



US Army Corps  
of Engineers  
Seattle District

# Special Public Notice

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## 2021 NATIONWIDE PERMIT SUPPLEMENTAL REGIONAL GENERAL CONDITION(S) REQUEST FOR COMMENTS

Nationwide permits (NWP) 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. 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 NWPs are no more than minimal, both individually and cumulatively.

There is ongoing interest in the nearshore habitat and functions within Puget Sound and a request that the 2021 NWP Regional General Condition (RGC) 3, which applies to Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11, and 12, be modified to apply to all tidal waters of Puget Sound. The existing RGC 3 prohibits the use of NWPs to authorize new bank stabilization within the identified WRIAs. In response to the request, the Northwestern Division has re-evaluated the past five years of permitting data within Puget Sound. Based on that re-evaluation the Division Engineer is proposing to modify the 2021 NWPs within all tidal waters of Puget Sound (WRIAs 1, 2, 3, and 5 -19) (see Figure 1) by adding up to three additional RGCs that would apply to the use of NWPs within all tidal waters of Puget Sound. These additional conditions may help ensure that the use of NWPs within the tidal waters of Puget Sound would continue to have no more than minimal effects, both individually and cumulatively.

The following RGCs are proposed for consideration:

Draft RGC A. The length of new bank stabilization within waters of the U.S., including new bank stabilization associated with maintenance activities that would expand previously authorized armoring length, cannot exceed 50 linear feet within the tidal waters of Puget Sound under any NWP. This condition does not apply to NWP 54, *Living Shorelines*.

Rationale for Draft RGC A: based on a review of the permitting data within the tidal waters of Puget Sound, projects with  $\leq 50$  linear feet of bank stabilization generally do not have more than a minimal individual or cumulative effect. In the past five years, most permitted activities that are

50 linear feet or less consisted of restoration activities or included stabilization where there is existing infrastructure such as roads. These activities typically have no more than minimal effects on the environment.

A pre-construction notice (PCN) would still be required for projects with 50 feet or less of stabilization and a site- and project-specific evaluation will occur to determine if the proposed project would have a more than minimal effect on the aquatic environment, including nearshore habitat functions and features. The district engineer may elevate the proposed action to an Individual Permit review if there are concerns that the specific proposed activity would have a more than minimal individual or cumulative impact, or otherwise not comply with applicable NWP terms and conditions.

Draft RGC B. No NWP activity can cause more than minimal adverse effects to drift cells within tidal waters of Puget Sound, including more than minimal adverse effects to sediment recruitment, transport, or deposition. This regional condition applies to all NWP activities within tidal waters. Information regarding the location and movement of drift cells is available at the Washington State Department of Ecology's Coastal Atlas Map website: <https://apps.ecology.wa.gov/coastalatlasmap>.

Rationale for Draft RGC B: This condition specifically identifies for the public the importance of drift cells into the nearshore habitat and aquatic species within Puget Sound. Based on a review of potential impacts from activities authorized by an NWP, it has been determined that activities that would prevent the function of necessary sediment movement and supply sources would likely have more than a minimal adverse effect. This condition would provide clarity to the public about potential effects that NWS closely scrutinizes when verifying any NWP.

Draft RGC C. No NWP activity can prevent the functioning of feeder bluffs or other necessary sediment supply sources in tidal waters. This regional condition applies to all NWP activities within the tidal waters of Puget Sound. Information regarding shoreline stability and coastal landforms, to include feeder bluffs, is available at the Washington State Department of Ecology's Coastal Atlas Map website: <https://apps.ecology.wa.gov/coastalatlasmap>.

Rationale for Draft RGC C: This condition specifically identifies for the public the importance of feeder bluffs and sediment into the nearshore habitat and aquatic species within Puget Sound. Based on a review of potential impacts from activities authorized by NWPs, it has been determined that activities that would prevent the function of necessary feeder bluffs and shoreline sediment supply sources would likely have a more than minimal adverse effect. This condition would provide clarity to the public about the potential effects that NWS has been closely scrutinizing when verifying any NWP.

The Northwestern Division is seeking comments on whether to adopt any of the proposed RGCs. Regarding Draft RGC A, please provide comments regarding the proposed length restriction. Comments should include rationale supporting expansion or contraction of the proposed length. Additionally, the Northwestern Division is seeking comments regarding whether Draft RGC A should include a waiver that would allow project proponents to seek waivers to the 50-foot length so long as site-specific conditions and project design would ensure

that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually, and cumulatively. In accordance with the 2021 NWP, the district engineer may only grant a waiver upon written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. Comments on regional issues relating to the proposed RGCs should be sent to [NWP-SeattleTeam@usace.army.mil](mailto:NWP-SeattleTeam@usace.army.mil); include on the subject line of the email "Comments on Supplemental NWP Regional Conditions" or via regular mail 4735 E. Marginal Way South, Bldg 1202, Seattle, Washington, 98134. Comments are due by July 27, 2023. After the public process and tribal and agency coordination, the Division Commander will make a final decision on whether to modify the existing NWP by approving any of the proposed draft RGCs.

Figure (1)

Figure 1. Puget Sound WRIAs

