



US Army Corps  
of Engineers®  
Omaha District

# Special Public Notice

**Subject: Special Public Notice for the Proposed Nationwide Permit Reissuance and Request for Comments**

**Comment Period Start Date: September 30, 2020**

**Comment Period End Date: November 16, 2020**

**SUMMARY:** On September 15, 2020, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWP) and issue five new NWP.

Nationwide permits 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. Many of the proposed NWP require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2020-0002 at [www.regulations.gov](http://www.regulations.gov), or by email to [nationwidepermits2020@usace.army.mil](mailto:nationwidepermits2020@usace.army.mil) or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWP are due by November 16, 2020.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: 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 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. An enclosure for this public notice (Enclosure 1), lists the proposed regional conditions currently under consideration by the Northwest Division of the Corps of Engineers for the Omaha District in North Dakota. The Omaha District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities

authorized by the proposed NWP's are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the state of North Dakota. Comments on regional issues relating to the proposed NWP's and proposed regional conditions should be sent to the Omaha District Regulatory Office in North Dakota [CENWO-ODR-ND@usace.army.mil](mailto:CENWO-ODR-ND@usace.army.mil). Comments relating to regional conditions are due by November 16, 2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWP's are issued, the final regional conditions will be issued after they are approved by the Division Commander.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWP's. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWP's.

Draft decision documents for each of the proposed NWP's, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWP's, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2020-0002. Final decision documents will be prepared for the NWP's that are issued.

Enclosed is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/> at [www.regulations.gov](http://www.regulations.gov) in docket number COE-2020-0002, or at the following Federal Register address: <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>.

**POINT OF CONTACT:** If you have questions or need additional information please contact the project manager, Toni R. Erhardt via email at [Toni.R.Erhardt@usace.army.mil](mailto:Toni.R.Erhardt@usace.army.mil) or by phone at (701) 255-0015, extension 2003.

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**September 30, 2020  
2020 Nationwide Permits  
Proposed Regional Conditions  
Omaha District  
State of North Dakota**

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWP's**

For all NWP's, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. **Wetlands Classified as Peatlands:**

PCN required for any regulated activity in wetlands classified as peatlands. For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. PCN required for NWP 3, 5, 20, 32, 38 and 45.
- b. All NWP's not listed above are revoked for use in peatlands.

2. **Waters Adjacent to Natural Springs:**

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

3. **Bank Stabilization Activities:**

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. **Specific Waterways:**

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (marinas, bays, etc.) of any of these waterways.

**B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP**

**5. NWP 23 – Approved Categorical Exclusions:**

PCN required prior to initiating any regulated activity under NWP 23 impacting an area greater than 1/2 of an acre of Waters of the United States. In addition to information required for PCN, the applicant must identify the approved categorical exclusion that applies in Regulatory Guidance Letter (RGL) 05-07 or the appropriate Corps RGL and provide documentation that the project fits the categorical exclusion.

**C. BEST MANAGEMENT PRACTICE**

**6. Best Management Practices**

In addition to Regional Conditions 1 through 5, additional required best management practices apply to NWPs within the Omaha District. These are available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

**September 30, 2020**  
**2020 Nationwide Permits**  
**Proposed Regional Conditions**  
**Omaha District**

**Required Best Management Practices**

The following Nationwide Permit regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District. Regional conditions are placed on Nationwide Permits to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**A. REQUIRED BEST MANAGEMENT PRACTICES APPLICABLE TO STATES**

**1. Suitable Material**

a. Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the U.S. can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

If using any riprap/concrete other than quarry graded/sized rock riprap, the following will apply:

- i. Small aggregate with a maximum dimension less than 6 inches may not be placed below the ordinary high water mark (OHWM) of a water body for the purpose of bank stabilization or erosion control when such aggregate will be unstable or subject to frequent failure. Small aggregate however, may be placed below the OHWM if its purpose is to fill the interstices of a well graded riprap structure, geo-membrane or other channel lining.
- ii. Slab material, regardless of source, must be broken before placement so that the maximum dimension of an individual piece of material is no more than 3.5 times its minimum dimension unless otherwise justified by a qualified engineer. All material must be free of exposed rebar, wire and wire mesh.
- c. The use of clean brick, broken concrete and cinder block for erosion control or bank stabilization will be considered on a case by case basis. If allowed, the broken concrete must be free of exposed rebar, wire, wire mesh, asphalt paving material, paint, and other erodible materials. Broken concrete must range in size from 6 to 36 inches unless otherwise justified by a qualified engineer.

