



**US Army Corps  
of Engineers**

Portland District

## 2012 Nationwide (NWP) Regional Permit Conditions Portland District

The following Nationwide Permit (NWP) regional conditions are for the Portland District Regulatory Branch boundary. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resource concerns.

### ALL NWPs –

1. **High Value Aquatic Resources:** Except for NWPs 3, 20, 27, 32, 38, and 48, any activity that would result in a loss of waters of the United States (U.S.) in a high value aquatic resource is not authorized by NWP. High value aquatic resources in Oregon include bogs, fens, wetlands in dunal systems along the Oregon coast, native eel grass (*Zostera marina*) beds, kelp beds, rocky substrate in tidal waters, marine reserves, marine gardens, vernal pools, alkali wetlands, and Willamette Valley wet prairie wetlands.

**NOTE:** There are other types of wetlands in Oregon, such as mature wooded wetlands and tidal swamps, which are also considered as providing high value and functions to the State's aquatic ecosystems. Impacts to these waters will be evaluated on a case-by-case basis for potential authorization under a Nationwide Permit. For more information about the State's Wetlands of Conservation Concern" please visit [http://oregonstatelands.us/DSL/PERMITS/forms.shtml#Permit\\_Forms](http://oregonstatelands.us/DSL/PERMITS/forms.shtml#Permit_Forms)

2. **Cultural Resources and Human Burials-Inadvertent Discovery Plan:** In addition to the requirements in NWP General Conditions 20 and 21 permittee shall immediately notify the Portland District Engineer if at any time during the course of the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves and Repatriation Act, are discovered. The permittee shall implement the following procedures:
  - a. Immediately cease all ground disturbing activities.
  - b. Project Located in Oregon: Notify the Oregon State Historic Preservation Office (503-986-0674).
  - c. Project Located in Washington: Notify the Washington Department of Archaeology and Historic Preservation (360-586-3077).
  - d. Notify the Portland District Engineer. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery. Follow up the fax notification by contacting the Portland District Engineer representative (by email and telephone) identified in the verification letter.
  - e. Failure to stop work immediately and until such time as the Portland District Engineer has coordinated with all appropriate agencies and Native American tribes, and complied with the provisions of 33 CFR 325 (Appendix C), the National Historic Preservation Act, Native American Graves and Repatriation Act, and other pertinent regulations could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

3. **In-water Work:** In order to minimize potential impacts to water quality, aquatic species and habitat, in-water work will be limited by the following timing considerations:
  - a. Permittee shall complete all in-water work within the preferred work window specified in Oregon Department of Fish and Wildlife's (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at: [http://www.dfw.state.or.us/lands/inwater/Oregon\\_Guidelines\\_for\\_Timing\\_of\\_%20InWater\\_Work2008.pdf](http://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_%20InWater_Work2008.pdf).
  - b. If work cannot be completed within the preferred timing window, despite every attempt to do so, permittee shall submit a request to work out side of the preferred window to the Portland District Engineer in writing. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the District Engineer. The District Engineer will coordinate with the appropriate agencies prior to finalizing a decision.
4. **Fish and Aquatic Life passage:** In addition to the requirements of NWP General Conditions 2 and 9, all activities authorized by a NWP shall not restrict passage of aquatic life temporarily or permanently. Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of the United States and which are generally present in and/or around waters of the United States.
  - a. Activities such as the installation of culvert, intake structures, diversion structures, or other modifications to stream channel morphology must conform to fish passage standards developed by the ODFW and the National Marine Fisheries Service (NMFS). ODFW's standards can be found at OAR 635-412-0035; ODFW provides an overview at <http://www.dfw.state.or.us/fish/passage/> and NMFS provides an overview at <http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf>.
5. **Fish Screening:** The permittee shall ensure that all intake pipes utilize fish screening that complies with standards developed by NMFS and ODFW ("Anadromous Salmonid Passage Facility Design", February 2008). <http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf> or the most current version.
6. **Work Area Isolation and Dewatering:** Appropriate best management practices shall be implemented to prevent erosion and sediments from entering wetlands or waterways.
  - a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows.
  - b. Permittee shall provide for fish passage upstream and downstream of the worksite.
  - c. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized.
  - d. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering the active stream channel.
  - e. Upstream and downstream flows shall be maintained by routing flows around the construction site with a pump, bypass pipe, or diversion channel.

f. A sediment basin shall be used to settle sediments in return water prior to release back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion of the streambank. Settlement basins shall be placed in uplands.

g. Fish and other aquatic species must be salvaged prior to dewatering. The State of Oregon requires a Scientific Take Permit be obtained to salvage fish and wildlife. Permittee is advised to contact the nearest ODFW office. For further information contact ODFW at <http://www.dfw.state.or.us>.

