



US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch

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Public Notice Date: April 26, 2024

Expiration Date: May 28, 2024

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 general conditions (RGCs) specific to the needs and/or requirements of a particular region or state. RGCs are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively.

There is ongoing interest in the nearshore habitat and functions within Puget Sound. On June 27, 2023, the Seattle District published a Special Public Notice on behalf of the Northwestern Division proposing three new RGCs (A, B, C) that would further restrict the use of NWP within certain waters in Washington State. In response to comments that were received, the Division Engineer is proposing four additional RGCs (D, E, F, G) for consideration alongside the three already proposed RGCs. These additional conditions may help ensure that the use of NWP within certain waters in Washington would continue to have no more than minimal effects, both individually and cumulatively.

The following additional RGCs are proposed for consideration:

Proposed RGC D: No NWP activity can cause more than minimal adverse effects to forage fish spawning beaches. This regional condition applies to all NWP activities within tidal waters.

Information regarding the location of forage fish spawning beaches is available on the Washington Department of Fish and Wildlife's (WDFW) Forage Fish Spawning Map at: <https://wdfw.maps.arcgis.com/home/webmap/viewer.html?webmap=19b8f74e2d41470cbd80b1af8dedd6b3>

This map is a resource that can be used to help identify the location of forage fish spawning beaches; this is not a substitute for site-specific data. Information about forage fish, their spawning habitats, and spawning behavior are available through the WDFW. Additional information about the importance of these species as prey species for Endangered Species Act listed salmonids can be found on the National Marine Fisheries Service website.

Rationale for proposed RGC D: This proposed RGC specifically identifies for the public the importance of forage fish spawning beaches to 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 adversely affect forage fish spawning beaches may 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.

Proposed RGC E: Bank stabilization activities, including maintenance activities, shall utilize living shorelines, vegetative stabilization, bioengineering, including but not limited to large woody material with intact root wads, and other soft bank stabilization approaches to the maximum practicable extent before considering hard bank stabilization methods such as bulkheads and rock revetments.

Rationale for proposed RGC E: Requiring the use of softer bank stabilization approaches to the maximum extent practicable, which can minimize adverse effects to aquatic species and habitat by providing in-water and above water habitat which provides cover and forage opportunities for aquatic species, and often match surrounding site conditions by mimicking natural bank evolution processes and aesthetic condition, will help ensure that activities authorized under an NWP have no more than a minimal adverse cumulative environmental effect.

Proposed RGC F: To ensure compliance with General Condition 17, *Tribal Rights*, a pre-construction notification is required for all NWPs associated with structures or fills in areas where Tribes have retained via treaty the right to fish in their usual and accustomed grounds and stations.

Rationale for Proposed RGC F: As described above, this proposed RGC would ensure compliance with General Condition 17.

Proposed RGC G: (applicable to NWP 3, Maintenance Activities) Maintenance of existing bank stabilization structures that expand the existing structure's footprint or dimensions either waterward, vertically, or linearly along the shoreline within the geographic jurisdiction of the U.S. Army Corps of Engineers are not eligible for NWP 3.

Rational for proposed RGC G: This proposed RGC clarifies and provides clear notice to the public that activities expanding the footprint of bank stabilization structures within the Corps' jurisdiction are not eligible for coverage under NWP 3. Such activities may be eligible for under another NWP, e.g., NWP 13, Bank Stabilization, or, if not eligible under another NWP, may seek authorization via the individual permit process.

The Northwestern Division is seeking comments on whether to adopt any of the proposed RGCs. Regarding proposed RGC E, the Northwestern Division is seeking comment on the best way to graphically display for the public where Tribes may have treaty-reserved rights to fish in their usual and accustomed grounds and stations, i.e., clear guidance to the public as to where this Draft RGC would apply due to the potential presence of treaty-reserved rights.

Additional Request: The Northwestern Division is also soliciting comments on whether it should consider proposing to expand the prohibition on the use of nationwide permits for authorization of new shoreline stabilization structures under RGC 3 to all tidal waters in Puget Sound during the next round of nationwide permit issuance.

Comments on regional issues relating to the proposed RGCs should be emailed to:
NWP-SeattleTeam@usace.army.mil

Include on the subject line of the email "Comments on Supplemental NWP Regional Conditions".
Email comments are due by May 28, 2024.

Comments may also be provided via U.S. Mail at the address 4735 E. Marginal Way South, Seattle, Washington 98124-2388. Comments provided by US Mail must be postmarked on or before May 28, 2024.

After the public comment process and tribal and agency coordination, the Northwestern Division Commander will make a final decision on whether to modify the existing NWP by approving any of the proposed RGCs.