

2012 Nationwide Permit Changes

Seattle District



US Army Corps of Engineers
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Agenda

- Introductions
- 2012 Nationwide Permit Changes
- NWP User's Guide
- 401 Water Quality Certification
- Open House for additional NWP questions



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Workshop Objectives

- To provide an overview of the changes from the 2007 to 2012 NWP national and regional conditions and water quality conditions
- To explain the format of the 2012 NWP User's Guide



What is a NWP?

- Efficient way of evaluating specific categories of development activities that are minimally impacting.
- Reissued every 5 years
- Built in processes for protection of water resources, endangered species, Tribal interests, and historic properties
- National and regional conditions



2012 NWP's - Highlights

- National and Regional Conditions are effective **19 March 2012**
- Reissued 48 NWP's
- 2 new NWP's
- 3 new National General Conditions
- 3 new Regional General Conditions
- 15 new Specific Regional Conditions



2012 NWP's with No Changes

- 1, Aids to Navigation
- 2, Structures in Artificial Canals
- 9, Structures in Fleeting and Anchorage Areas
- 11, Temporary Structures
- 16, Return Water From Upland Contained Disposal Areas
- 17, Hydropower Projects
- 18, Minor Discharges
- 22, Removal of Vessels
- 23, Approved Categorical Exclusions
- 25, Structural Discharges
- 28, Modification of Existing Marinas
- 30, Moist Soil Management for Wildlife
- 32, Completed Enforcement Actions
- 33, Temporary Construction, Access and Dewatering
- 34, Cranberry Production Activities
- 35, Maintenance Dredging of Existing Basins
- 41, Reshaping Existing Drainage Ditches



2012 NWP with Substantive Changes

NWP 3, Maintenance

National Changes

- (a) Repair rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill
 - ▷ Any stream channel modification must be **immediately adjacent** to the project or **within the boundaries** of the structure or fill
- (b) Removal of accumulated sediments and debris in the vicinity of existing structures
 - ▷ May occur in waters **not** immediately adjacent to the structure or fill

Regional Changes: None



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2012 NWP's with Substantive Changes

NWP 5, Scientific Measurement Devices

National Changes

- Added meteorological stations, current gages, and biological observation devices to the list of examples
- Added requirement that devices and any associated structures or fills be removed upon completion of the use and restored to pre-construction elevations to maximum extent practicable.

New Regional Condition

- The quantity of discharged material and the volume of area excavated must not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line and the discharge will not cause the loss of more than 1/10th of an acre of waters of the U.S.



2012 NWP with Substantive Changes

NWP 6, Survey Activities

National Changes

- Added language stating the backfilling of exploratory trenches must not drain a water of the U.S.
- Added sample plots or transects for wetland delineations to list of examples
- Replaced the 25 cubic yard limit for temporary work pads with a 1/10-acre limit

New Regional Condition

- The quantity of discharged material and the volume of area excavated must not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line and the discharge will not cause the loss of more than 1/10th of an acre of waters of the U.S.



2012 NWP with Substantive Changes

NWP 7, Outfall Structures and Associated Intake Structures

National Changes: None

New Regional Condition

- The pre-construction notification must include the following information: **location and size of any submerged aquatic vegetation beds in the project vicinity** (a formal survey may be required) and **location and size of forage fish spawning areas in the project vicinity** (e.g., documented or potential Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), surf smelt (*Hypomesus pretiosus*), and Pacific eulachon (*Thaleichthys pacificus*))



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2012 NWP with Substantive Changes

NWP 10, Mooring Buoys

National Changes: None

New Regional Conditions



1. NWP 10 may not be used in any waterbody the Washington State Department of Health has designated as “closed” to shellfish harvesting (due to the number of boats moored in the waterbody).
2. NWP 10 may not be used in any waterbody the Washington State Department of Health has designated as “threatened” due to the number of boats moored in the waterbody.

Currently, no waterbodies are listed as “closed” and Filucy Bay is listed as “threatened”. Check with the Seattle District for the current list of “closed” or “threatened” waterbodies.



