

Plan/Project: Nationwide Permit Reissuance Request for Comments (Regional Conditions)

Date: 8 August 2016

Commenters: Regional Road Maintenance ESA Forum

Comments are on changes to Regional General Conditions and Regional Nationwide Permit (NWP) Conditions considered most applicable to Road Maintenance operations including: NPW #3 – Maintenance, NWP #13 – Bank Stabilization, NWP #18 – Minor Discharges, NWP #19 – Minor Dredging, NWP #25 – Structural Discharges, NPW #33 – Temporary Construction, Access, and Dewatering, NWP #41 – Reshaping Existing Drainage Ditches, NPW #43 – Stormwater Management Facilities, NWP #45 – Repair of Uplands Damaged by Discrete Events, and NPW #46 – Discharges in Ditches.

<i>Condition</i>	<i>Current Requirements</i>	<i>Proposed Requirement</i>	<i>Comment</i>
General 1 – Pre-Construction Notification	None specified that are additional to the Federal conditions.	Hard Copy of a JARPA application, documentation to meet NWP General or regional conditions, Drawings (including drawings of existing conditions), dated pre-project photos and a mitigation plan if needed.	<p>Regional requirements would place an administrative burden far in excess of the 11 hours estimated by the ACOE to complete a Pre-Construction Notification (Federal Register/Vol 81 No 105 Pg. 35214 re: Paperwork Reduction Act) and result in a financial impact to local government. Please evaluate this regional impact to local governments in accordance with NEPA or revise the pre-construction notification requirements.</p> <p>Federal conditions encourage the submission of the preconstruction notification in electronic format (Federal Register/ Vol 81 No 105 pg. 35237). Please revise condition to allow for submission in electronic formats.</p>
General 3 – New Bank Stabilization in Tidal Waters of the Salish Sea	None	Requires an individual permit for new bank stabilization. Condition specifies that replacement of existing, currently serviceable or recently damaged, <u>previously authorized</u> bank stabilization within the original footprint is not considered “new” bank stabilization.	<p>Regional requirements would place an increased burden on road maintenance near tidal waters and may make maintenance of such roadways economically infeasible. Prolonged permitting would result in roadways sustaining additional damage and increase the size and scope of repairs. Please evaluate this regional impact to local governments in accordance with NEPA or revise the general condition.</p> <p>Please note that federal conditions acknowledge that “general permits are an important tool for protecting the environment by providing incentives to minimize impacts to jurisdictional waters and wetlands to qualify for a streamlined authorization process” (Federal Register/Vol 87 No 105 pg. 35191). Environmental resources can be protected through the Nationwide Permit Process.</p> <p>All the General Conditions should continue to include the exemptions allowed in the Nation Wide Permits. NWP 3 was specifically developed for those areas of maintenance</p>

			not exempt from the Clean Water Act, for example the River and Harbors Act. Please delete this Regional General Condition.
General 5 – Bank Stabilization	Similar to proposed	Similar to current requirement however the following sentence was struck: “this requirement does not apply to maintenance work exempt by 33 CFR 323.4 (a)(2)”	<p>Please clarify if the intent of the revisions. Is work exempt by 33 CFR 323.4 (a)(2) required to comply with General Condition 5? If so, then the regional condition would require a pseudo-permit for work specifically exempted from these requirements. This would increase the administrative burden on local governments, and delays in maintenance may result in infrastructure sustaining additional damage and increase the size and scope of repairs. Please evaluate this regional impact to local governments in accordance with NEPA or revise the general condition to clarify that it does not apply to work exempt by 33 CFR 323.4 (a)(2).</p> <p>All the General Conditions should continue to include the exemptions allowed in the Nation Wide Permits. Please reinstate the language “this requirement does not apply to maintenance work exempt by 33 CFR 323.4 (a)(2).”</p>
General 6 – Crossings of Waters of the United States	Requires a pre-construction notification with additional information requirements; -need for crossing - crossing design criteria and design methodology - rationale behind using the specific design method for the crossing	<p>the following sentence was struck: “this requirement does not apply to maintenance work exempt by 33 CFR 323.4 (a)(2)”</p> <p>Requirements are increased to more directly require stream-sim design when salmonid species are present, or an extended justification if another methodology is used.</p> <p>Requirements include provision for emergency culvert replacements that would require culverts to meet stream-sim after the fact.</p> <p>New requirement to include a monitoring plan</p>	<p>All the General Conditions should continue to include the exemptions allowed in the Nation Wide Permits. Please reinstate the language “this requirement does not apply to maintenance work exempt by 33 CFR 323.4 (a)(2).”</p> <p>Requirements address all salmonid species, including non-ESA State managed species. Salmonid is <u>assumed</u> to include any fish in the family Salmonidae including salmon, trout, char, whitefish and grayling because this term is undefined in the draft regional conditions. ACOE does not directly manage wildlife therefore, provisions should be limited to segments of the environment that the ACOE regulates, or are regulated by other federal agencies through consultation. Inclusion of un-federally regulated salmonid species is arbitrary. Please revise the general condition to reflect the ACOE scope of authority.</p> <p>Increased requirements for specific design standard based on wildlife limit other agencies who directly manage these resource from taking the primary role in their management. It discourages innovative design solutions that these agencies and tribes may approve of by requiring additional analysis and justification for non-stream sim designs.</p> <p>Stream-sim and emergency replacement requirements may result in a standard that local government permittees cannot meet if the required culvert size results in a design that extends beyond the right of way and the adjacent landowner is unwilling to grant an easement. Delays in maintenance may result in infrastructure sustaining additional damage, risking public safety and increasing the size and scope of repairs.</p>

