

Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ZRIN 0710-ZA05

Proposal to Reissue and Modify Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is soliciting comments for the reissuance of the existing nationwide permits (NWP), general conditions, and definitions, with some modifications. The Corps is also proposing to issue six new NWPs and one new general condition. The reissuance process starts with today's publication of the proposed NWPs in the Federal Register for a 60-day comment period. The purpose of this Federal Register notice is to solicit comments on the proposed new and modified NWPs, as well as the NWP general conditions and definitions. Shortly after the publication of this Federal Register notice, each Corps district will publish a public notice to solicit comments on their proposed regional conditions for the new and modified NWPs. The comment period for these district public notices will be 45 days.

**DATES:** Submit comments on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number COE-2010-0035 and/or ZRIN 0710-ZA05, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: [NWP2012@usace.army.mil](mailto:NWP2012@usace.army.mil) . Include the docket number, COE-2010-0035, and/or the ZRIN number, 0710-ZA05, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R, 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

**Instructions:** Direct your comments to docket number COE-2010-0035 and/or ZRIN 0710-ZA05. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or

NWP 48. Existing Commercial Shellfish Aquaculture Activities. The modifications proposed for this NWP include authorizing the expansion of existing commercial shellfish aquaculture operations. The production of geoducks in the expansion area would be prohibited. We are proposing to remove the reporting requirement because we do not believe it is necessary to track all activities authorized by this NWP. Many existing commercial shellfish aquaculture activities have been in continuous operation for many years, and are subject to a multitude of federal, state, and local regulations. We believe that our focus should be on reviewing those proposed commercial shellfish aquaculture activities that have the potential to result in more than minimal adverse effects on the aquatic environment. Such activities are those commercial shellfish aquaculture operations that exceed 100 acres in size, involve dredge harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation, or involve changes in operation, such as expansions, reconfigurations, relocations, changes in species cultivated, or changes in culture methods. Since many commercial shellfish aquaculture activities, especially those on the west coast, may affect listed or threatened species under the Endangered Species Act, the notification requirement in general condition 19, Endangered Species, will also result in these activities being reported to the Corps.

We are also proposing to modify the notification thresholds by adding a pre-construction notification requirement for all activities that propose to expand the commercial production of shellfish beyond the existing project area.

We are proposing to change the notification provision to require the prospective permittee to submit the information that was required for reporting under the 2007 version of NWP 48. That information will be used with the information submitted in accordance with paragraph (b) of general condition 30, pre-construction notification, to determine if the proposed activity will result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors.

## **Discussion of Proposed New Nationwide Permits**

A. Land Based Renewable Energy Generation Facilities. We are proposing to issue a new NWP to authorize the discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction, expansion, modification or improvement of land-based renewable energy production facilities. Examples include infrastructure to generate solar (concentrating solar power and photovoltaic), wind or geothermal energy and their collection systems. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

We are proposing a one acre limit for this NWP, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. We believe the one acre limit, as well as the 300 linear foot limit for stream impacts, will authorize only those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can regionally condition this NWP to lower the acreage or linear foot limit or otherwise limit its use. We are proposing to require a PCN for all

activities. This proposed NWP is limited to activities that only require section 404 authorization. An individual permit, regional general permit, or another NWP would be needed to authorize discharges of dredged or fill material into navigable waters of the United States subject to jurisdiction under Section 10 of the Rivers and Harbors Act of 1899. We are seeking comments on this proposed NWP, including its terms and conditions, such as the proposed one acre limit.

B. Hydrokinetic Energy Generation Facilities. We are proposing to issue a new NWP to authorize structures and the discharges of dredged or fill material into waters of the United States, including navigable waters, for the construction, expansion, modification or improvement of hydrokinetic energy production facilities. Examples include infrastructure to generate wave, tidal, current or ocean thermal energy and their collection systems. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

We are proposing a one acre limit for this NWP, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. We believe the one acre limit, as well as the 300 linear foot limit for stream impacts, will authorize only those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can regionally condition this NWP to lower the acreage or linear foot limit or otherwise limit its use.

The proposed NWP would also prohibit structures in anchorage areas, danger zones, restricted areas, and shipping safety fairways or traffic separation schemes designated by the U.S. Coast Guard and also prohibit structures in open water dredged material disposal areas designated by the Corps or EPA.

We are proposing to require a PCN for all activities proposed under this proposed NWP. This proposed NWP would authorize activities that require section 10 and/or 404 authorization.

The proposed NWP would also include a Note (similar to Note 1 in NWP 12) after the Notification provision instructing district engineers to coordinate with the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting structures and utility lines in navigable waters of the U.S. to protect navigation.

We are seeking comments on this proposed NWP, including its terms and conditions, such as the proposed one acre limit.

