



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVE
NEW ORLEANS, LA 70118-3651

October 1, 2020

SPECIAL PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE AND NATIONWIDE PERMIT LOUISIANA REGIONAL
CONDITIONS REQUEST FOR COMMENTS

Nationwide Permit Reissuance: 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.

Commenting on 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. **ALL comments on the proposed NWP, their general conditions, and/or definitions are due by November 16, 2020 and should be sent using one of the above ways for submitting comments.**

NWP Louisiana Regional Conditions: 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.

Commenting on Louisiana Regional Conditions: This public notice includes the proposed regional conditions (see attachment) currently under consideration by the US Army Corps of Engineers, Mississippi Valley Division for the State of Louisiana. The New Orleans District is seeking comments on these proposed regional conditions and/or the need for additional regional conditions for the State of Louisiana. Comments on these proposed regional conditions can be sent to US Army Corps of Engineers, New Orleans District, ATTN: Brenda Archer, CEMVN-ODR, 7400 Leake Avenue, New Orleans, Louisiana 70118 via regular mail or Brenda.A.Archer@usace.army.mil via email. If you have questions, please call 504-862-2046. **ALL comments relating to the proposed Louisiana regional conditions, including any proposals for new Louisiana regional conditions, are due by November 16, 2020 and should be sent to the New Orleans District address or email address above.**

Additional Details:

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.

Below is an index of the proposed NWP's and conditions. Anyone wishing to review and provide comments to Headquarters may obtain a full text copy of the NWP's through the Corps' Headquarter 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>.

Enclosed is a copy of the proposed Louisiana regional conditions. They are also available through Corps' Headquarters 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 Federal Register at <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>.

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- Direct effects
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1. STATE OF LOUISIANA
2. NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS

Proposed 2020 NWP Louisiana Regional Conditions

PART I - REGIONAL CONDITIONS FOR ALL NWPS:

Regional Condition 1. No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of cypress swamp and/or cypress-tupelo swamp.

Regional Condition 2. No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of coastal prairie, pine savanna, and/or pitcher plant bogs.

Regional Condition 3. No regulated activity is authorized under any NWP permit which has been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary.

Regional Condition 4. Dredged and/or fill material placed within wetlands and other waters must be free of contaminants, to the best of the applicant's knowledge.

Regional Condition 5. For work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana;

a. The New Orleans District's Programmatic General Permit (PGP) generally supersedes the Nationwide Permit authorization for regulated activities located within the Louisiana Coastal Zone as incorporated within the New Orleans Corps District boundaries. Projects typically will not qualify for a Nationwide Permit if they qualify for the Programmatic General Permit.

b. A joint permit application for work must first be submitted to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM). OCM will then forward the request to the Corps of Engineers-New Orleans District.

c. NWP requests that have not received a Coastal Use Permit or other consistency determination from the OCM would be processed by the Corps. However any granted authorization may be conditioned to require the applicant to obtain appropriate authorization from OCM before the NWP is valid.

Regional Condition 6. A pre-construction notification, as defined under nationwide general condition 32, will be provided for all regulated activities, excluding Nationwide 20, that

- a. Adversely affects greater than 1/10 acre of wetlands, and/or;
- b. Adversely impacts a Louisiana designated Natural and Scenic River or a state or federal wetland/wildlife management area and/or refuge.

Regional Condition 7, Supplement to General Condition 2 – Aquatic Life Movement. To support compliance with General Condition 2 of the NWP, culverts must be sufficiently sized to maintain expected high water flows and be installed at a sufficient depth to maintain low flows to sustain the movement of aquatic species.

PART II - REGIONAL CONDITIONS FOR SPECIFIC NWPS

NWP 1. *Aids to Navigation:*
No regional conditions are proposed.

NWP 2. *Structures in Artificial Canals:*
No regional conditions are proposed.

NWP 3. *Maintenance:*
No regional conditions are proposed.

NWP 4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities:*
No regional conditions are proposed.

NWP 5. *Scientific Measurement Devices:*
Pre-construction notification, as defined under nationwide general condition 32, is required for all weirs and flumes in any water of the United States.