**7. Dredging:** For any NWP-authorized activities, including but not limited to NWP 1, 3, 12, 13, 19, 27, 28, 35, 36, 40, and 41 that involve removal of sediment from waters of the United States permittee shall ensure that:

a. Prior to dredging, appropriate sediment characterization as to size composition and potential contaminants has been undertaken and the material is suitable for in-water disposal per the Sediment Evaluation Framework for the Pacific Northwest, 2009 (available at: <http://www.nwp.usace.army.mil/environment/sediment.asp>) or the most current version.

b. Permittee shall use the least impactful methodology and activity sequencing to ensure impacts to the aquatic system are minimized to the maximum extent practicable. Examples include using a hydraulic, closed-lipped clamshell bucket, toothed clamshell bucket, dragline and/or excavator.

c. Dredged or excavated material is placed where sediment-laden water cannot enter waterways or wetlands in an uncontrolled manner. The discharge associated with the return of sediment-laden water into a water of the United States from an upland disposal site requires separate authorization from the District Engineer under NWP 16.

**8. Chemically Treated Wood:** Permittee shall not allow wood products treated with biologically harmful leachable chemical components (e.g. copper, arsenic, zinc, creosote, chromium, chloride, fluoride, and pentachlorophenol) to be placed over or come in contact with waters or wetlands.

a. **New structures:** Wood may be permanently or temporarily sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood include untreated wood, steel (painted, unpainted or coated with epoxy-petroleum compound or plastic), concrete and plastic lumber.

b. **Removal of existing chemically treated wood:** Permittee shall prevent chemically treated wood debris from entering any waters or wetlands. In the event chemically treated wood debris inadvertently enters a water or wetland, permittee shall remove the material as soon as practicable and dispose of the material at an approved upland facility.

1) Permittee shall make every practicable effort to remove chemically treated wood piles in their entirety using a vibratory hammer.

i) In uncontaminated sediment, piling that breaks off during extraction shall be cut off at least three (3) feet below the surface of the sediment.

ii) In contaminated sediment, piling that breaks off above the surface shall be cut off at the sediment line. If the break occurs within contaminated sediment, no further effort shall be made to remove the pile. Any resulting hole shall be filled with clean, native substrate.

- 9. Mechanized Equipment:** In addition to the requirements in NWP General Condition 11, permittee shall implement the following to prevent or limit aquatic impacts from mechanized equipment:
- a. In all events use the type of equipment that minimizes aquatic impacts spatially and temporally.
  - b. Use existing roads, paths, and drilling pads where available. Temporarily place mats or pads onto wetlands or tidal flats to provide site access. Temporary mats or pads shall be removed upon completion of the authorized work.
  - c. Operate equipment from the top of a streambank and conduct work outside of the active stream channel, unless specifically authorized by the District Engineer.
  - d. Isolate storage, staging, and fueling areas, and operate and maintain equipment in isolation from waters, wetlands, and riparian areas.
  - e. Maintain spill prevention and containment materials with ready access at vehicle staging areas. Permittee and staff shall be trained to effectively deploy the measures. Spill response materials include straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags. In the event of a spill of petroleum products or other chemicals with potential to affect waters or wetlands, permittee shall immediately report the spill to the Oregon Emergency Response Service (OERS) at 1-800-452-0311 and shall implement containment and cleanup measures, as directed.

