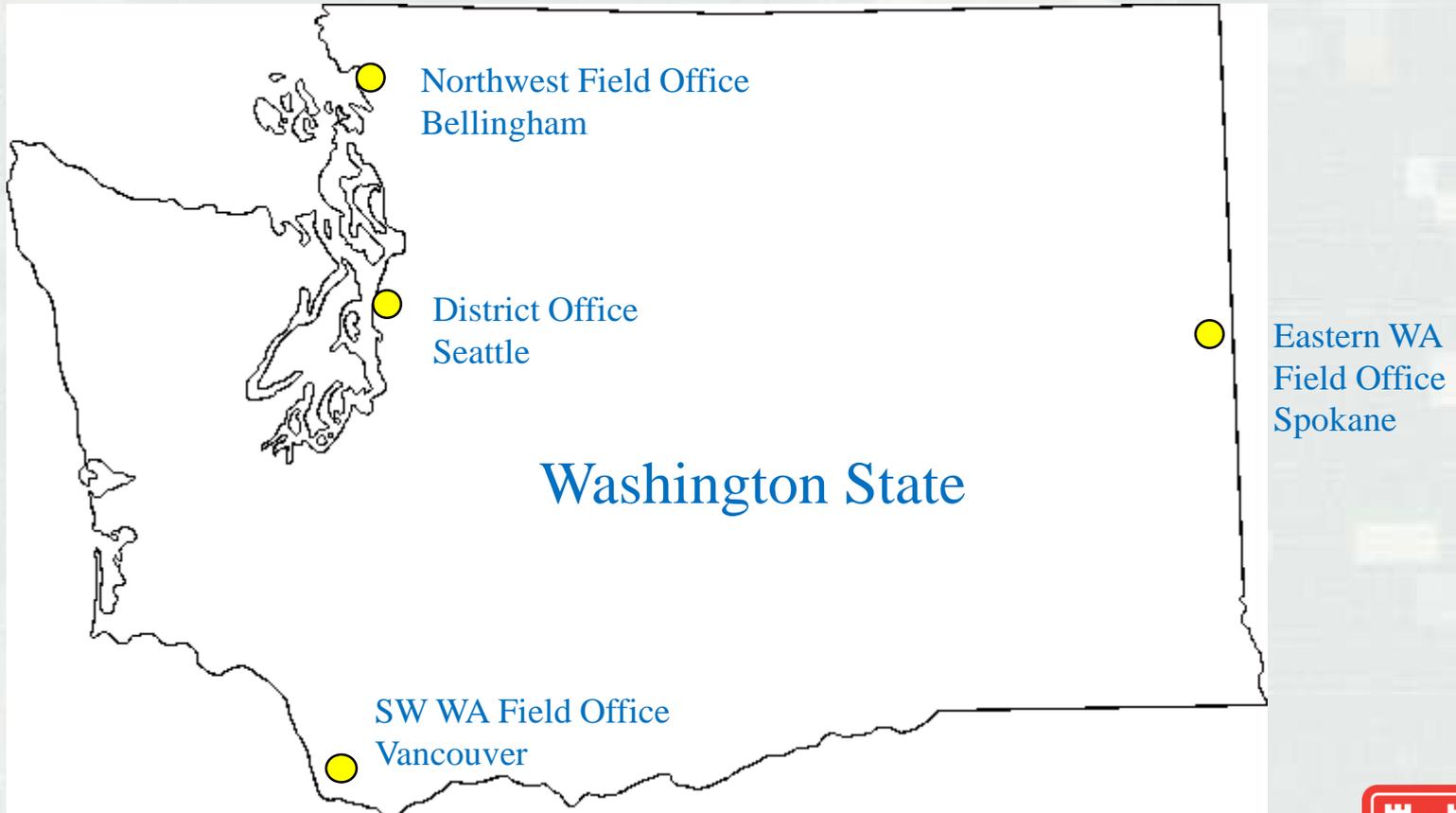


2017 Nationwide Permit Reissuance

Seattle District, U.S. Army Corps of Engineers
14 December 2015
Tribal Coordination Meeting



Seattle District's Limits of Regulatory Jurisdiction

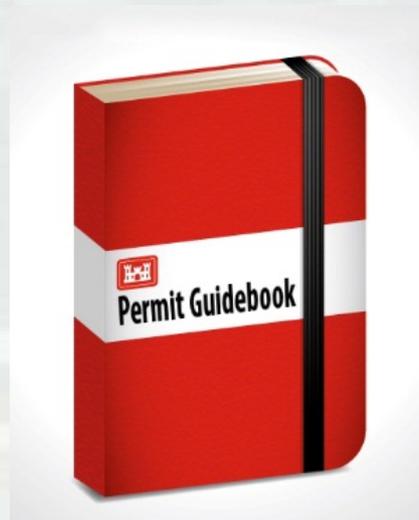


Lower Columbia River Ports - Portland District



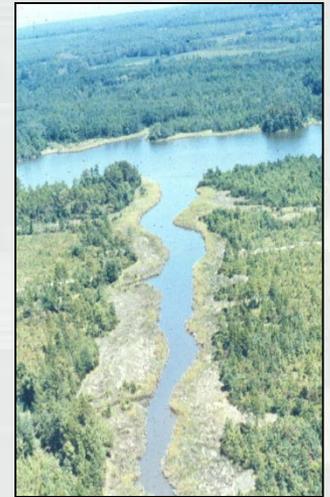
²
BUILDING STRONG®

Permitting Authority and Jurisdictional Areas



Section 10 of the Rivers and Harbors Act of 1899

- To protect and preserve the navigability of navigable waters
- Requires a permit for any structure or work in a navigable water of the U.S.



