

2021 NATIONWIDE PERMITS

Regulatory Branch,
Headquarters, U.S. Army Corps of Engineers
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NATIONWIDE PERMIT BACKGROUND

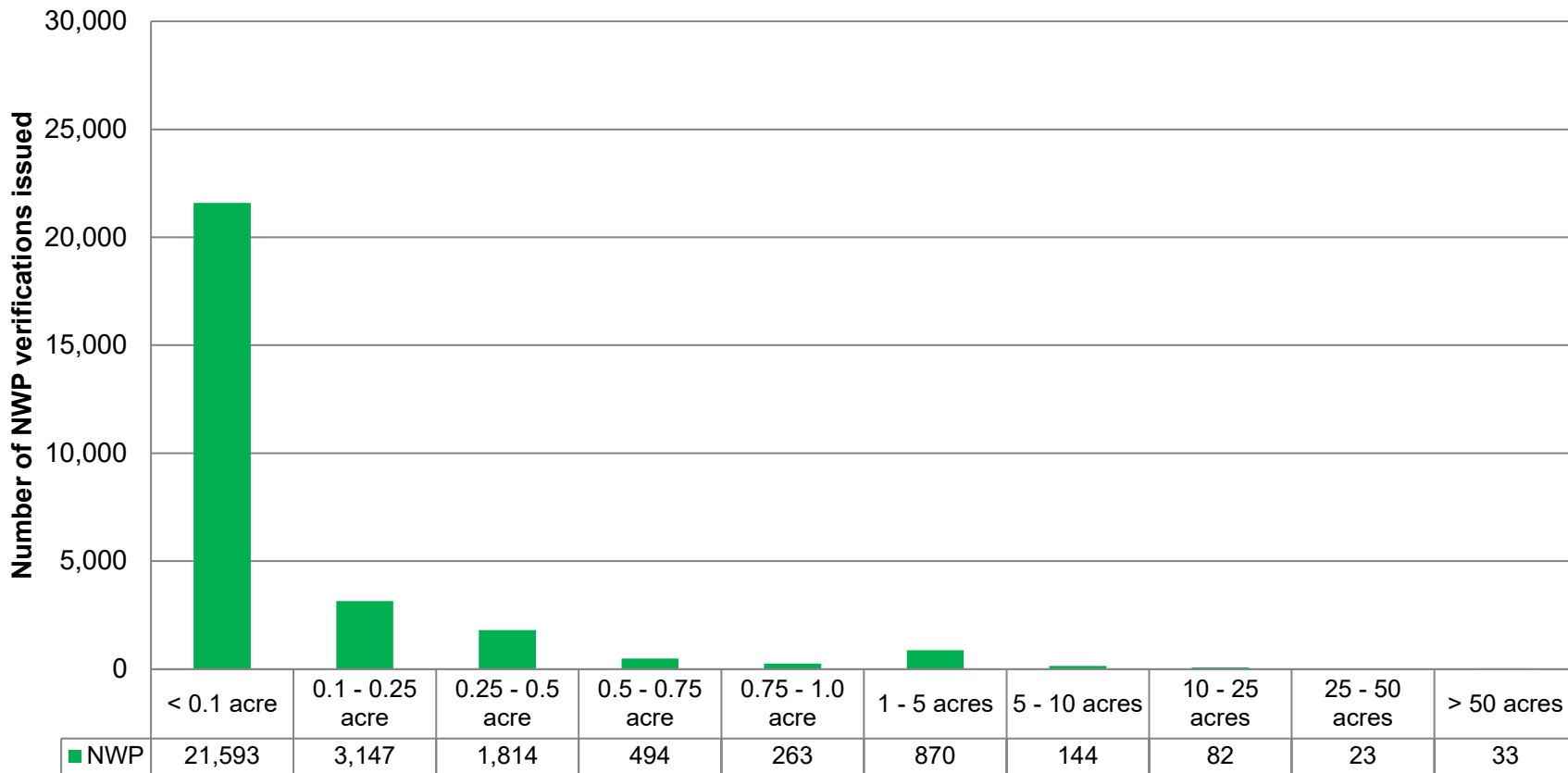
- General permits issued by Corps Headquarters to authorize activities across the country
 - Categories of activities with no more than minimal individual and cumulative adverse environmental effects
 - Reissuance process every 5 years
 - Rulemaking activity, with interagency review under EO 12866
- Authorize ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First NWP's issued in 1977
- The nationwide permits are issued every five years
 - Previous out-of-cycle exceptions occurred in 1984, 1995, and 2000



