

2021 NATIONWIDE PERMIT UPDATE

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OBJECTIVES

- ✓ Brief background on NWPs
- ✓ Explain the differences between the 2017 NWPs and the 2021 NWPs
- ✓ Discuss major changes to 2021 NWPs, including General Conditions and definitions



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NATIONWIDE PERMIT BACKGROUND



- General permits issued by Corps Headquarters
 - Categories of activities with no more than minimal individual and cumulative adverse environmental effects
 - Reissuance process (usually) every 5 years
 - Rulemaking activity, with interagency review under EO 12866
- Authorize ~35,000 activities per year (reported) plus ~30,000 non-reporting activities (nationally)

- First issued in 1977
- 15 NWP and 14 GC



- Under the 2021 Proposal
 - 56 NWP and 32 GC



SUMMARY OF 2021 NWP REISSUANCE

- On January 13, 2021, the Corps reissued and modifying 12 existing NWPs and issued 4 new NWPs. The effective date for these NWPs was March 15, 2021.
- For these 16 2021 NWPs, the Corps reissued and modified the NWP General Conditions and definitions, and the Sacramento District modified their Regional Conditions for these 2021 NWPs.
- At this time, the Corps is not reissuing or modifying the remaining 40 existing 2017 NWPs or finalizing proposed new NWP E (water reclamation and reuse facilities)
- The 40 remaining 2017 NWPs continue to be in effect under the January 6, 2017, final rule
 - General Conditions and definitions in the 2017 final rule continue to apply to those permits.



2021 NATIONWIDE PERMITS



Modified and reissued 12 NWPs:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

Issued 4 new NWPs:

- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances



These 16 will expire on March 14, 2026



2021 NWPs Effective

March 15, 2021 –

Will expire

March 14, 2026

12	50
21	51
29	52
39	55
40	56
42	57
43	58
44	
48	

2017 NWPs – Will expire

March 18, 2022



1	13	25	37
2	14	26	38
3	15	27	41
4	16	28	45
5	17	30	46
6	18	31	47
7	19	32	49
8	20	33	53
9	22	34	54
10	23	35	
11	24	36	



Summary of the 2021 and 2017 Nationwide Permits.docx

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Summary of the 2021 Nationwide Permits (grey rows) and 2017 Nationwide Permits (white rows)¹

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 1 – Aids to Navigation	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 2 – Structures in Artificial Canals	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 3 – Maintenance	10/404						
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills		authorizes only minor deviations for maintenance	PCN not required	no	all waters of the U.S.	Authorize the repair, rehabilitation, or replacement of any currently serviceable structure or fill that did not require a permit at the time it was constructed. Authorize new or additional riprap to protect the structure or fill.	Does not authorize: maintenance dredging for the primary purpose of navigation; beach restoration; or new stream channelization or stream relocation projects. Limits stream channel modification to the minimum necessary for the maintenance activity.
(b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals		200 feet from structure; minimum necessary to restore capacity intake or outfall or associated canal	all activities	yes	all waters of the U.S.		
(c) Temporary structures, fills, and work necessary to conduct maintenance activity			PCN not required	no	all waters of the U.S.	none.	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	10/404	none	PCN not required	no	all waters of the U.S.	none	Does not authorize impoundments or artificial reefs. Does not authorize covered oyster trays or clam racks.
NWP 5 – Scientific Measurement Devices	10/404	25 cubic yards for weirs and flumes	PCN not required	no	all waters of the U.S.	none	Devices and any associated structures or fills be removed upon completion of the use and restored to pre-construction elevations to maximum extent practicable.

¹ This table is intended to provide general information on the 2021 and 2017 nationwide permits. The 2021 nationwide permits, in which 12 existing nationwide permits have been reissued and 4 new nationwide permits have been issued along with changes to the general conditions and definitions, have been submitted to the *Federal Register* for publication. The final rule for the 2021 nationwide permits includes revised general conditions and definitions. The 12 existing 2021 NWPs replace 12 of the existing 2017 NWPs, and these NWPs are indicated in rows with grey background. Forty of the 2017 nationwide permits continue to be in effect until they are replaced by reissued NWPs. The text of the 2017 nationwide permits and their general conditions were published in the January 6, 2017, issue of the *Federal Register* (82 FR 1860). For the 2017 NWPs that remain effective, the "Changes" column indicates the changes that were published in the September 15, 2020, issue of the *Federal Register* (85 FR 57298) but will not be finalized at this time. For the 12 existing permits that are reissued, the "Changes" column indicates the changes that were finalized in the rule submitted to the *Federal Register* on January 4, 2021.

