projects proposed within or associated with a multiple unit or phased commercial or institutional development, the pre-construction notification must identify any known previous Department of the Army (DA) authorizations received for the multiple unit or phased development.

#### NWP 42 – Recreational Facilities

1. Pre-construction notification must identify if the project is for the construction or expansion of a single recreational facility, a multiple unit recreational facility, or a phased recreational facility development. For projects proposed within or associated with a multiple unit recreational facility or a phased recreational facility development, the pre-construction notification must identify any known previous Department of the Army (DA) authorizations received for the multiple unit or phased development.

#### NWP 43 – Stormwater Management Facilities

1. This NWP does not authorize the retention of water in excess of that required to meet stormwater management requirements. Unauthorized purposes include recreational lakes, reflecting pools, irrigation, etc.

#### NWP 44 – Mining Activities

1. In-stream mining, including bar scalping, is not authorized by this NWP.
2. The use of explosives in waters of the U.S. is not authorized by this NWP.

#### NWP 48 – Commercial Shellfish Aquaculture Activities

Note: For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels on state-owned submerged and submersible lands, permittee is advised authorization may be required from the Oregon Department of Agriculture. For more information go to <http://www.oregon.gov/oda/programs/foodsafety/pages/aboutfoodsafety.aspx>.

#### NWP 52 – Water Based Renewable Energy Generation Pilot Projects

Note: Activities located within ocean waters may be subject to the siting requirements of the Oregon Territorial Sea Plan, which designates areas as suitable for such activities. For more information go to [http://www.oregon.gov/LCD/OCMP/Pages/Ocean\\_TSP.aspx](http://www.oregon.gov/LCD/OCMP/Pages/Ocean_TSP.aspx).