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IMPACTS FOR NATIONWIDE PERMIT VERIFICATIONS ISSUED IN FY2020



Authorized permanent and temporary impacts to jurisdictional waters and wetlands, including rivers and streams, in acreage range categories, by nationwide permits (NWP) during FY 2020.

76% of authorized impacts less than 1/10-acre.



PROCESS FOR ISSUING NATIONWIDE PERMITS

- Issuance of nationwide permits is a rulemaking activity under the Administrative Procedure Act
- Proposed rule published in *Federal Register* on September 15, 2020
 - Districts propose regional conditions via public notice
 - Request water quality certification from certifying authorities
 - Request CZMA consistency concurrence from state coastal zone agencies
- Final rule issuing 16 NWP's published in *Federal Register* on January 13, 2021
 - Effective date: March 15, 2021
 - The 16 NWP's expire on March 14, 2026
- Preparing separate final rule for the 40 existing NWP's not included in January 2021 final rule
 - Decision on proposed new NWP for water reclamation and reuse facilities (NWP E)
 - Effective date 60 days after final rule published in *Federal Register*
 - Divisions finalize regional conditions



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WHY FINALIZE THESE 16 NWP's in JANUARY?

- Culmination of years of effort at all levels of USACE, across agencies, and the public to increase efficiency and effectiveness of NWP Program while ensuring that all environmental protections remain strong
 - Simplify the terms and conditions of the NWP's so that they can continue to provide incentives to reduce impacts to aquatic resources, to qualify for a streamlined permit process at lower costs
- Prioritized finalization of these 16 NWP's to ensure the most efficient and effective tools are available to the public as the Nation emerges from the pandemic
 - Identified these NWP's and the efficiencies that are finalized in the permits as a priority to accomplish in advance of the 5-year cycle
 - The permits that are finalized authorize minimally impacting activities associated with the construction of, for example, housing and commercial development, renewable energy, food production, electric and telecommunications lines, and water utility lines.



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16 NWPS IN JANUARY 2021 FINAL RULE

Reissued 12 existing 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 four 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



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40 EXISTING 2017 NATIONWIDE PERMITS THAT REMAIN IN EFFECT

- NWP 1** – Aids to Navigation
- NWP 2** – Structures in Artificial Canals
- NWP 3** – Maintenance
- NWP 4** – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5** – Scientific Measurement Devices
- NWP 6** – Survey Activities
- NWP 7** – Outfall Structures and Associated Intake Structures
- NWP 8** – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9** – Structures in Fleeting and Anchorage Areas
- NWP 10** – Mooring Buoys
- NWP 11** – Temporary Recreational Structures
- NWP 13** – Bank Stabilization
- NWP 14** – Linear Transportation Projects
- NWP 15** – U.S. Coast Guard Approved Bridges
- NWP 16** – Return Water From Upland Contained Disposal Areas
- NWP 17** – Hydropower Projects
- NWP 18** – Minor Discharges
- NWP 19** – Minor Dredging
- NWP 20** – Response Operations for Oil or Hazardous Substances
- NWP 22** – Removal of Vessels
- NWP 23** – Approved Categorical Exclusions
- NWP 24** – Indian Tribe or State Administered Section 404 Programs
- NWP 25** – Structural Discharges
- NWP 27** – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28** – Modifications of Existing Marinas
- NWP 30** – Moist Soil Management for Wildlife
- NWP 31** – Maintenance of Existing Flood Control Facilities
- NWP 32** – Completed Enforcement Actions
- NWP 33** – Temporary Construction, Access, and Dewatering
- NWP 34** – Cranberry Production Activities
- NWP 35** – Maintenance Dredging of Existing Basins
- NWP 36** – Boat Ramps
- NWP 37** – Emergency Watershed Protection and Rehabilitation
- NWP 38** – Cleanup of Hazardous and Toxic Waste
- NWP 41** – Reshaping Existing Drainage Ditches
- NWP 45** – Repair of Uplands Damaged by Discrete Events
- NWP 46** – Discharges in Ditches
- NWP 49** – Coal Remining Activities
- NWP 53** – Removal of Low-Head Dams
- NWP 54** – Living Shorelines



