NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

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 (NWPs) and issue five new NWPs.

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 NWPs require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public’s opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2020-0002 at www.regulations.gov, or by email to 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 NWPs are due by November 16, 2020.

Regional Issues Concerning the Proposed NWPs, 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 NWPs are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs 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 NWPs may be more than minimal. An enclosure for this public notice (Enclosure 2) lists the proposed regional conditions currently under consideration by the Great Lakes and Ohio River Division for Michigan. The Detroit 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 NWPs are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Michigan. Comments on regional issues relating to the proposed NWPs and proposed regional conditions should be sent to Charles Simon, Chief, Regulatory Office, U.S. Army Corps of Engineers, Detroit District, 477 Michigan Avenue, Detroit, Michigan 48226-2550, or by email to Robert Morningstar at Robert.L.Morningstar@usace.army.mil. Comments relating to regional conditions are due by November 13, 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 NWPs 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 NWPs. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWPs.

Draft decision documents for each of the proposed NWPs, 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 NWPs with the requirements for issuance under the Corps’ general permit authority. These draft decision documents, as well as the proposed NWPs, are available for viewing at www.regulations.gov, docket number COE-2020-0002. Final decision documents will be prepared for the NWPs that are issued.

Enclosure 1 is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through the Corps Home Page at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/, at 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.
Additional Information: This public notice is also available for viewing/printing at: http://www.lre.usace.army.mil/Missions/RegulatoryProgramandPermits/PublicNotices.aspx. Questions concerning this application may be directed to Robert Morningstar at the Corps of Engineers address listed above, or telephone number (313) 226-2015.

FOR THE DISTRICT ENGINEER:

Charles Simon
Chief, Regulatory Office
Engineering & Technical Service
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District Engineer's Decision

Further Information

1. District Engineers have authority to determine if an activity complies with the
terms and conditions of a NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits,
approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal
project.
### Definitions

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Proposed Detroit District Regional Conditions in Michigan:

2. Structures in Artificial Canals.

Detroit District NWP 2 Regional Conditions:
The Detroit District proposes to revoke this Nationwide Permit.

5. Scientific Measurement Devices.

Detroit District NWP 5 Regional Conditions:
a. The application must provide the latitude and longitude (or UTM coordinates) of each device.
b. Each device must be marked in accordance with all relevant U.S. Coast Guard requirements.

7. Outfall Structures and Associated Intake Structures.

Detroit District NWP 7 Regional Conditions:
a. The face of the outfall shall not create shoreline pockets capable of trapping debris.

8. Oil and Gas Structures on the Outer Continental Shelf.

Detroit District NWP 8 Regional Conditions:
The Detroit District proposes to revoke this Nationwide Permit.

10. Mooring Buoys.

Detroit District NWP 10 Regional Conditions.
a. The application must provide the latitude and longitude (or UTM coordinates) of the buoy and the distance of the buoy offshore.
b. The buoy must be clearly marked with the Corps of Engineers’ File Number in letters at least 3 inches high and of contrasting color to the background color of the buoy.
c. The mooring buoy must be marked in accordance with all relevant U.S. Coast Guard requirements.

12. Oil or Natural Gas Pipeline Activities.

Detroit District NWP 12 Regional Conditions:
a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S.
c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
d. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
    1) the line must be embedded at least 6 feet below the authorized Federal channel depth;
    2) existing and proposed elevation information on precise plan and section scale drawings are required;
    3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
    4) The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.

e. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be disposed of on uplands.


*Detroit District NWP 13 Regional Conditions:*  
The Detroit District does not propose any regional conditions.

14. Linear Transportation Projects.

*Detroit District NWP 14 Regional Conditions:*  
a. For private road projects, the base width of the fill is limited to 16 feet. For private paths, the base width of the fill is limited to 6 feet. These limits apply unless the applicant provides a written statement supporting a variation, and the Corps accepts the justification. Culverts or other appropriate measures are required to maintain existing drainage patterns.

b. For public projects, the total impacts are limited to 3 acres for all crossings associated with the same project.

18. Minor Discharges.

*Detroit District NWP 18 Regional Conditions:*  
The Detroit District does not propose any regional conditions.

21. Surface Coal Mining Activities.

*Detroit District NWP 21 Regional Conditions:*  
The Detroit District is proposing to revoke this Nationwide Permit.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

*Detroit District NWP 27 Regional Conditions:*  
The Detroit District does not propose any regional conditions.