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2012 NWP with Substantive Changes

NWP 12, Utility Lines

National Changes

- Clarified when copies of PCN would be sent by Corps to **NOAA National Ocean Service** for charting (if project is in: **coastal United States**; Great Lakes, and U.S. territories)
- Added requirement **for overhead utility lines**, DE to send PCN and verification letter to **Department of Defense Siting Clearinghouse**, which will evaluate potential effects on military activities (NWPs 12, 39, 51, and 52)



2012 NWP with Substantive Changes

NWP 13, Bank Stabilization

National Changes

- Added language authorizing temporary structures, fills and work necessary to construct the activity
- Added language: Invasive plant species may not be used for bioengineering or vegetative bank stabilization.

Regional Changes: No specific NWP 13 changes



2012 NWP with Substantive Changes

NWP 20, Response Operations for Oil and Hazardous Substances

National Changes

- Changed name of NWP
- Also authorizes approved regional or local contingency plans, as well as temporary structures and fills for spill response **training exercises**

New Regional Condition

1. For spill response **training exercises** in **special aquatic sites**, the discharge of dredged or fill material must not cause the loss of greater than ½ of an acre of waters of the U.S.



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New Regional Condition

- For NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52
- No activity can result in the loss of greater than 300 linear feet of **intermittent** and **ephemeral** stream beds.



2012 NWP with Substantive Changes

NWP 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities

National Changes

- Authorizes rehabilitation or enhancement of **tidal open waters**
- Authorizes discharges to restore stream channels after removing water control structures or fills
- Authorize the re-establishment of submerged aquatic vegetation and tidal wetlands in areas where those habitats previously existed
- Activities subject to the reporting provision must include information on baseline ecological conditions, such as a delineation of wetlands, streams, and other aquatic habitats



Reminders for NWP 27

Regional Condition 1 **requires a PCN submittal** of:

- Why the loss is necessary (when there is a loss)
- How would the loss be fully offset by beneficial impacts of projects (when there is a loss)
- Pre-project site conditions (including photographs)
- General wetland and other aquatic functions the site provides
- **Benefits anticipated from project construction**
- Proposed maintenance and monitoring plans



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2012 NWP with Substantive Changes

NWP 48, Commercial Shellfish Aquaculture Activities

National Changes

- Authorizes existing, **expansion**, and **new** project areas

Regional Changes: None



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NWP 48 Notes

- **Pre-Construction Notification is required in all cases** (per NGC 18, Endangered Species).
- Applicants applying for NWP 48 authorization for **existing** activities, must submit documentation showing that they were authorized to perform the activity and planted the area prior to **March 18, 2007**, for the work to be covered by the ESA Programmatic Consultation for Existing Shellfish Aquaculture Activities.
- For the **expansion** of existing project areas or new project areas created after March 18 2007, applicants will need to complete **individual** ESA consultation.



NWP 48 Notes

- Per the existing Seattle District ESA Programmatic Consultation for Existing Shellfish Aquaculture Activities, **any changes to the authorized work**, such as changing the species or cultivation method, or increasing the gravel applied to special aquatic sites, you must submit a request for a **permit modification** and receive written approval from the Corps before you begin the revised work.
- This NWP authorizes any property markers to demarcate the boundaries of the project area in tidal areas. The permittee must ensure that the markers are not a navigation hazard and must be in compliance with U.S. Coast Guard requirements.



2012 New Nationwide Permit

NWP 51, Land-Based Renewable Energy Generation Facilities

- Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features
- Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy
- Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility



2012 New Nationwide Permit

NWP 51, Land-Based Renewable Energy Generation Facilities

- The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed. This permit does not authorize discharges into non-tidal wetlands adjacent to tidal waters.



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2012 New Nationwide Permit

NWP 52, Water-Based Renewable Energy Generation Pilot Projects

- Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind or hydrokinetic renewable energy generation pilot projects and their attendant features
- Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities
- For the purposes of this NWP, the term “pilot project” means an experimental project where the renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site



2012 New Nationwide Permit

NWP 52, Water-Based Renewable Energy Generation Pilot Projects

- The discharge must not cause the loss of greater than 1/2-acre of waters of the United States, including the loss of no more than 300 linear feet of stream bed
- For each single and complete project, no more than 10 generation units (e.g., wind turbines or hydrokinetic devices) are authorized
- Structures may not be placed in established danger zones or restricted areas, Federal navigation channels, or EPA or Corps designated open water dredged material disposal areas
- Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed



New National General Conditions

- NGC 19, Migratory Bird and Bald and Golden Eagle Permits
- NGC 21, Discovery of Previously Unknown Remains and Artifacts
- NGC 24, Safety of Impoundment Structures



Modified NGCs with Substantive Changes

- NGC 2 (Aquatic Life Movements): added language to emphasize water crossings must **maintain low flows**
- NGC 18 (Endangered Species) and NGC 20 (Historic Properties): added language to emphasize that the applicant **must wait for written approval** from the Corps, even if 45 days have past
- NGC 23 (Mitigation): added language to emphasize that a detailed mitigation plan, approved by the Corps, and **meeting the required components** of a Mitigation Plan per the **Federal Mitigation Rule** is required before work can begin in waters of the U.S.



Reminders about the NGCs

- NGCs have been renumbered
- Any project proposal must meet all NGCs conditions
- NGC 22 (Designated Critical Resource Waters) prohibits discharges into DCRWs for certain NWP's; NOAA-managed marine sanctuaries, marine monuments and National Estuarine Research Reserves (Olympic Coast National Marine Sanctuary, Padilla Bay)



New Regional General Conditions

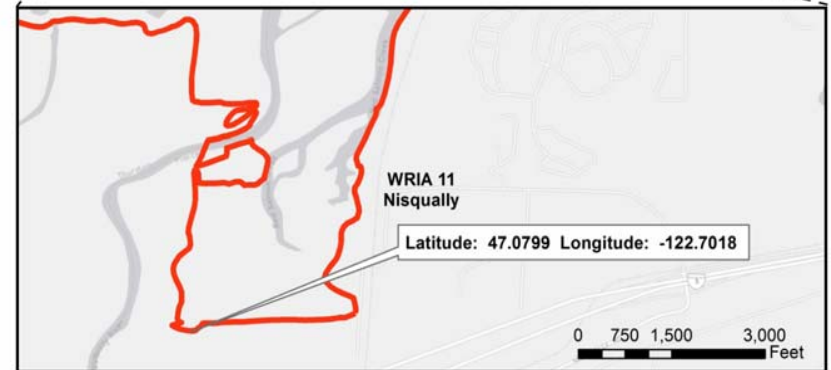
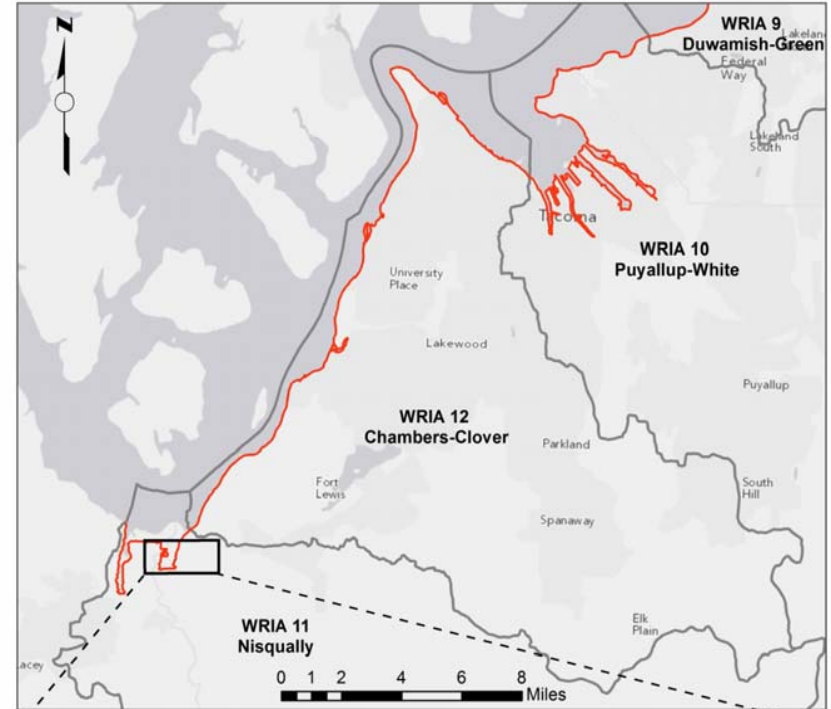
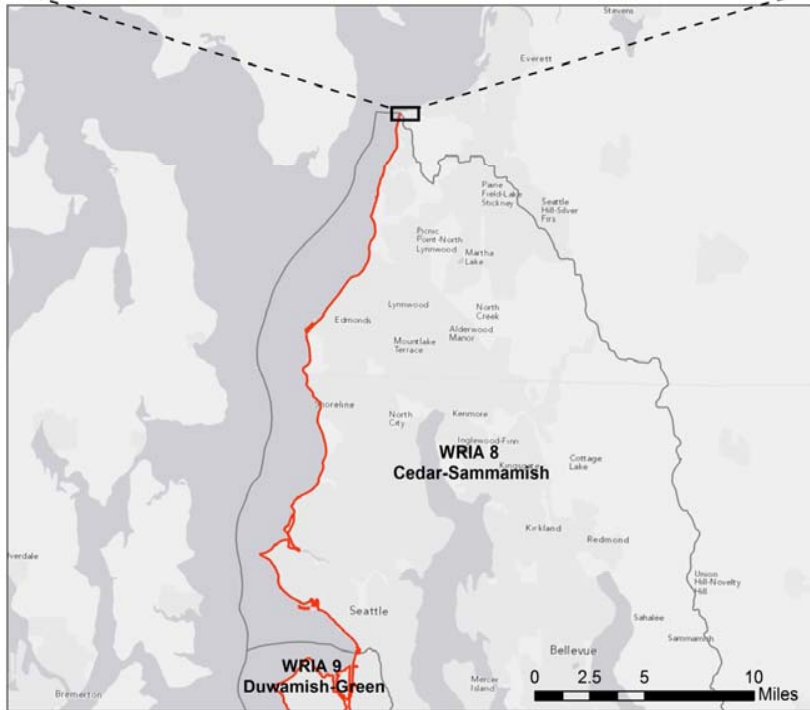
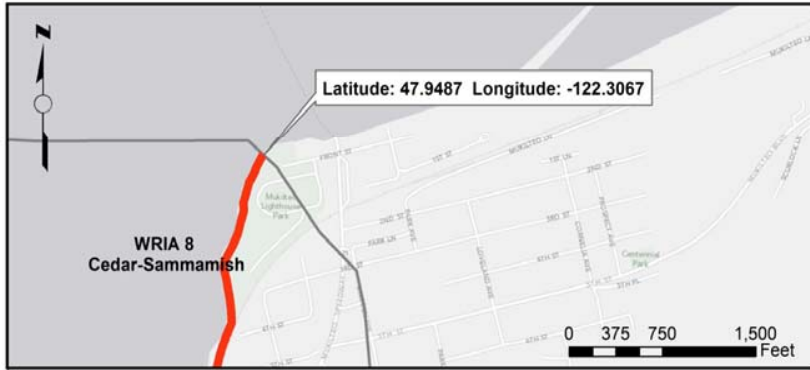
3. **New Bank Stabilization Prohibition Areas in Tidal Waters of Puget Sound.** Activities involving **new** bank stabilization in **tidal waters** in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within specified areas) cannot be authorized by a NWP.
5. **Crossings of Waters of the United States.** Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts, **requires pre-construction notification** to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification **and** submittal of specific information on the **need and design of the crossing.**
10. **Contractor Notification of Permit Requirements.** The permittee must provide a copy of the nationwide permit verification letter, conditions, and permit drawings to all contractors involved with the authorized work, prior to the commencement of any work in waters of the U.S.