January 4, 2021

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MAIN CHANGES TO NWPS

NWP 12 – split

- Issued separate NWPs for general categories of utility line sectors:
 - Modify NWP 12 – Oil or natural gas pipeline activities
 - New NWP 57 – Electric utility line and telecommunications activities
 - New NWP 58 – Utility line activities for water and other substances





SUMMARY OF 2021 NWP 12:



Removal of specific PCN requirements:

- activities that involve mechanized land clearing in a forested wetland for a utility line right-of-way;
- utility lines in WOUS., excluding overhead lines, that exceed 500 feet;
- utility lines placed within a jurisdictional area, that run parallel to or along a stream bed that is within jurisdictional area;
- permanent access roads constructed above grade in WOUS. for a distance of more than 500 feet; or
- permanent access roads are constructed in WOUS with impervious materials



New PCN requirement for NWP 12:

- a section 10 permit is required;
- the discharge will result in the loss of > than 1/10- acre of WOUS; or
- the activity is associated with an overall project that is > than 250 miles in length and the project purpose is to install new pipeline



4 NEW NWPS:

- NWP 55 – Seaweed Mariculture Activities
- NWP 56 Finfish Mariculture Activities
- NWP 57 Electric Utility Line and Telecommunications Activities:
 - Construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in WOUS.
 - Reporting requirements for certain activities authorized by this NWP and it has a $\frac{1}{2}$ -acre limit for losses of WOUS for each single and complete project.
- NWP 58 – Utility Line Activities for Water and other Substances:
 - Construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity.
 - Includes associated utility line facilities, such as substations, access roads, and foundations for above-ground utility lines, in WOUS provided the activity does not result in the loss of greater than $\frac{1}{2}$ -acre of waters of the U.S. for each single and complete project.



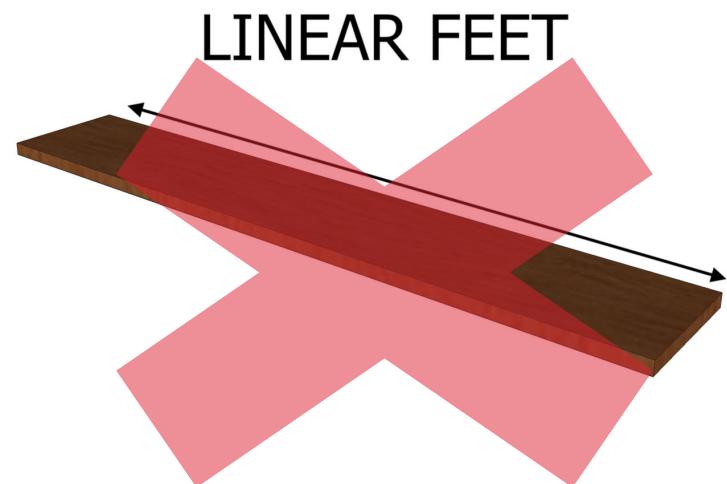


MAIN CHANGES TO NWPS



REMOVAL OF 300 LINEAR FOOT LIMIT FOR LOSSES OF STREAM BED:

- NWP 21 – surface coal mining activities
- NWP 29 – residential developments
- NWP 39 – commercial and institutional developments
- NWP 40 – agricultural activities
- NWP 42 – recreational facilities
- NWP 43 – storm water management activities
- NWP 44 – mining activities
- NWP 50 – underground coal mining activities
- NWP 51 – land-based renewable energy generation facilities
- NWP 52 – water-based renewable energy pilot projects



Length of impact (below OHWM) x **width** of impact (below OHWM) = acres of loss to stream bed.