40 EXISTING 2017 NATIONWIDE PERMITS THAT REMAIN IN EFFECT

- The 40 existing 2017 NWP's remain in effect until they are reissued by Corps Headquarters or expire on March 18, 2022, whichever comes first
 - These 40 NWP's are governed by the 2017 NWP general conditions and definitions
- The regional conditions for these 40 NWP's that were approved by division engineers in 2017 remain in effect
- The Corps plans to issue a final rule for these 40 NWP's by using the comments received in response to the September 15, 2020, proposed rule



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TRANSITIONING TO 2021 NATIONWIDE PERMITS

- The 12 existing 2017 NWP that were reissued in January 2021 expire on March 14, 2021
 - There cannot be two sets of the same NWPs in effect at the same time
- The 40 existing NWPs not reissued in January 2021 remain in effect under the 2017 terms and conditions
- Grandfathering provisions in NWP regulations
 - If the activity qualifies for authorization under one of the 12 reissued 2021 NWPs, the original NWP verification letter will continue to be valid under March 18, 2022, unless the district engineer identified a different expiration date in that verification letter (33 CFR 330.6(a)(3)(ii))
 - If the activity no longer qualifies for NWP authorization under one of the reissued 2021 NWPs, the project proponent would have 12 months to complete the authorized activity as long as that activity is under construction or under contract to commence construction before the reissued or modified NWP goes into effect (33 CFR 330.6(b))

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



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REMOVAL OF 300 LINEAR FOOT LIMIT FOR LOSSES OF STREAM BED

- Rely on other tools to comply with “no more than minimal adverse environmental effects” requirement for NWPs
 - Discussed on next slide
- More accurate quantification of losses of stream bed
 - Streams within watersheds vary substantially in size
 - More defensible determinations of “no more than minimal impacts”
- Reduced costs for permittees and the Corps
 - Remove delays due to agency coordination of waiver requests
 - Increase availability of NWPs to authorize small losses of stream bed, instead of requiring individual permits for these activities
- Consistent limits for all categories of non-tidal waters
- Consistency with 404(b)(1) Guidelines, which provide greater protection for special aquatic sites (e.g., wetlands)
- Established compensatory mitigation requirement for losses of greater than 3/100-acre of stream bed, consistent with wetland mitigation requirement
 - Additional incentive to reduce stream impacts



TOOLS TO ENSURE “NO MORE THAN MINIMAL ADVERSE ENVIRONMENTAL EFFECTS”

- 1/2-acre limit for losses of non-tidal waters of the United States
 - Applies to all of these NWP's
- Pre-construction notification required for all activities authorized by these NWP's
 - NWP 43 – PCNs for all, except certain maintenance activities
 - NWP 51 – PCN for losses of greater than 1/10-acre
- Authority of division engineers to impose regional permit conditions to restrict use of NWP's to address regional aquatic resource concerns
- Authority of district engineers to add activity-specific permit conditions to address project-specific aquatic resource concerns



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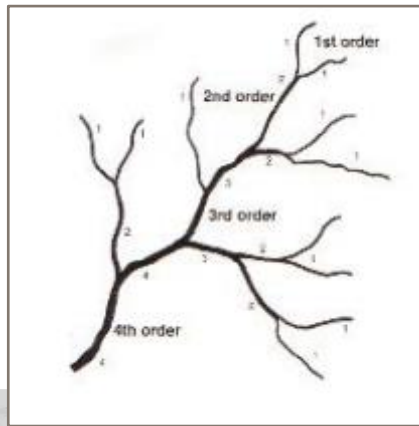
EFFECTIVE ACREAGE LIMITS, BASED ON 300 LINEAR FOOT LIMITS, BY STREAM ORDER