		for fish passage at all life stages and a maintenance plan.	<p>After the fact culvert replacement limit design to stream sim only when other design standards may be approved by agencies that directly regulate wildlife. This requirement may prolong salmonid recovery by prioritizing local government resources on culverts that have failed rather than infrastructure that poses a significant barrier to salmonids.</p> <p>New requirements to establish a monitoring and maintenance plan for all culverts replaced would result in a financial impact to local government. Please evaluate this impacts with an economic impact statement to local governments as part of a NEPA process; or revise the general condition to eliminate the requirement. If funding is not attached to new requirements, then it will reduce local government's ability to provide services.</p> <p>New requirements to determine if salmonid species are present, and develop monitoring and maintenance plans may delay projects for several years. This delay may endanger public safety and result in water quality violations. Please evaluate these impacts as part of a NEPA process; or revise the general condition to eliminate the requirement.</p>
General 7 – Stream Loss	None	Identifies no activity shall result in loss of perennial stream beds or greater than 300 l.f. of intermittent or ephemeral stream beds unless the <u>primary</u> purpose is the improvement of ecological function in accordance with NWP #27	<p>This would limit the ways the local government could manage drainage and may result in infrastructure damage, local property flooding, and shorter infrastructure design life. For example if a perennial stream is scouring out a bridge abutment then logs could not be installed upstream to direct the water towards the center of the channel if it lowers the sinuosity of the reach. Rip Rap would be continually replaced along the abutment because alternate solutions would be prohibited. Tribes have suggested design solutions in some cases that would reduce the overall stream lengths in order to align bridges better with the upstream and downstream reaches. However because the <u>primary</u> purpose is failing infrastructure and not improvement of ecological function then it would not be permitted under the proposed language.</p> <p>Streams are not static and there are many reasons stream length may increase or decrease due to natural conditions, land use, and private citizen actions. Local governments need the ability to manage water crossings and ditches so that they convey water, prevent unsafe road conditions and property flooding. Please revise the general condition to address these risks.</p>
General 8 – Mitigation	None	New requirements for wetlands and stream mitigation, mitigation may be required for temporary impacts	The requirements for streams are ambiguous. Under this condition the ACOE could require anything and there would be no way to ensure projects are being treated consistently. Mitigation required for in stream work should be clarified in order for the public to provide meaningful comment.

General 10 – Submerged Aquatic Vegetation and Forage Fish	None	New requirement for delineating submerged aquatic vegetation and identifying nearby forage fish	
General 11 – Notification of Permit Requirements	Similar to proposed	Similar to current but stricter. New language: “The permittee shall ensure all appropriate contractors and any other parties performing the authorized work at the project site have read and understand relevant NWP conditions as well as plans, approvals, and documents referenced in the NWP letter.”	
General 13 – Construction Boundaries	None	New requirement to mark construction boundaries.	
General 14 – Temporary Impacts and Site Restoration	None	New requirements for aquatic vegetation and soils, may require monitoring for submerged aquatic vegetation.	
NWP #13 – Bank Stabilization	Similar to proposed	Similar to current but revoked in tidal waters	See General Condition 3 Please reinstate the use of this Nation Wide in tidal waters.
NWP #19 – Minor Dredging	Similar to proposed	Similar to current but slightly expands pre construction notification requirements for wetlands	It is concerning that this proposed language in combination with the definition of Waters of the US in the proposed Nationwide Permits would result in unpredictability on how this would apply to road maintenance activities.

			Please clarify that dredging is removal of bed material for the purpose of navigability and not for the purpose of sediment removal from drainage structures to restore flow to previous conditions.
NWP #27 – Aquatic Habitat Restoration, Establishment and Enhancement Activities	Similar to proposed	Similar to current but slightly expands requirements to include a maintenance and monitoring plan	New requirements to establish a monitoring and maintenance plan for Aquatic Habitat Restoration, Establishment and Enhancement Activities would result in a financial impact to local government. Please evaluate this impact with an economic impact statement to local governments as part of a NEPA process; or revise the NWP condition to eliminate the requirement. If funding is not attached to new requirements, then it will reduce local government's ability to provide services.
NWP #33 – Temporary Construction, Access, and Dewatering	Similar to proposed	Similar to current but expands pre construction notification requirements	See General Condition 1
NWP #41 – Reshaping Existing Drainage Ditches	Similar to proposed	Similar to current but requires a preconstruction notification for activities that involve side casting of excavated material into waters of the state, Requires hydro seeding or planting with appropriate herbaceous species	<p>See General Condition 1</p> <p>Hydro seeding and planting requirements may not be appropriate in all situations (e.g. high slopes or if work is complete during season when hydro seeding and planting would not be successful). Please revise to allow multiple types of BMPs in compliance with the NPDES.</p> <p>Please clarify that reshaping existing drainage ditches to restore flow to previous conditions that are Waters of the U.S. is maintenance exempt.</p>