NWP 6. *Survey Activities:*
No regional conditions are proposed.

NWP 7. *Outfall Structures and Associated Intake Structures:*
Activities that include the construction of intake structures must include adequate fish exclusion screening devices.

NWP 8. *Oil and Gas Structures on the Outer Continental Shelf:*
No regional conditions are proposed.

NWP 9. *Structures in Fleeting and Anchorage Areas:*
No regional conditions are proposed.

NWP 10. *Mooring Buoys:*
No regional conditions are proposed.

NWP 11. *Temporary Recreational Structures:*
No regional conditions are proposed.

NWP 12. *Oil or Natural Gas Pipeline Activities:*
Pre-Construction Notification, as defined under nationwide general condition 32, is required for regulated **pipeline activities within tidal waters** regardless of impact acreage. The U.S. Environmental Protection Agency and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification..

A 50-foot gap shall be required for every 500 linear feet of sidecast material resulting from trench excavation activities associated with pipeline construction. Under certain circumstances the gap intervals may be modified. Additionally, no fill shall be placed in a manner which would impede natural watercourses.

NWP 13. *Bank Stabilization:*
Rip-rap material shall be free of protruding reinforcement material (i.e., rebar). Such material may pose a hazard to navigation and recreational uses.

NWP 14. *Linear Transportation Projects:*
Pre-Construction Notification, as defined under nationwide general condition 32, is required for all regulated **linear transportation crossings within tidal waters** regardless of impact acreage. The U.S. Environmental Protection Agency and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification.

NWP 15. *U.S. Coast Guard Approved Bridges:*
No regional conditions are proposed.

NWP 16. *Return Water from Upland Contained Disposal Areas:*
No regional conditions are proposed.

NWP 17. *Hydropower Projects:*
No regional conditions are in proposed.

NWP 18. *Minor Discharges:*
No regional conditions are proposed.

NWP 19. *Minor Dredging:*
No regional conditions are proposed.

NWP 20. *Response Operations for Oil and Hazardous Substances:*
No regional conditions are proposed.

NWP 21. *Surface Coal Mining Activities:*
No regional conditions are proposed.

NWP 22. *Removal of Vessels:*
No regional conditions are proposed.

NWP 23. *Approved Categorical Exclusions:*
No regional conditions are proposed.

NWP 24. *Indian Tribe or State Administered Section 404 Programs:*
Not applicable in the State of Louisiana.

NWP 25. *Structural Discharges:*
No regional conditions are proposed.

NWP 26. (Reserved)

NWP 27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities:*
No regulated activities shall be authorized that would convert tidal wetlands to another aquatic habitat type.

NWP 28. *Modifications of Existing Marinas:*
No regional conditions are proposed.

NWP 29. *Residential Developments:*
No regional conditions are proposed.

NWP 30. *Moist Soil Management for Wildlife:*
No regional conditions are proposed.

NWP 31. *Maintenance of Existing Flood Control Facilities:*
No regional conditions are proposed.

NWP 32. *Completed Enforcement Actions:*
No regional conditions are proposed.

NWP 33. *Temporary Construction, Access and Dewatering:*
No regional conditions are proposed.

NWP 34. *Cranberry Production Activities:*
Not applicable within the State of Louisiana.

NWP 35. *Maintenance Dredging of Existing Basins:*
No regional conditions are proposed.

NWP 36. *Boat Ramps:*
No regional conditions are proposed.

NWP 37. *Emergency Watershed Protection and Rehabilitation:*
No regional conditions are proposed.

NWP 38. *Cleanup of Hazardous and Toxic Waste:*
No regional conditions are proposed.

NWP 39. *Commercial and Institutional Developments:*
No regional conditions are proposed.

NWP 40. *Agricultural Activities:*
No regional conditions are proposed.

NWP 41. *Reshaping Existing Drainage Ditches:*
No regional conditions are proposed.

NWP 42. *Recreational Facilities:*
No regional conditions are proposed.

NWP 43. *Stormwater Management Facilities:*
Regulated activities which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Navigation Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 44. *Mining Activities:*
Regulated activities which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

NWP 45. *Repair of Uplands Damaged by Discrete Events:*

No regional conditions are proposed.