RGCs for Bank Stabilization

3. **New Bank Stabilization Prohibition Areas in Tidal Waters of Puget Sound.** Activities involving **new** bank stabilization in **tidal waters** in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within specified areas) cannot be authorized by a NWP.





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RGCs for Bank Stabilization

4. **Bank Stabilization**. Any project including **new or maintenance** bank stabilization activities **requires pre-construction notification** to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification. This requirement does not apply to maintenance work exempt by [33 CFR 323.4 \(a\)\(2\)](#). Each notification must also include the following information:



RGC 4, Required PCN Information

- Need for the work
- Sediment movement and deposition patterns
- Habitat conditions
- River and stream properties
- Bank stabilization in project vicinity
- Use of least environmentally damaging methods including bioengineering
- Native riparian plantings



New Regional General Condition

5. Crossings of Waters of the United States.

- Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts, requires **PCN**
- Each notification must also include the following information:
 - **Need for the crossing**
 - **Crossing design criteria and design methodology**
 - **Rationale behind using the specific design method for the crossing**
- If **stream simulation** design method is not used to design the proposed watercourse crossing, the PCN must include justification for utilizing a different method. The stream simulation design method can be found in the “Design of Road Culverts for Fish Passage” (see www.wdfw.wa.gov/hab/engineer/cm).
- If you have a Hydraulic Project Approval from the Washington Department of Fish and Wildlife, WDFW can typically provide you with the crossing design criteria and methodology they utilized as part of their HPA review.