- 10. Deleterious Waste:** In addition to the requirements in NWP General Condition 6, permittee shall not dispose of biologically harmful or waste materials into waters or wetlands. These materials include but are not limited to the following:

- a. Petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete.
- b. Discharge water created during construction activities (such as but not limited to concrete wash out, pumping for work area isolation, vehicle wash water, drilling fluids, dredging return flows, and sediment laden runoff) shall be treated to remove debris, sediment, petroleum products, metals, and other pollutants and discharged in a controlled fashion to avoid erosion. A separate Department of the Army permit and/or a National Pollutant Discharge Elimination System (NPDES) permit from Oregon Department of Environmental Quality's (DEQ) may be required prior to discharge. Permittee is directed to contact the nearest DEQ office (<http://www.deq.state.or.us/about/locations.htm>) for more information about the NPDES program.

- 11. Stormwater Discharge Pollution Prevention:** Activities that result in stormwater runoff passing over disturbed areas and impervious surfaces must include reduction measures, controls, treatment techniques and management practices to avoid discharge of soil, debris, toxics and other pollutants to waterways and wetlands.

- a. **Erosion Control:** During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. For proper erosion control measure selection and implementation, the permittee is referred to DEQ "Oregon Sediment and Erosion Control Manual," April 2005, available at: <http://www.deq.state.or.us/wq/stormwater/escmanual.htm>. Appropriate control measures and maintenance include, but are not limited to the following:

1) Permittee shall inspect and maintain control measures in good condition throughout construction and until permanent measures are well established. Permittee shall repair or replace any damages such as rips, broken stakes that result in loss of intended function. Permittee shall install additional control measures and reseed or replant with native and/or non-competitive species as necessary to achieve stabilization of the site. Spray-on mulches imbedded with benign sterile species may be used to temporarily stabilize the area until permanent controls are in place.

2) Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all components of installed control measures.

**b. Post-Construction Stormwater Management:** If the activity will result in creation of new impervious surfaces and federally listed aquatic species or their habitat may be affected by the proposed activity permittee shall forward a copy of the post-construction stormwater management plan (SWMP) to the Portland District Engineer for our consultation under the Endangered Species Act. A copy of the SWMP must be submitted to the DEQ for their review and approval prior to initiating construction.

1) Submittal of the post-construction stormwater management plan to DEQ at the same time the application is submitted to the Corps will streamline the project review. DEQ's Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications which involve impervious surfaces can be found at <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf>. This document provides information to determine the level of detail required for the plan based on project type, scope, location, and other factors, as well as references to assist in designing the plan and a checklist for a complete submission.

**12. Upland Disposal:** Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Portland District Engineer.

a. Final disposition of materials removed from waters and wetlands to uplands may require separate approvals under Oregon State Solid Waste Rules. For more information please visit DEQ's Solid Waste program at <http://www.deq.state.or.us/lq/sw/index.htm>.

b. Temporary upland stockpiles of excavated or dredged materials shall be isolated from waterways, wetlands, and floodwaters; stabilized prior to wet weather; and maintained using best management practices unless specifically authorized by the District Engineer.

**13. Restoration of Temporary Impacts:** To minimize temporal losses of waters of the U. S. construction activities within areas identified as temporary impacts shall not exceed two construction seasons or 24 months, whichever is less. For all temporary impacts, permittee shall provide the Portland District Engineer a description, photos, and any other documentation which demonstrates pre-project conditions with the Preconstruction Notification.

a. Site restoration of temporarily disturbed areas shall include returning the area to pre-project ground surface contours. Permittee shall revegetate temporarily disturbed areas with native, noninvasive herbs, shrubs, and tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

b. Site restoration shall be completed within 24 months of the initiation of impacts (unless otherwise required by the specific NWP). However, if the temporary impact requires only one construction season, site restoration shall be completed within that same construction season before the onset of seasonal rains.

**14. Permittee-responsible Compensatory Mitigation:** When permittee-responsible compensatory mitigation is required by the Portland District Engineer to replace lost or adversely affected aquatic functions, the permittee shall provide long-term protection for the mitigation site through real estate instruments (e.g., deed restriction or conservation easement) or other available mechanisms. The appropriate long-term protection mechanism will be determined by the Portland District Engineer based on project-specific review and must be in place prior to initiating the permitted activity.

**15. Inspection of the Project Site:** The permittee shall allow representatives of the Portland District Engineer and/or DEQ to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

**16. Sale of Property/Transfer of Permit:** Permittee shall obtain the signature(s) of the new owner(s) and transfer this permit in the event the permittee sells the property associated with this permit. To validate the transfer of this permit authorization, a copy of this permit with the new owner(s) signature shall be sent to the Portland District Engineer at the letterhead address on the verification letter.