NWP 46. *Discharges in Ditches:*

No regional conditions are proposed.

NWP 47. *[Reserved]*

NWP 48. *Existing Commercial Shellfish Aquaculture Activities:*

No regional conditions are proposed.

NWP 49. *Coal Remining Activities:*

No regional conditions are proposed.

NWP 50. *Underground Coal Mining Activities:*

No regional conditions are proposed.

NWP 51. *Land-Based Renewable Energy Generation Facilities:*

No regional conditions are proposed.

NWP 52. *Water-Based Renewable Energy Generation Pilot Projects:*

No regional conditions are proposed.

NWP-53. Removal of Low-Head Dams

No regional conditions are proposed.

NWP-54. Living Shorelines

No regional conditions are proposed.

New NWP A. *Seaweed Mariculture Activities*

No regional conditions are proposed.

New NWP B. *Finfish Mariculture Activities*

No regional conditions are proposed.

New NWP C. *Electric Utility Line and Telecommunication Activities*

No regional conditions are proposed.

New NWP D. *Utility Line Activities for Water and Other Substances*

No regional conditions are proposed.

New NWP E. *Water Reclamation and Reuse Facilities*

No regional conditions are proposed.

PART III - WATER QUALITY REGIONAL NWPS CONDITIONS FOR “INDIAN COUNTRY” LANDS

The Environmental Protection Agency (EPA) is the agency required to address water quality certification of the 2020 nationwide permits (NWPs) in Indian country¹ where a tribe has not received treatment in the same manner as a state for the Clean Water Act (CWA) Section 401 program. Tribes which have received treatment in the same manner as a state (TAS) for the water quality standards and §401 certification programs and which have EPA-approved water quality standards will be contacted by the Corps of Engineers for the water quality certification process. EPA is the agency required to address water quality certification for tribes that have not received TAS for the water quality standards and 401 certification programs. At this time, no Indian tribes in Louisiana have CWA Section 401 authority.

1. The permittee shall conduct all work in such a manner to comply with all U.S. Army Corps of Engineers §404 permit conditions.
2. The permittee shall keep a copy of this certification with conditions at the project site during all phases of construction. All contractors or subcontractors involved in the project must be provided a copy of this certification prior to commencement of activities.
3. All heavy equipment used in the project areas shall be steam cleaned before the start of the project and inspected daily for leaks. Leaking equipment must not be used in or near surface water or in a wetland area. Equipment shall be parked outside the waterbody when not in use.
4. All fuels, oil, hydraulic fluid, or other substances of this nature must not be stored, temporarily or otherwise, within the normal floodplain or the wetland. A secondary containment system for these items shall be used in the event the primary containment system leaks. Refueling or servicing of equipment must not take place within 100 feet of any watercourse or within the wetland area.
5. The construction area shall be protected such that a runoff event will not move soil or contaminants to surface water or away from the construction site. These measures shall be in place prior to the commencement of activities and inspected daily.
6. Temporary mats must be placed on stream banks, riparian areas, and wetlands, to minimize impacts to soil and vegetation from heavy equipment. Temporary access roads must be restored to pre-project conditions.

¹ “Indian Country”, as defined in 18 U.S.C. 1151, means: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

7. All asphalt, concrete, and other construction materials must be properly handled and contained to prevent releases to the stream channels. All concrete that is to be poured must be fully contained in mortar-tight forms to prevent accidental releases to surface water or ground water. No discharge of any concrete to surface water or ground water may occur. Dumping of waste materials near watercourses is strictly prohibited.
8. Work in a stream channel should be limited to periods of no flow when practicable, and must be limited to periods of low flow. Avoid working within the channel during spring runoff or summer thunderstorm season.
9. When working in a stream channel, flowing water must be temporarily diverted around the work area to minimize sedimentation and turbidity problems. Acceptable diversion structures are non-erosive and include (but are not limited to) sand bags, water bladders, concrete barriers lined with plastic, and flumes.
10. The permittee shall restore all areas disturbed by construction activities to pre-project conditions. This shall include restoration of surface contours, stabilization of the soil, and restoration of appropriate native vegetation to establish permanent cover.