**2. Culvert Countersink Depth:**

For all NWP in streams with intermittent or perennial flow and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the

natural stream channel flow line according to the table below. This regional condition does not apply in instances where the lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

<b>Culvert Type</b>	<b>Drainage Area</b>	<b>Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line</b>
All culvert types	< 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	0.5 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter > 8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0ft

- a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.
- b. The slope of the culvert should be parallel to the slope of the stream flow line.
- c. The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream flow line.
- d. Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

**B. MONTANA REQUIRED BEST MANAGEMENT PRACTICES**

**3. Bank and Shoreline Stabilization Activities:**

The following additional requirements apply to all bank and shoreline stabilization:

- a. The revetment must conform to the existing bankline, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the system; must not extend above the top of the bank (i.e. no new levees); and the slopes must be flatter than the angle of repose for the selected revetment material (i.e. rock riprap normally needs to be placed on a slope flatter than 1.5 Horizontal to 1 Vertical (1.5H:1V).
- b. The revetment must not wholly or partially block flows from entering a side channel or an overflow channel.

**4. Placement and Removal of Temporary Fills:**

Temporary fills in wetlands must be placed on a horizontal marker layer, such as fabric or certified weed-free straw, to delineate the pre-project ground elevation and facilitate complete fill removal and site restoration.

**5. Erosion and Sediment Control Blanket:**

All erosion control blanket or fabric used in or adjacent to waters of the U.S. must be comprised of degradable material to ensure decomposition. Do not use material that

includes stabilized netting or stabilized open mesh, as these products take a long time to degrade and they can trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. Non-degradable blankets or fabric may be allowed on a case-specific basis if it will be buried beneath riprap or structures and it is not likely to be exposed. Non-degradable blanket or fabric that becomes exposed within waters of the U.S. must be removed.

6. **NWP-3 – Maintenance and NWP-45 – Repair of Uplands Damaged by Discrete Events Definition of “Discrete Event”:**

The definition of “discrete event,” as used in these permits, includes, but is not limited to, unexpected natural and human-caused events such as fires, storms, landslides, avalanches, earthquakes, accidents, debris or ice jams, and floods. For the purpose of the NWPs, discrete event floods are stream flow events that overflow the OHWM.

7. **Outfall Structures and Associated Intake Structures:**

Inlet screens for intakes in the Yellowstone River or the Missouri River in Blaine, Chouteau, Custer, Dawson, Fergus, Garfield, McCone, Petroleum, Phillips, Prairie, Richland, Roosevelt, Valley and Wibaux Counties must be installed on all pump intakes with a screen mesh opening size no larger than 0.25 inch. Water intake velocities must not exceed 0.5 foot per second through the mesh. Intakes must be located in the deepest water available and be elevated off the bottom of the river bed.

C. **NEBRASKA REQUIRED BEST MANAGEMENT PRACTICES**

8. **Revegetation of Disturbed Areas:**

- a. All areas adjacent (contiguous, bordering, neighboring) to jurisdictional waters disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. In accordance with Executive Order 13112, the use of invasive species and non-native species is not appropriate for revegetation of disturbed areas. A cover crop may be planted to aid in the establishment of native vegetation. The disturbed areas shall be reseeded concurrently with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of appropriate perennial, native grasses and forbs reaches 75%. If this seeding cannot be accomplished by September 15 in the year of project completion, then an erosion blanket shall be placed on the disturbed areas. The erosion blanket shall remain in place until ground cover of appropriate perennial, native grasses and forbs reaches 75%. If the seeding can be accomplished by September 15, all seeded areas shall be properly mulched to prevent erosion.
- b. When the vegetation has become established, all temporary erosion control materials shall be removed from the project site. Biodegradable or photodegradable materials need not be removed.

9. **Temporary Structures/Work/Fill:**

## ENCLOSURE 1

### a. All NWPs

- i. The use of dredged material in the construction of temporary structures or used for temporary work or used as temporary fill shall not be allowed. The term “dredged material” is defined as material that is excavated or dredged from waters of the U.S. All temporary fill material shall be obtained from an upland source.
- ii. Upon completion of the construction activity, all temporary fill material shall be removed in its entirety from the water of the U.S. to an upland area and the affected area shall be restored to its pre-construction condition. Wetlands disturbed by temporary construction shall be seeded with appropriate native hydrophytic species.

