



US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch

4725 E. Marginal Way S., Building 1202

Seattle, Washington 98134

Telephone (206) 764-3495

ATTN: NWP-SeattleTeam@usace.army.mil

Public Notice Date: June 28, 2024

ANNOUNCEMENT: 2021 NATIONWIDE PERMITS – NEW REGIONAL GENERAL CONDITIONS

BACKGROUND: On behalf of the Northwestern Division the Seattle District published a Special Public Notice (SPN) on June 27, 2023, proposing three new regional general conditions (RGCs A, B, and C) that would further restrict the use of NWP within certain waters in Washington State. In response to comments on that SPN and through government-to-government consultation with Native American Tribes, the Northwestern Division Engineer proposed four additional RGCs, D, E, F, and 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.

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 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. Division Engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal.

PURPOSE: To help ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively.

All of the proposed RGCs, with some minor modifications, have been approved. Enclosed (Enclosure 1) are current regional general conditions approved by the Division Engineer for Washington State. Unless otherwise noted, all regional conditions listed on this enclosure are applicable for activities in Washington State. The amendments to the supplemental documents for the 2021 NWP in Washington State, including a summary of comments and responses, can be viewed on the Seattle District's website.

Documents on the Seattle District website for overall NWP compliance, pre-construction notification requirements, and permit review will be updated no later than July 30, 2024.

ENCLOSURE 1

Seattle District Regional Conditions for Nationwide Permits

If you would like to view the 2021 Final Regional Conditions for Seattle District for comparison, please view them on our webpage located at: www.nws.usace.army.mil, select Regulatory Permit Information, Permit Guidebook

REGIONAL GENERAL CONDITIONS (RGCs). The following conditions apply to all Nationwide Permits (NWP) for the Seattle District in Washington State, unless otherwise specified.

RGCs 10–14 are the newly added RGCs.

RGC 1, Project Drawings

Drawings must be submitted with a pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the United States will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

RGC 2, Aquatic Resources Requiring Special Protection

A PCN is required for activities resulting in a loss of waters of the United States in wetlands in dunal systems along the Washington coast, mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.

RGC 3, New Bank Stabilization 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 the areas identified on Figures 1a through 1e) cannot be authorized by NWP.

RGC 4, Commencement Bay

No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

RGC 5, Bank Stabilization

All projects including new or maintenance bank stabilization activities in waters of the United States where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

For new bank stabilization projects only, the following must be submitted to the Corps:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

RGC 6, Crossings of Waters of the United States

Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the U.S. Army Corps of Engineers (see NWP general condition 32).

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the applicant must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

RGC 7, Stream Loss

A PCN is required for all activities that result in the loss of any linear feet of streams.

RGC 8, Construction Boundaries

Permittees must clearly mark all construction area boundaries within waters of the United States before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

RGC 9, ESA Reporting to NMFS

For any nationwide permit that may affect threatened or endangered species:

Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries, National Marine Fisheries Service (NMFS) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NMFS, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by the NMFS to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

RGC 10, Limitations on New Bank Stabilization Within the Salish Sea

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 Salish Sea under any NWP.

RGC 11, Effects to Forage Fish Spawning Beaches, Drift Cells, and Feeder Bluffs)

No NWP activity can:

- a) cause more than minimal adverse effects to forage fish spawning beaches or drift cells; or
- b) prevent the functioning of feeder bluffs, including more than minimal adverse effects to sediment recruitment, transport, or deposition.

This regional general condition applies to all NWP activities within the Salish Sea. 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>. Information regarding the location and movement of drift cells, 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>. These maps are resources that can be used to help identify the location of forage fish spawning beaches, drift cells, and feeder bluffs; they are 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.

RGC 12, Bank Stabilization Design Considerations

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.

RGC 13, PCNs for Activities in Areas Where There May Be Treaty-Reserved Tribal Rights

To ensure compliance with General Condition 17, *Tribal Rights*, a pre-construction notification (PCN) 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.

RGC 14, Maintenance of Existing Bank Stabilization Structures and Fills

(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.