

# 2021 Nationwide Permits – Summary of changes

4/20/22

This document summarizes changes to Nationwide Permits (NWP) commonly used by WSDOT projects, general permit conditions, and NWP-specific conditions from the 2017 NWPs.

Commonly used NWPs include:

- NWP 3. Maintenance
- NWP 6. Survey Activities
- NWP 13. Bank Stabilization
- NWP 14. Linear Transportation Projects
- NWP 18. Minor Discharges
- NWP 23. Approved CEs
- NWP 27. Aquatic Habitat Restoration, Enhancement, and Establishment Activities
- NWP 33. Temporary Construction, Access, and Dewatering

If the NWP or condition is not listed in this document, assume there were no notable changes.

## Nationwide Permits & National General Conditions

The changes clarify what can be covered under a few of the NWPs. The National General Conditions (NGCs) apply to all projects nationwide, regardless of which NWP the work is covered under.

### Summary of changes to the NWPs

#### NWP 13. Bank Stabilization

Added a note that living shorelines may be authorized under NWP 54.

#### NWP 14. Linear Transportation Projects

Added driveways to the list of activities that can be covered.

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

Added conditions for the release of sediment from reservoirs and coral projects.

### Summary of changes to the NGCs

#### NGC 23. Mitigation

Added new condition for compensatory mitigation when there is a loss of more than 3/100ths of an acre of streambed.

Added new condition for compensatory mitigation at 1:1 ratio when there is a loss of more than 1/10<sup>th</sup> acre of permanent loss of wetlands. Applicant will also need to submit a mitigation plan with their PCN.

## Regional General Conditions

The Regional General Conditions (RGCs) apply to all projects, regardless of which NWP the work will be covered under. The Corps retained 9 of the 2017 RGC, added a new RGC 9, and removed 5 RGCs.

### Summary of changes

#### RGC 2. Aquatic resources requiring special protection

Changed to any project with impacts requires a pre-construction notification (PCN, application).

This RGC rarely applies to WSDOT projects.

#### RGC 4. Commencement Bay

Changed to prohibit the use of any NWP for work that results in a permanent loss of wetlands or mudflats in the Commencement Bay Study Area (CBSA). This applies to any activity that is towards Commencement Bay from I-5, the border of the CBSA.

#### RGC 5. Bank Stabilization

Reduced when a PCN is required from all projects with bank stabilization activities to only those in waters where salmonid species are or could be present.

#### RGC 6. Crossings of WOTUS

Removed the requirement for a 5-year monitoring plan.

#### RGC 7. Stream loss

Removed limitation that a project cannot result in a loss of more than 300 linear feet of stream and the need for a waiver. Simplified to a PCN is required anytime there is any loss of linear feet of stream.

#### RGC 8. Construction boundaries

Was RGC 12. No change.

#### RGC 9. ESA Reporting to NMFS

New. Adds reporting requirement if construction activities result in an injury or death of a listed species and instructions on how to deal with the individuals.

### Removed 2017 RGCs

#### 8. Mitigation

Covered by NGC 23. A PCN and compensatory mitigation are no longer triggered if a project results in a loss of between 1,000 sf and 0.1 acres of wetlands. However, it is WSDOT policy to provide compensatory mitigation for any loss of WOTUS.

## 9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat

Covered by EFH/ESA consultations and NGC 18.

## 10. Forage Fish

Covered by HPA for WSDOT projects. Fish are also protected under NGC 2 & 3. The Corps may add a project-specific condition if a project proposed work outside the designated work window.

## 11. Notification of Permit Requirements

Removed the requirement for applicants to share the Permit and conditions with the Contractor, subcontractor, and to keep a copy on site. It remains WSDOT policy to share the permit and conditions with the contractor and subcontractors. The Corps may add this to the project-specific conditions.

## 13. Temporary Impacts and Site Restoration

Covered by NGC 13 which requires areas be restored to pre-construction elevations and revegetated. Removed limit of temporarily impacted areas, six-month duration, and stockpiling of native soils and vegetation.

# Regional NWP-specific conditions

These conditions only apply to projects that will be verified under the specified NWP.

## Summary of changes

### NWP 6. Survey Activities

Removed all NWP-specific conditions. The fill quantity is no longer limited to only 25 cy below OHWM or HTL.

### NWP 14. Linear Transportation Projects

Removed driveways because they were added to NWP 14. Kept the requirement for a PCN for all activities that cross tidal waters.

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

Reduced to a maintenance and monitoring plan is only needed for projects that result in a loss of WOTUS.

### NWP 33. Temporary Construction, Access, and Dewatering

Reduced to a PCN is no longer needed unless triggered by the NGCs or RGCs. A PCN used to be required for all actions under this NWP.

## Ecology's WQC conditions

Structural or organizational changes to the conditions are not noted below unless they resulted in a substantive change. The re-arrangement, addition, and removal of conditions resulted in new condition numbers. The change in number is only noted for those conditions that had other changes as well.

Ecology's CZMA for all commonly used NWP's changed and a consistency determination is only needed if the project requires and Individual WQC.

### Summary of changes to general conditions

#### Introduction

Removed definitions of types of certifications. Replaced it with a paragraph on what type of information Ecology may need if review is required. The language is much more simplified and clearer.

#### 1. For in-water construction activities

Removed sentence that water quality standards can be found on the web.

#### 4. Loss of more than 300 linear feet of streambed

New. Any project with a loss (Ecology has clarified this means gross loss, not net) of 300 linear feet of streambed requires review.

#### 5. Temporary fills

Was Condition 6. Changed to review required if temporary fill is in place more than 6 months. This is an increase from the previous 90 days.

#### 8. Application

Was Condition 3. Added option to use other application formats besides the JARPA form. Removed the bullet with the review timelines. Timelines will be covered in the WSDOT policy guidance.

### Summary of changes to NWP-specific conditions

#### 3. Maintenance

Removed the trigger for review if there is any new work below OHWM outside the original footprint.

Added a new trigger for review if there is a complete replacement of a shoreline stabilization using hard armoring. The change in material would likely kick the project out of NWP 3; this change is not likely to affect WSDOT projects.

### 13. Bank Stabilization

Changed to an Individual WQC is required if any of the conditions apply. Before, some conditions only triggered review.

Removed the NWP-specific trigger if work that discharges to a special aquatic site. However, review for this reason may still be triggered by the general conditions.

### 14. Linear Transportation Projects

Changed to review is only triggered if work is in a known contaminated or cleanup site instead of in or adjacent to.

Changed to an Individual WQC if there are more than 1/3 acre impacts to waters or if the NWP is combined with any other NWP (for example, the Corps issues a NWP 14 and a NWP 13 for a road project with bank stabilization).

### 23. Approved CEs

Changed from review to Individual WQC if more than 1/2 acre of impacts to waters.

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

Changed to review is only triggered if work is in a known contaminated or cleanup site instead of in or adjacent to.

Changed from review to an Individual WQC if:

- More than 1/2 acre of direct impacts to tidal waters.
- Affects more than 1/2 acre of wetlands.
- The project is a mitigation bank or advanced mitigation site. This will not change the timeline and process because it removes the need for Ecology to issue an Administrative Order.