Total impacts must meet the acreage limits of the NWP you are using.

The loss of stream bed, plus any other losses of WOUS cannot exceed $\frac{1}{2}$ acre.



MINOR UPDATES & CHANGES

NWP 14 Linear Transportation Projects: added driveways

NWP 17 Hydropower Projects: “Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 10,000 kW of total generating capacity at existing reservoirs...”

NWP 19 Minor Dredging: “Dredging of no more than 2550 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable WOUS...”

NWP 27 Aquatic Habitat Restoration, Enhancement and Establishment Activities: added text regarding releasing sediment from reservoirs, coral restoration and relocation, change in PCN requirement with coral restoration and NFMS agreement

NWP 41 Reshaping Existing Drainage and Irrigation Ditches: Added irrigation ditches

NWP 44 Mining Activities: 300 linear foot limit removal and limit mining in non-tidal navigable WOUS to ½ acre

NWP 48 – Commercial Shellfish Mariculture Activities: new PCN requirement, removal of definition of new commercial shellfish aquaculture operations and removal of prohibition against new activities affecting more than ½ acre

NWP 49 Coal Remining Activities: Remove requirement for written verification. Remove reference to integrated permit processing procedures.



NWP GENERAL CONDITION MODIFICATIONS



GC 13 – Removal of Temporary Structures and Fills

added structures

GC 17 – Tribal Rights

Restored text of general condition that was in 2012 and prior NWPs

GC 18 – Endangered Species

Removed definitions of “direct effects” & “indirect effects”. Replaced with references to the 2019 FWS and NMFS regulations defining:

- “effects of the action”
- “activities that are reasonably certain to occur”
- “consequences caused by the proposed action”

GC 23 – Mitigation: Mitigation General Condition

Modified paragraph (d) of this general condition to establish a threshold of 3/100 (0.03) of an acre for requiring compensatory mitigation for losses of stream bed that is similar to the threshold for wetlands in paragraph (c) of this general condition



NWP GENERAL CONDITION MODIFICATIONS



GC 25 - Water Quality

Revise for consistency with EPA's new WQC regulation (40 CFR part 121)

GC 26 – Coastal Zone Management

If NWP activity does not comply with conditions of a general consistency concurrence, and individual consistency concurrence is required, unless presumption occurs.

GC 28 – Use of multiple NWP

Clarified use of NWPs with different numeric limits, with examples.

GC 32 – Pre-Construction Notification

Linear projects with one or more single and complete crossings that require PCN, must quantify anticipated losses of wetlands and waters for each single and complete crossing. This will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project.

Use the NWP PCN form (Form ENG 6082)

Remove the agency coordination provision for PCNs requesting waivers of the 300 linear foot limit for losses of stream bed



DEFINITION CHANGES



Remove definitions of:

- Ephemeral stream
- Intermittent stream

The Corps is removing the definitions of intermittent stream and ephemeral stream because they are no longer used in the text of the NWPs. To be consistent with the definitions in the Navigable Waters Protection Rule (NWPR) defining “waters of the United States” (see 33 CFR 328.3(c))

-
- Protected tribal resources

The definition of “protected tribal resources” has been removed because that phrase is no longer in the text of GC 17, tribal rights.

The term “protected tribal resources” continues to be applied in the Corps' implementation of the 1998 Department of Defense American Indian and Alaska Native Policy.



DEFINITION CHANGES



Modified definitions:

- Ordinary high-water mark
- Perennial Stream

The Corps modified both definitions to be consistent with the definitions in the Navigable Waters Protection Rule defining “waters of the United States” (see 33 CFR 328.3(c))

-
- Loss of WOUS

The Corps has removed the 300 linear foot limit for losses of stream bed from NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52.

Therefore, the Corps removed “linear feet” from this definition.



SUMMARY

- Recognize that the NWPs have changed! **12 revised NWP and 4 new NWP for 2021**
- KNOW which NWPs you are using: **2017 or 2021**
- USE the correct **General Conditions and Regional Conditions** to ensure the proposed project fits under the NWP
- KNOW how to **quantify impacts** to stream beds
- Understand and follow PCN requirements



QUESTIONS?

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