Resource type	Average stream width ^{#,*}	Effective acreage limit for loss of 300 linear feet of stream bed
Non-tidal wetland (special aquatic site)		0.50 acre
1st order non-tidal stream [#]	1.05 feet	0.007 acre
1st order non-tidal stream [*]	2.6 feet	0.02 acre
2nd order non-tidal stream [*]	5.9 feet	0.04 acre
3rd order non-tidal stream [*]	12.1 feet	0.08 acre
4th order non-tidal stream [*]	27.2 feet	0.19 acre
5th order non-tidal stream [*]	96.1 feet	0.50 acre ^a

[#] G.H. Allen et al. 2018. Similarity in stream width distribution across headwater systems. Nature Communications 9:610

^{*} J.A. Downing et al. 2012. Global abundance and size of streams and rivers. Inland Waters 2:229-236. (Supp. Info. U.S.)

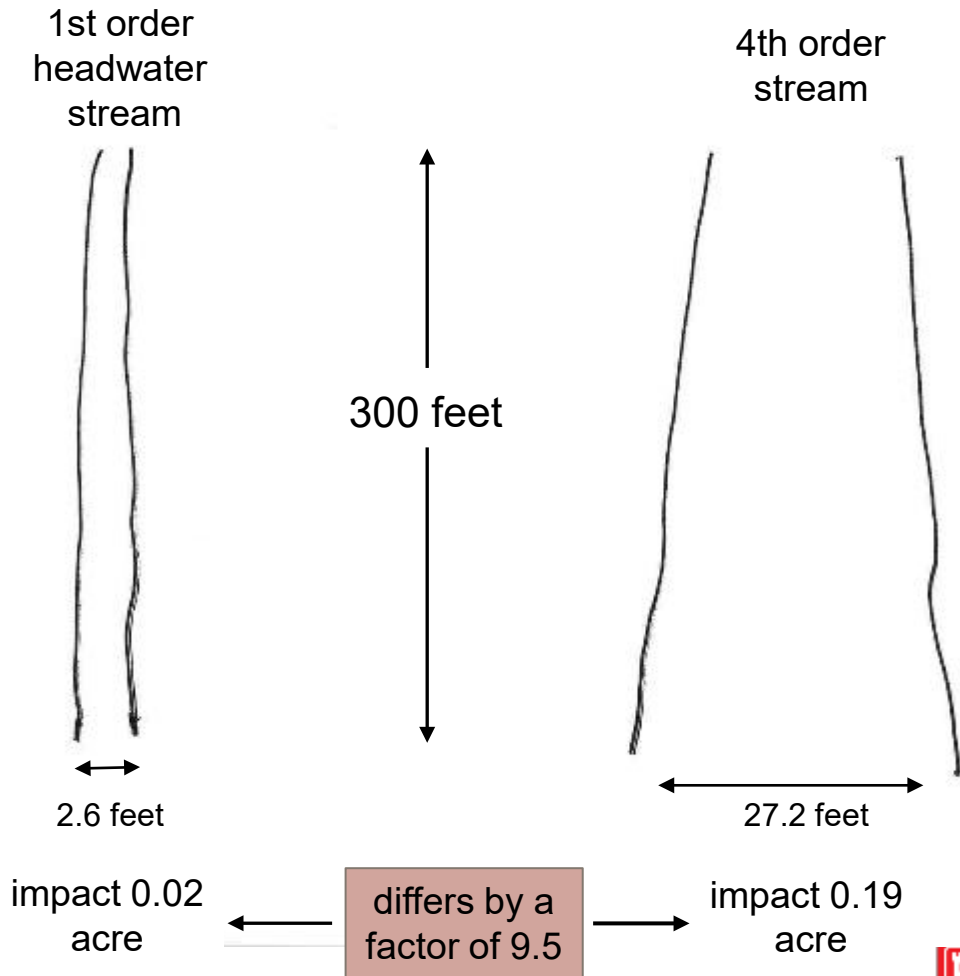
^a 0.66 acre impact over 300 linear feet