29. Residential Developments.

*Detroit District NWP 29 Regional Conditions:*
a. The discharge must not cause the loss of greater than 1/4 acre of wetlands adjacent to navigable waters of the U.S.
b. No discharge is authorized in areas waterward of the OHWM, areas subject to inundation by the adjacent waterbody, or areas which provide fish habitat functions.
c. The following attendant features are authorized under this NWP: garage, driveway, parking/turn areas, lawn up to 15 feet surrounding the buildings, storage shed, septic field, utilities, deck foundations, and access paths.
d. Culverts and other measures to maintain pre-existing drainage patterns across the site are required.
e. Where the option is available, on-site sewage treatment systems shall utilize pump-back systems to upland.


*Detroit District NWP 39 Regional Conditions:*

a. No discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions of any kind.
b. The discharge must not cause the loss of greater than 1/4 acre of wetlands adjacent to navigable waters of the U.S.

41. Reshaping Existing Drainage Ditches.

*Detroit District NWP 41 Regional Conditions:*

a. All excavated materials shall be placed on uplands.

42. Recreational Facilities.

*Detroit District NWP 42 Regional Conditions:*

a. No discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions of any kind.
b. The discharge must not cause the loss of greater than 1/4 acre of wetlands adjacent to navigable waters of the U.S.
c. Golf courses and ski areas are not authorized.

43. Stormwater Management Facilities.

*Detroit District NWP 43 Regional Conditions:*

a. Construction of new facilities is not authorized.

44. Mining Activities.

*Detroit District NWP 44 Regional Conditions:*

The Detroit District proposes to revoke this Nationwide Permit.

45. Repair of Uplands Damaged by Discrete Events.

*Detroit District NWP 45 Regional Conditions:*

The Detroit District does not propose any regional conditions.

49. Coal Remining Activities.

*Detroit District NWP 49 Regional Conditions:*
The Detroit District proposes to revoke this Nationwide Permit.

50. Underground Coal Mining Activities.

*Detroit District NWP 50 Regional Conditions:*
The Detroit District proposes to revoke this Nationwide Permit.

52. Water-Based Renewable Energy Generation Projects.

*Detroit District NWP 52 Regional Conditions:*
The Detroit District proposes to revoke this Nationwide Permit.

A. Seaweed Mariculture Activities

*Detroit District NWP A Regional Conditions:*
The Detroit District proposes to revoke this Nationwide Permit.

B. Finfish Mariculture Activities

*Detroit District NWP B Regional Conditions:*
The Detroit District proposes to revoke this Nationwide Permit.

C. Electric Utility Line and Telecommunications Activities

*Detroit District NWP C Regional Conditions:*
a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S.
c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
d. For underground utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
   1) the line must be embedded at least 6 feet below the authorized Federal channel depth;
   2) existing and proposed elevation information on precise plan and section scale drawings are required;
   3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
4) The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.
e. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP C, shall be disposed of on uplands.

D. Utility Line Activities for Water and Other Substances

*Detroit District NWP D Regional Conditions:*
a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S.
c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
d. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
   1) the line must be embedded at least 6 feet below the authorized Federal channel depth;
   2) existing and proposed elevation information on precise plan and section scale drawings are required;
   3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
   4) The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.
e. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP D, shall be disposed of on uplands.

E. Water Reclamation and Reuse Facilities

*Detroit District NWP E Regional Conditions:*
The Detroit District does not propose any regional conditions at this time.

*Detroit District Regional Conditions Applicable to all NWPs:*

(1) Based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental, Great Lakes, and Energy (EGLE) submittal of a joint Corps/EGLE permit application is required for activities in Michigan. The submittal of an application is not an authorization to perform the work. The application encompasses the same information as a pre-construction notification (PCN), thereby creating the circumstance that any proposed work in Michigan requires a PCN, irrespective of the National level requirements.
(2) In NWP verification letters, the Corps will state that: "The permittee shall not initiate activities authorized under the NWP until all required State authorizations have been received."

(3) If EGLE has issued its authorization, we shall presume that 401 Water Quality Certification and Coastal Zone Management certification has been satisfied.

(4) Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example, EGLE has issued a permit and has not restricted the dredging activities to these periods).