C. Wind and Geothermal Energy Generation Facilities. We are proposing to issue a new NWP to authorize structures and the discharges of dredged or fill material into waters of the United States, including navigable waters, for the construction, expansion, modification or improvement of wind or geothermal energy production facilities when the energy generation facility is sited in navigable waters of the United States. Examples of authorized activities include infrastructure to generate wind and geothermal energy and their collection systems. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

We are proposing a one acre limit for this NWP, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this

300 linear foot limit is waived in writing by the district engineer. We believe the one acre limit, as well as the 300 linear foot limit for stream impacts, will authorize only those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can regionally condition this NWP to lower the acreage or linear foot limit or otherwise limit its use.

The proposed NWP would also prohibit structures in anchorage areas, danger zones, restricted areas, and shipping safety fairways or traffic separation schemes designated by the U.S. Coast Guard and also prohibit structures in open water dredged material disposal areas designated by the Corps or EPA. Additionally the NWP would not authorize structures, artificial islands, etc. on the outer continental shelf as NWP 8, Energy and Mineral Production on the Outer Continental Shelf authorizes these activities.

We are proposing to require a PCN for all activities proposed under this proposed NWP. This proposed NWP would authorize activities that require section 10 and/or 404 authorization.

The proposed NWP would also include a Note (similar to Note 1 in NWP 12) after the Notification provision instructing district engineers to coordinate with the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting structures and utility lines in navigable waters of the U.S. to protect navigation.

We are seeking comments on this proposed new NWP, including its terms and conditions, such as the proposed one acre limit.

D. Private Boat Docks, Hoists, and Sheds. We are proposing a new NWP to authorize activities required for the construction and installation of boat docks, hoists, and sheds for non-commercial, private use in waters of the United States. A dock and hoist authorized by this proposed NWP would be limited to 25 feet in combined width unless this limit is waived in writing by the district engineer. To protect navigation the NWP would limit the length of dock to the minimum necessary to accommodate landing and launching water craft. The proposed NWP prohibit the excavation of navigable waters to the amount necessary to prepare the site and require all excavated materials to an upland area. The NWP would also allow boat shed to have an enclosed roof but otherwise prohibit enclosing sheds and other structures. If dredging in navigable waters of the United States is necessary to provide access to the boat dock, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.

We are proposing to require a PCN for all activities proposed under this proposed NWP. This proposed NWP would authorize activities that require section 10 authorization.

### **Discussion of Proposed Modifications to Nationwide Permit General Conditions**

In the 2007 NWPs we reordered the general conditions to make them easier to read and to group together the general conditions that are associated with environmental concerns and public interest review factors and followed by general conditions relating to administrative requirements. In this proposal, we are moving former general condition 28, Single and Complete Project, and renumbering it as general condition 16. The following general conditions (GCs) will be renumbered, but we are not proposing to

**Notification:** The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 30.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

**Note:** Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

A. **Land Based Renewable Energy Generation Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction, expansion, modification or improvement of land-based renewable energy production facilities. Examples include infrastructure to generate solar (concentrating solar power and photovoltaic), wind or geothermal energy and their collection systems. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

The discharge must not cause the loss of greater than 1 acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This permit does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30). (Sections 10 and 404)

B. **Hydrokinetic Energy Generation Facilities.** Structures and discharges of dredged or fill material into waters of the United States, for the construction, expansion, modification or improvement of hydrokinetic energy production facilities. Examples include infrastructure to generate wave, tidal, current or ocean thermal energy and their collection systems. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

The discharge must not cause the loss of greater than 1 acre of waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR part 322.5(1)(2).

Structures may not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR part 322.5(1)(1)), or EPA or Corps designated open water dredged material disposal areas.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30). (Sections 10 and 404)

**Note:** Copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA),

National Ocean Service (NOS), for charting the project and associated utility line(s) to protect navigation.

C. Wind and Geothermal Energy Generation Facilities. Structures and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification or improvement of wind or geothermal energy production facilities when the energy generation is sited in navigable waters of the United States. Examples of authorized activities include infrastructure to generate wind and geothermal energy and their collection systems located in navigable waters. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

The discharge must not cause the loss of greater than 1 acre of waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer.

This NWP does not authorize structures, artificial islands, etc. on the outer continental shelf.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR part 322.5(l)(2).

Structures may not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR part 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30). (Sections 10 and 404)

Note: Copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the project and associated utility line(s) to protect navigation.

D. Private Boat Docks, Hoists and Sheds. Activities required for the construction and installation of boat docks, hoists, and sheds for non-commercial, private use in waters of the United States, provided the activity meets the following criteria:

(a) The dock length is the minimum necessary to accommodate landing and launching;

(b) Docks with a boat hoist must not exceed 25 feet in combined width, unless the criterion is specifically waived in writing by the district engineer;

(c) Any excavation in navigable waters of the United States is limited to the area necessary for site preparation and all excavated material is removed to an upland area; and

(d) Sheds may have a roof (canopy) but otherwise enclosing the shed or constructing other structures is not authorized.

If dredging in navigable waters of the United States is necessary to provide access to the boat dock, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.