General Condition 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands, a horizontal marker (i.e. fabric, certified weed-free straw, a ground survey with minimum accuracy of 0.10-foot, etc.) must be used to demarcate the existing ground elevation of wetlands that will be temporarily filled during construction, in order to restore the wetlands to pre-project conditions.

### b. NWPs with a PCN Requirement

In addition to the above Regional Conditions in “a”, the following apply to NWPs with a PCN requirements.

- i. A proposal for the temporary structure/work/fill, if not already provided, shall be submitted 14 days prior to construction and authorized/verified by the Nebraska Regulatory Office prior to the commencement of construction.
- ii. The Nebraska Regulatory Office shall be notified with documentation (i.e. photos) when the site has been restored to its pre-project condition.

## D. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES

### 10. **Minimum Culvert Width:**

In stream channels the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the ordinary high water mark in the affected stream reach. In stable stream channels, the ordinary high water mark (OHWM) is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the OHWM is generally located within the entrenched channel. The OHWM may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).

### 11. **Spawning Areas:**

Spawning areas and seasons can be accessed on the North Dakota Game & Fish Department’s website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

12. **Intake Structures:**

- a. Intake screens with a maximum mesh opening of ¼-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.
- b. Pumping plant sound levels will not exceed 75 dB at 50 feet.
- c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:
  - i. The intakes shall be floating.
  - ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
  - iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
  - iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼ foot per second.
- b. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below Garrison Dam are subject to the following conditions:
  - i. The intakes shall be submerged.
  - ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
  - iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
  - iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.
- c. Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- d. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable.

13. **Boat Docks:**

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

- a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the ordinary high watermark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

## ENCLOSURE 1

- b. Any boat dock shall be anchored to the top of the high bank.
- c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.

Section 10 Waters located in the State of North Dakota are:

- i. Bois de Sioux River
- ii. James River Missouri River
- iii. Red River of the North
- iv. Upper Des Lacs Lake
- v. Yellowstone River

### E. WYOMING REQUIRED BEST MANAGEMENT PRACTICES

#### 14. Spawning Areas:

Spawning locations are defined as sites within stream networks where mature fish congregate to release gametes into the riverine environment.

Spawning periods are driven by a host of local environmental factors including elevation, day length and water temperature. As such, there is a high degree of variability in timing from one location to the next in the state. If a permittee is proposing to undertake regulated activities in spawning locations and within the spawning periods identified below, they must first obtain site-specific information from Fisheries Supervisors in Wyoming Game and Fish Department Regional Offices (WGFD). Additional information is available at:

<https://wgfd.wyo.gov/Habitat/Habitat-Plans/Wyoming-State-Wildlife-Action-Plan>

Activities in spawning locations during the periods listed below must be avoided to the maximum extent practicable.

#### **Spawning seasons for common native species are:**

- i. Chub, Leatherside: April 1 through August 15
- ii. Chub, Roundtail: May 1 through July 15
- iii. Sauger: May 1 through June 15
- iv. Sturgeon: May 1 through June 15
- v. Sucker, Bluehead: May 1 through July 15
- vi. Sucker, Flannelmouth: May 1 through July 15
- vii. Trout, Bonneville Cutthroat: April 15 through July 31
- viii. Trout, Colorado River Cutthroat: May 1 through July 31
- ix. Trout, Snake River Cutthroat: March 15 through July 31
- x. Trout, Yellowstone Cutthroat: May 15 through July 31

**Spawning seasons for common nonnative salmon and trout species are:**

- xi. Salmon, Kokanee: September 15 through November 30
- xii. Trout, Brook: September 15 through November 30
- xiii. Trout, Brown: September 15 through November 30
- xiv. Trout, Rainbow: May 15 through July 31

The WGFD can provide information on Blue Ribbon and Red Ribbon trout streams or waters that contain State Wildlife Action Plan Native Species Status 1, 2, and 3 fish species. Potential effects on these important resources should be considered when formulating a project plan with the intent of minimizing adverse effects. If PCN is required, early coordination with Fisheries Supervisors in WGFD Regional Offices should be conducted prior to submitting a PCN for activities located in these waters. Otherwise, project modifications to minimize adverse effects after receiving a PCN may be required.