(5) Prior to authorization of work under any NWP, the Corps shall determine whether the proposed structure or discharge adversely impact or fragment the hydrologic and ecologic connection to an aquatic resource. If there is an adverse impact then the Corps shall evaluate the potential secondary impacts that could result, and if the expected secondary impacts are more than minimal, then the Corps may discuss with the applicant possible modifications to the project which would retain the connection.

(6) Critical Resource Waters: NWP General Condition 22 (GC 22) designates Critical Resource Waters, and allows for Regional additions to the list. The following Critical Resource Waters are located in the Detroit District and subject to the restrictions and limitations identified in GC 22:

   a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.

   b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.

   c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.

   d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resource Waters (General Condition 22) in Michigan is amended to include the following:

      All areas designated under Part 351, Wilderness and Natural Areas, of the Natural Resources and Environmental Protection Act, Public Act 451, 1994.

      All rivers designated under Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act.

      All Environmental Areas designated under Part 323, Shorelands Protection and Management, of the Natural Resources and Environmental Protection Act.
(7) National Wild and Scenic Rivers (NWSR): NWP General Condition 16 (GC 16) designates Wild and Scenic Rivers, and the restrictions applicable to them. The following are Wild and Scenic Rivers located within the Detroit District and subject to the restrictions and limitations identified in GC 16:

Au Sable River – main stem from the Mio Pond project boundary downstream to the Alcona Pond project boundary.
Bear Creek (Manistee County) – Coates Highway to the confluence with the Manistee River.
Black River (Gogebic County) - from the Ottawa National Forest boundary to Lake Superior.
Carp River – from the west section line of section 30, T43N, R5W to Lake Huron.
Indian River – from Hovey Lake to Indian Lake.
Manistee River – from the MDNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge.
Ontonagon River – East Branch from its origin to the Ottawa NF boundary; the Middle Branch from its origin to the northern boundary of the Ottawa NF, the Cisco Branch from its origin at Cisco Lake Dam to its confluence with Ten-Mile Creek south of Ewen, the West Branch from its confluence with Cascade Falls to Victoria Reservoir.
Paint River – main stem from the confluence of the North and South Branches to the Ottawa NF boundary, the North Branch from its origin to its confluence with the South Branch, the South Branch from its origin to its confluence with the North Branch.
Pere Marquette River – the segment downstream from the junction of the Middle and Little south Branches to its junction with Pere Marquette Highway (old US Highway 31).
Pine River – the segment from Lincoln Bridge to the east 1/16th line of Section 16, T21N, R13W.
Presque Isle River – the main stem from the confluence of the East and West Branches to the Minnewawa Falls, the East Branch within the Ottawa NF, the South Branch within the Ottawa NF, the West Branch within the Ottawa NF.
Sturgeon River (Baraga and Houghton Counties) – from its entry into the Ottawa NF to the northern boundary of the Ottawa NF.
Sturgeon River (Alger and Delta Counties) – from the north line of Section 26, T43N, R19W to Lake Michigan.
Tahquamenon River East Branch – from its origin to the Hiawatha National Forest boundary.
Whitefish River – The main stem from its confluence with the East and West Branches to Lake Michigan. The East Branch from the crossing of County Road 003 to its confluence with the West Branch. The West Branch from County Road 444 to its confluence with the East Branch.
Yellow Dog River – From its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa NF.

Portions of the following have also been designated as a “study river” for possible inclusion in the system: Brule River, Carp River, Little Manistee River, Paint River, Presque Isle River, Ontonagon River, Sturgeon River (Baraga and Houghton Counties), Sturgeon River (Alger and Delta Counties), Tahquamenon River, White River, Whitefish River.
(8) NWP General Condition 18 (GC 18) addresses Critical Habitats for Endangered Species. The following Critical Habitats located within the Detroit District are subject to the restrictions applicable to Critical Habitat for Federally Listed Threatened and Endangered Species identified in GC 18:

Critical habitat for the piping plover (*Charadrius melodus*) in Michigan was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969).

Revised Critical habitat for the Hine’s Emerald Dragonfly (*Somatochlora hineana*) in Michigan was finalized April 23, 2010 Federal Register (Vol. 75, No. 78, pages 21394-21453).

Critical habitat for the gray wolf (*Canis lupus*) in Michigan was reinstated in the February 20, 2015 Federal Register (Vol. 80, No. 34, pages 9218-9229).

Critical habitat for the Poweshiek skipperling (*Oarisma poweshiek*) was designated in the October 1, 2015 Federal Register (Vol. 80, No. 190, pages 59248-59384).