Existing and Revised RCs

- RGC 1, Aquatic Resources Requiring Special Protection
 - **Added**: wetlands in dunal system along the coast, vernal pools, camas prairie wetlands, **estuarine wetlands**, and wetlands in coastal lagoons
 - NWP use prohibited except for NWP 3, 20, 32, and 38
- RGC 2, Commencement Bay
 - Lists prohibited NWPs
 - NWP 12 use is prohibited only for “loss” (e.g., substations)
- RGC 6, Cultural Resources and Human Burials
 - Must immediately stop work and notify DE within 24 hours
- RGC 8, Vegetation Protection and Restoration
 - For construction impacts, removal of native riparian vegetation and **submerged aquatic vegetation** must be minimized and revegetated if disturbed



New National Definitions

- Direct effects
- High tide line
- Indirect effects
- Single and complete linear and non-linear project



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Notes and Reminders

- Each **separate** and **distant** crossing of a waterbody as well as each crossing of other waterbodies may be permitted by **separate** NWP authorizations.
- The acreage and other applicable limits would be applied to **each** crossing, as long as they are far enough apart to be considered separate and distant



2012 NWP User's Guide

- National Terms and Conditions
- Regional Conditions
- 401 Conditions and CZM Determinations
- PCN requirements
- Agency notification
- National and regional definitions



Taking Discretionary Authority

If the District Engineer determines the adverse effects of the proposal are more than minimal:

- The project will be processed as an individual permit or
- Can only be processed as a NWP if:
 - The project is modified or
 - Mitigation is proposed to reduce the adverse effects to the minimal level



What is a PCN?

- Pre-construction notification is required for the majority of NWP's particularly those occurring in tidal waters or waters containing ESA-listed species
- National General Condition (NGC) 31 the required contents of a PCN
- Submit a JARPA as a PCN



When is a PCN required?

- National General Conditions
- National Specific Conditions
- Regional General Conditions
- Regional Specific Conditions



When is a PCN required?

National General Condition 18 for Endangered Species requires that non-federal applicants must submit a pre-construction notification if:

- Any ESA-listed species or designated critical habitat **might be affected** or is in the **vicinity** of the project (e.g., Puget Sound, major tributaries to Puget Sound)
- And must **wait until notified** by the Corps that the ESA requirements are met and the activity is authorized **before** work can begin in waters of the U.S.



When is a PCN required?

National General Condition 20 for Historic Properties requires that non-federal applicants must submit a pre-construction notification if:

- The activity may have the **potential to cause effects** to any historic properties listed on, determined to be **eligible** for listing on, or **potentially eligible** for listing on the National Register of Historic Places, including previously unidentified properties
- And must **wait until notified** by the Corps that NHPA requirements are met and the activity is authorized **before** work can begin in waters of the U.S.



Agency Notification

Nationally Required, NGC 31: All NWPs requiring a PCN and

- Result in the loss of greater than ½ of an acre of waters of the U.S.
- All NWP 48 activities
- USFWS, NMFS, EPA, and Ecology (for new or expansion activities)
- 10 days with a 15 day time extension



New Agency Notification

- Regionally requested

NWP # and Specific Activity	Agency to be Notified
NWP 3 (if bank stabilization work is proposed beyond the original footprint)	EPA, WDNR (WA Department of Natural Resources), USFWS
NWP 7 (if a new outfall is proposed)	EPA, WDNR
NWP 13 (for activities greater than 500 feet in length or activities in inland marine waters)	EPA, WDNR, USFWS
NWP 33 (when temporary fills will remain in place longer than 6 months)	WDNR
NWP 36 (if an activity will exceed 50 cubic yards or 20 feet in width)	WDNR
NWP 51	EPA, WDNR, USFWS
NWP 52	EPA, WDNR, USFWS

- 10 days with a 15 day time extension



Questions?



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