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EXAMPLE OF POTENTIAL DIFFERENCE BETWEEN LINEAR FOOT AND AREA-BASED STREAM IMPACTS



NWP 12, OIL OR NATURAL GAS PIPELINE ACTIVITIES

- Authorizes discharges of dredged or fill material and structures and work in navigable waters of the United States for oil or natural gas pipeline activities
- Defines “oil or natural gas pipeline” as “any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt”
- 1/2-acre limit for each single and complete project
- Pre-construction notification required for:
 - Activities that require authorization under Section 10 of the Rivers and Harbors Act of 1899
 - Discharges of dredged or fill material that result in the loss of greater than 1/10-acre of waters of the United States
 - Proposed oil or natural gas pipeline activities associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length



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NEW UTILITY LINE NATIONWIDE PERMITS

NWP 57 – Electric Utility Line and Telecommunications Activities

- Discharges of dredged or fill material and structures and work in navigable waters
- “Electric utility line and telecommunication line” is any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.
- 1/2-acre limit for each single and complete project
 - Separate and distant crossings of jurisdictional waters
- Notification required for:
 - Losses greater than 0.1 acre
 - Crossings of navigable waters

NWP 58 – Utility Line Activities for Water and Other Substances

- Discharges of dredged or fill material and structures and work in navigable waters
- “Utility line” is any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals.
 - Water, sewage, wastewater, etc.
- 1/2-acre limit for each single and complete project
 - Separate and distant crossings of jurisdictional waters
- Notification required for:
 - Losses greater than 0.1 acre
 - Crossings of navigable waters



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NWP 48, COMMERCIAL SHELLFISH MARICULTURE ACTIVITIES

- Clarified that this NWP authorizes activities for the cultivation of bivalve molluscs such as oysters, mussels, clams, and scallops
- Removed definition of “new commercial shellfish mariculture activities”
- Pre-construction notification required for:
 - New and existing (on-going) activities that directly affect more than 1/2-acre of submerged aquatic vegetation
- Authorizes structures and work under Section 10 of the Rivers and Harbors Act of 1899 (on-bottom and off-bottom culture)
 - Also authorizes discharges of dredged fill material under Section 404 of the Clean Water Act for certain shellfish mariculture activities (on-bottom culture)



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NEW MARICULTURE NATIONWIDE PERMITS

NWP 55 – Seaweed Mariculture Activities

- Authorizes structures in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf
 - Includes multitrophic mariculture activities (e.g., seaweed, mussels)
- Requires, to the maximum extent practicable, removal of structures from navigable waters if operator ceases production
- Does not authorize attendant features such as docks, piers, boat ramps, stockpiles, or staging areas

NWP 56 – Finfish Mariculture Activities

- Authorizes structures in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf
 - Includes multitrophic mariculture activities (e.g., finfish, seaweed, mussels)
- Requires, to the maximum extent practicable, removal of structures from navigable waters if operator ceases production
- Does not authorize the construction of land-based fish hatcheries or other attendant features, such as docks, piers, boat ramps, stockpiles, or staging areas



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REGIONAL CONDITIONS FOR THE NATIONWIDE PERMITS

- Corps division engineers have authority to modify, suspend, or revoke NWP's on a regional basis to ensure no more than minimal adverse environmental effects
 - Districts issue public notices on proposed regional conditions
 - Divisions approve regional conditions through supplemental documents
 - Districts issue public notices announcing final regional conditions approved by division engineer
- Regional conditions can only make the NWP's more restrictive
 - Lower impact limits
 - Add pre-construction notification requirements
 - Restrict or prohibit use of NWP's in certain categories of waters
- Supplemental documents also address status of WQCs and CZMA consistency determinations for the issuance of the NWP's



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