

Implementation of the NOAA biological opinion on the 2012 Nationwide Permits

Headquarters, U.S. Army Corps of Engineers

November 2015



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Consultation background

- Voluntary consultation
 - ▶ Activity-specific ESA Section 7 consultation required for any NWP activity that may affect listed species or critical habitat (33 CFR 330.4(f); NWP general condition 18)
- February 13, 2012 – 2012 Nationwide Permits issued
- February 15, 2012 – NOAA issues first biological opinion on 2012 Nationwide Permits (jeopardy)
- July 27, 2012 – re-initiation of consultation
- February 4, 2013 – Corps' biological evaluation adding seven protective measures
- March 6, 2014 – ASA(CW) letter to NOAA modifying proposed action with five additional protective measures
- November 24, 2014 – NOAA issues second biological opinion (no jeopardy)



Nationwide permit program implementation

- Corps districts will continue evaluate each NWP PCN and make ESA section 7 “effect” determinations
 - ▶ Formal consultation on each “may affect, likely to adversely affect ” determination
 - ▶ Informal consultation on each “may affect, not likely to adversely affect” determination
 - ▶ Consider impacts from regulated activities to decide whether a direct or indirect effect to listed species or critical occurs as a result of the proposed activity requiring Corps authorization
 - e.g., noise from pile driving in navigable waters, impacts from dredging activities



Implementation of 2014 NMFS BO

1. Corps develops information packages for general condition 18 compliance
 - ▶ Implementation guidance issued 5 August 2015
2. Corps requires list of information for NWP pre-construction notifications
 - ▶ Covered under 2012 NWP “pre-construction notification” general condition 31
3. Corps districts coordinate with NOAA regional or local offices to identify new or modified regional conditions
 - ▶ Implementation guidance issued 7 May 2015



Implementation of 2014 NMFS BO

4. Corps issues guidance to include special condition in NWP verifications to require permittees to report listed species injured or killed to NOAA
 - ▶ Implementation guidance issued 5 May 2015
5. Corps will issue guidance on conducting cumulative effects analyses under National Environmental Policy Act, Clean Water Act 404(b)(1) Guidelines, and Endangered Species Act
 - ▶ Guidance is being written
6. Corps will utilize discretion in NWP general condition 23, mitigation, and may require wetland compensatory mitigation for losses of less than 1/10-acre
 - ▶ Covered under 2012 NWP general condition 23, paragraph (c)



Implementation of 2014 NMFS BO

7. Corps will provide NOAA with semi-annual reports on all permitted activities (general and individual permits) in 10-digit hydrologic units inhabited by their listed species
 - ▶ Reports under development in ORM
 - ▶ Awaiting 10-digit hydrologic unit list from NMFS
8. Mandatory meetings between Corps districts and NOAA regions after providing semi-annual reports
 - ▶ Will occur after first semi-annual report provided to NMFS
9. Corps will provide its project managers with additional training and guidance to ensure accurate data entry
 - ▶ On-going action, through PROSPECT courses and other training classes



Implementation of 2014 NMFS BO

10. Corps will conduct rulemaking to modify NWP's 12, 13, 14, and 36 to require pre-construction notifications for permanent fills that add impervious surface cover
 - ▶ Awaiting list of 10-digit hydrologic units from NMFS
11. Corps will provide NOAA with baseline impervious surface cover for each 10-digit hydrologic unit NOAA has designated as inhabited by their listed species
 - ▶ Awaiting list of 10-digit hydrologic units from NMFS
12. Corps will include in semi-annual reports acreage of impervious surface cover added to 10-digit hydrologic units as a result of fills authorized by Corps permits
 - ▶ Awaiting list of 10-digit hydrologic units from NMFS
 - ▶ ORM modifications under development