#### **NATIONWIDE SPECIFIC CONDITIONS:**

##### **NWP 3 – Maintenance**

1. Permittee shall implement measures necessary to prevent streambed gradient alterations and streambank erosion.

##### **NWP 5 – Scientific Measurement Devices**

1. Permittee shall remove all scientific measurement devices including all associated structures and fills including anchoring devices, buoys, and cable within 30 days after research is completed.

##### **NWP 6 – Survey Activities**

1. Use of in-water explosives is not authorized.
2. Permittee shall isolate all in-stream exploratory trenching from the active channel.

##### **NWP 12 – Utility Line Activities**

1. Permittee shall install trench-blockers of a type and design sufficient to prevent the drainage of the wetland areas (e.g. bentonite clay plugs, compacted sand bags, etc.) where utility lines are buried within or immediately adjacent to wetlands and other waters.
2. Permittee shall remove and separately reserve the topsoil from the subsurface soils during trenching. Permittee shall place the reserved topsoil as the final surface layer in backfilling the trench.
3. Agency coordination, per Nationwide Permit General Condition 31 (d), is required where utility lines are proposed in estuaries to ensure there are no impacts to native shellfish beds.
4. Manholes placed in streams or other waterways require specific approval by the District Engineer.

### **NWP 13 – Bank Stabilization**

1. Permittee shall include the use of bioengineering techniques and natural products (e.g. vegetation and organic material such as root wads) in the project design to the maximum extent practicable and shall minimize the use of rock, except when it is anchoring large woody debris. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern shall not be used for soil stabilization. Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.
2. Riprap shall be clean (i.e. free of toxic contaminants and invasive species), durable, angular rock.

### **NWP 23 – Approved Categorical Exclusions**

1. Pre-construction notification or other Corps-approved documentation is required for all activities which require a permit from the Portland District Engineer.

### **NWP 29 – Residential Developments**

1. Wetland impacts associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc) shall not exceed one-fourth (¼) acre.

### **NWP 41 – Reshaping Existing Drainage Ditches**

1. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.

### **NWP 43- Stormwater Management Facilities**

1. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.
2. This NWP does not authorize the retention of water in excess of that required to meet stormwater management requirements for purposes such as recreational lakes, reflecting pools, irrigation, etc.

### **NWP 44 - Mining Activities**

1. Reclamation, when required, must be achieved within 24 months of completing the mining activity.
2. In-stream mining including bar scalping is not authorized by this NWP.
3. Permittee shall ensure site includes appropriate grade controls to prevent headcutting of streams or bank erosion.
4. The use of in-water explosives is prohibited under this nationwide.
5. Excavated materials may be temporarily stockpiled within the channel above the plane of the water surface for up to seven (7) days. Excavated materials shall not be stockpiled in wetlands or flowing water.

#### **NWP 48 – Commercial Shellfish Aquaculture Activities**

1. Agency coordination, per NWP General Condition 31 (d), is required for all activities proposed under this NWP.

**NOTE:** For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels on state submerged and submersible lands permittee is advised authorization may be required from the Oregon Department of Agriculture. For more information go to [http://www.oregon.gov/ODA/FSD/program\\_shellfish.shtml](http://www.oregon.gov/ODA/FSD/program_shellfish.shtml)

#### **NWP 51– Land-Based Renewable Energy Generation Facilities**

1. Agency coordination, per NWP General Condition 31 (d), is required for activities where aerial power transmission lines cross navigable waters.

#### **NWP 52 – Water Based Renewable Energy Generation Pilot Projects**

1. Agency coordination, per NWP General Condition 31 (d), is required for all activities proposed for verification under this NWP.

2. Activities authorized under this NWP shall comply with the siting requirements of the Oregon Territorial Sea Plan, which designates areas as suitable for such activities.

**NOTE:** The State of Oregon is updating its Territorial Sea Plan to identify areas suitable for renewable ocean energy. Once identified and adopted by the Land Conservation and Development Commission, the general public will be able to identify those areas using a Geographic Information Systems map layer.