Examples of Navigable Waters

- Puget Sound
- Duwamish River
- Lakes Washington, Sammamish & Union
- Hoh River
- Columbia River
- Skagit River
- Lake Chelan

http://www.nws.usace.army.mil/Portals/27/docs/regulatory/permit%20guidebook/Navigable_Waters_of_the_US_in_WA_State.pdf



Activities regulated under Section 10 of the Rivers and Harbors Act include

- buoys
- floats
- marinas
- bulkheads
- breakwaters
- dredging
- fill
- piers
- piling
- boatlifts
- boat ramps
- marine railways
- disposal of dredged material



Section 404 of the Clean Water Act

Purpose:

To restore and maintain the chemical, physical, and biological integrity of the waters of the U.S.

Regulate:

The **discharge of dredged or fill material** in any water of the U.S.



Waters of the U.S.

- Marine Waters
- Lakes
- Streams
- Ditches
- Wetlands



BUILDING STRONG®

Activities Regulated under Section 404



Lines of Jurisdiction

Fresh Waters

Ordinary High Water Mark

Marine Waters

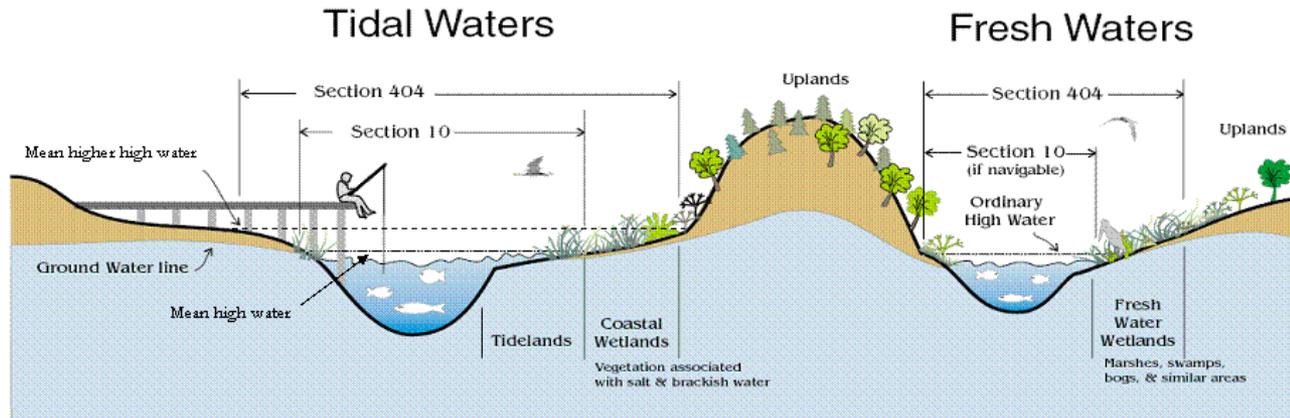
Section 10, Rivers and Harbors Act = MHW

Section 404, Clean Water act = MHHW



Jurisdictional Boundaries

CORPS OF ENGINEERS REGULATORY JURISDICTION



Section 404

Disposal of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.

Section 10

All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves, floats, intake / outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.



Types of Permits for Section 10 and 404 Activities

INDIVIDUAL

Standard Permit

Letter of Permission (LOP)

GENERAL

Nationwide Permit

Regional General Permit



Standard Individual Permit

- Public Notice - to Federal, state, local agencies, Indian treaty tribes, adjacent property owners, interested citizen groups and individuals (30 day comment period)
- Alternatives Analysis
- Individual 401 water quality certification for 404 projects
- Prepare Environmental Assessment and Decision Document



Letter of Permission (LOP)

- Section 10 activities only
- Non-controversial projects
- Small scale activities
 - ▶ Construction, maintenance, or replacement of piers, mooring piles, or floats
- Notification to Tribes, NMFS, USFWS, Ecology



Types of Permits for Section 10 and 404 Activities

INDIVIDUAL

Standard Permit

Letter of Permission (LOP)

GENERAL

Nationwide Permit

Regional General Permit



Nationwide Permits

- Authorize Section 404 and Section 10 activities
- Issued on a national basis for activities that are similar in nature
- Timely authorization
- Cause only minimal adverse environmental effects when performed separately
- Cause only minimal cumulative adverse effect on the aquatic environment
- Last issued on March 19, 2012; Currently 50 Nationwide Permits
- Approx. 2/3 of the Seattle District projects are authorized with a NWP
- Encourages applicants to design projects that are minimally impacting
- Notification to Tribes
- Allows Seattle District to add Regional Conditions to ensure projects are minimally impacting



Regional General Permits

- Streamlined review
- Standard construction specifications
- Residential pier, ramps, floats, and watercraft lifts
- Programmatic ESA consultation
- Specific geographic region



Notification to Tribes



Related Laws and Policies

- Tribal Trust Responsibilities
- Section 106 of the National Historic Preservation Act
- Section 7 of the Endangered Species Act
- Magnuson-Stevens Fishery Conservation Management Act
- Coastal Zone Management Act
- Section 401 of the Clean Water Act
- National Environmental Policy Act
- Mitigation



Objectives of Nationwide Permit Reauthorization

- Reissue NWP's prior to expiration
- Maintain consistency across NWP's to minimize impacts to similar aquatic resources in regard to:
 - ▶ Impact limits
 - ▶ Protection of aquatic environment
 - ▶ Pre-Construction Notifications



NWP Conditions

Conditions that apply to all NWPs:

- National Specific Conditions
- National General Conditions
- Regional Specific Conditions
- Regional General Conditions
- Section 401 Water Quality Certification Specific Conditions
- 401 General Conditions



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



National General Condition (NGC) 31 – Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible.



When is a PCN required?

National General Condition 18 for Endangered Species requires that non-federal applicants 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 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.



National General Condition 17

Tribal Rights

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fish and hunting rights.



National General Condition 21

Discovery of Previously Unknown Remains and Artifacts

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.



Regional General Condition 6

Cultural Resources and Human Burials

Permittees must immediately stop work and notify the District Engineer within 24 hours if, during the course of conducting authorized work, human burials, cultural resources, or historic properties, as identified by the National Historic Preservation Act, are discovered. Failure to stop work in the area of discovery until the Corps can comply with the provisions of 33 CFR 325 Appendix C, the National Historic Preservation Act, and other pertinent laws and regulations could result in a violation of state and federal laws. Violators are subject to civil and criminal penalties.



2012 NWP's - Highlights

- Reissued 48 NWP's
- 2 new NWP's
- 4 new National General Conditions
- 3 new Regional General Conditions
- 15 new Specific Regional Conditions



BUILDING STRONG®

New 2012 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.
- 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.



New 2012 Regional General Conditions Cont.

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.



New 2012 Regional Condition

No activity can result in the loss of greater than 300 linear feet of **intermittent** and **ephemeral** stream beds.

- Applies to NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52



BUILDING STRONG®

U.S. Army Corps of Engineers, Seattle District 2017 NWP Reissuance Process Proposed Schedule



U.S. Army Corps of Engineers, Seattle District

2017 Nationwide Permit (NWP) Reissuance Process Proposed Schedule

Action	Proposed Timeframe	Notes
District initiates coordination with Tribes, State, and Federal agencies on NWP reissuance process. Requests initial comments on current regional conditions prior to Public Notice in Feb 2016	November 2015 through January 2016	
HQ publishes Notice of Draft NWPs in Federal Register (60 day comment period)	February 2016	Comment period ends April 2016
District issues Public Notice with draft regional conditions (30 day comment period)	February 2016	Comment period ends March 2016
EPA & Corps provide informational Webinar on 2017 NWP reauthorization process, regional conditions and 401 Water Quality Certification (WQC) process to Tribes in Region 10 (AK, ID, OR, WA)	Spring 2016 (during Public Notice comment period)	Webinar for Tribes with and w/o 401 WQC authority. Opportunity for early Tribal input on EPA 401 WQC decisions
District reviews comments on regional conditions	Spring 2016	
District meets with agencies and Tribes to discuss comments and any potential changes to regional conditions	Spring 2016	
District coordinates with Department of Ecology (Ecology), EPA, and Tribes with 401 WQC on draft regional conditions so 401 and Coastal Zone Management Act (CZMA) decisions can be made after HQ finalizes NWPs	Summer 2016	Note: The Department of Ecology has CZMA authority in WA and makes all CZMA decisions
District coordinates draft regional conditions with Regulatory Branch Chief and District Engineer	Summer 2016	
District coordinates draft regional conditions with Division	Summer/Fall 2016	



Proposed Schedule Cont.

EPA sends consultation offer letter to Tribes in Region 10 on EPA's draft 401 WQC decisions on NWP's with District's regional conditions	Early Fall 2016	
District requests Ecology, EPA, and designated Tribes make 401 WQC determinations and that Ecology make CZMA determinations	Early Fall 2016	
Ecology, EPA, and designated Tribes issue public notice requesting comments regarding 401 WQC and CZMA	Early Fall 2016	
District's final coordination with tribes and agencies on regional conditions	December 2016	
HQ publishes final NWP's in Federal Register	December 2016	
Ecology, EPA, and designated Tribes issue 401 WQC decisions and Ecology issues CZMA determination	January 2017	
District submits decision documents, final draft regional conditions, and CZMA and 401 conditions to Division for approval	February 2017	
District publishes final Special Public Notice and new NWP's go into effect	March 2017	

Date: 14 December 2015

Note: This schedule is meant to give Tribes and agencies a better understanding of the general procedures and timeframes for the reissuance process. Dates may be modified.

